

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Ass'n v. Durland

66 P.3d 429 (Okla. 2003) · Decided March 18, 2003

SUMMARY

The Oklahoma Supreme Court considered attorney disciplinary charges against Jack R. Durland, who had served as a co-trustee and misrepresented the investment of trust funds by sending bogus certificates of deposit. The court found clear and convincing evidence of dishonesty, fraud, and misrepresentation, ordered Durland disbarred, struck his name from the roll of attorneys, and assessed \$3,829.61 in costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Hargrave, J.; Watt, C.J.; Hodges, J.; Lavender, J.; Kauger, J.; Boudreau, J.; Winchester, J.
JURISDICTION	Oklahoma
DECIDED	March 18, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding initiated by the Oklahoma Bar Association; the Professional Responsibility Tribunal found misconduct and recommended disbarment. The Supreme Court of Oklahoma reviewed the matter de novo in the exercise of its exclusive disciplinary jurisdiction.
STANDARD OF REVIEW	De novo review; the Professional Responsibility Tribunal's findings, credibility determinations, and recommendations are not binding, although its recommendations receive great weight. Charges in a contested disciplinary matter must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential disciplinary decision.
PARTIES	Oklahoma Bar Association v. Jack R. Durland, Jr.

TOPICS

- breach of trust
- trustee duties
- trusts
- beneficiary litigation

PRACTICE AREAS

legal ethics and professional responsibility

trusts and fiduciary duties

attorney discipline

QUESTIONS PRESENTED

1. What standard governs the Supreme Court of Oklahoma's review of attorney disciplinary proceedings?
2. Whether Durland's falsification of certificates of deposit and related misrepresentations were proven by clear and convincing evidence and constituted professional misconduct.
3. Whether the misconduct warranted disbarment.
4. Whether Durland's failure to provide complete information during the disciplinary investigation violated the applicable professional-conduct and disciplinary-proceeding rules.

HOLDINGS

1. The Supreme Court of Oklahoma reviews attorney disciplinary matters de novo in the exercise of its exclusive jurisdiction; the Professional Responsibility Tribunal's factual findings and recommendations are advisory rather than binding, and misconduct must be established by clear and convincing evidence.
2. Durland's falsification of certificates of deposit and related misrepresentations were proven by clear and convincing evidence and violated Oklahoma Rules of Professional Conduct Rules 8.4(b) and 8.4(c).
3. Disbarment was warranted because the forged certificates of deposit and associated fraud and misrepresentation went to Durland's fitness to practice law, notwithstanding his mitigating evidence.
4. Durland's repeated failure to provide complete information and documents concerning the grievance violated Rules 8.1(b), 8.4(d), and Rule 5.2 of the Rules Governing Disciplinary Proceedings.

KEY QUOTATIONS

"Our determinations are made de novo and neither the findings of fact of the PRT nor its view of the weight of the evidence or credibility of witnesses are binding on us." (66 P.3d at 430)

"The purpose of a disciplinary proceeding is not to punish the lawyer, but to inquire into his continued fitness to practice with a view to safeguarding the interest of the public, the courts and the legal profession." (66 P.3d at 431)

"Our task in cases such as this is to protect the public and to preserve the public confidence in the legal profession and in the judiciary that licenses them." (66 P.3d at 432)

FACTUAL BACKGROUND

Durland and Judith Pederson served as trustees of William T. Durland's trust, which held more than \$400,000 in real property, stocks, and cash. Durland was responsible for investments and told Pederson and William Durland that trust funds diverted from a Merrill Lynch account had been invested in certificates of deposit at Boatmen's Bank. When asked for documentation, Durland sent certificates that were bogus and later acknowledged that no certificates existed and that the trust funds had instead been loaned to his professional corporation. He also repeatedly failed to provide the information and documents requested during the disciplinary investigation.

PROCEDURAL HISTORY

The Oklahoma Bar Association charged Durland with converting trust funds, making misrepresentations about certificates of deposit, sending bogus certificates, and failing to respond fully to the grievance. The Professional Responsibility Tribunal found misconduct and recommended disbarment. The Supreme Court independently reviewed the record, found the falsification of certificates of deposit proven by clear and convincing evidence, and ordered disbarment and payment of costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Association v. Miskovsky, 1991 OK 88, 824 P.2d 1090
- State ex rel. Oklahoma Bar Association v. McMillian, 770 P.2d 892 (Okla. 1989)
- State ex rel. Oklahoma Bar Association v. Braswell, 663 P.2d 1228 (Okla. 1983)
- State ex rel. Oklahoma Bar Association v. Samara, 683 P.2d 979 (Okla. 1984)
- State ex rel. Oklahoma Bar Association v. Raskin, 1982 OK 39, 642 P.2d 262
- Oklahoma Bar Association v. Thomas, 1995 OK 145, 911 P.2d 907
- State ex rel. Oklahoma Bar Association v. Brown, 863 P.2d 1108, 1111 (Okla. 1993)
- State ex rel. Oklahoma Bar Association v. Colston, 777 P.2d 921, 924 (Okla. 1989)
- Oklahoma Bar Association v. Moore, 1987 OK 21, 741 P.2d 445