SUPREME COURT OF OREGON

In re Complaint as to the Conduct of Kluge, 332 Or. 251

27 P.3d 102 (2001) · No. OSB 98-22; SC S47247 · Decided June 28, 2001

SUMMARY

The Supreme Court of Oregon reviewed a lawyer disciplinary proceeding arising from David R. Kluge's default. The court held that the alleged conduct established violations involving dishonesty, unlawful practice of law, failure to withdraw when serving as a potential witness, and false statements, and increased the sanction from an 18-month suspension to a three-year suspension.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Carson, Chief Justice; Gillette, Justice; Durham, Justice; Leeson, Justice; Riggs, Justice; De Muniz, Justice
JURISDICTION	Oregon
DECIDED	June 28, 2001
DOCKET	OSB 98-22; SC S47247
DISPOSITION	other
PROCEDURAL POSTURE	Automatic de novo review of a lawyer disciplinary proceeding after the accused failed to timely answer the Oregon State Bar's complaint and the trial panel deemed the allegations true and imposed an 18-month suspension.
STANDARD OF REVIEW	De novo review is automatic under ORS 9.536(2), (3). On de novo review, the court determines whether facts deemed true establish the charged violations and may adopt, modify, or reject the trial panel's decision under BR 10.6.
PRECEDENTIAL VALUE	Published precedential opinion of the Oregon Supreme Court
PARTIES	David R. Kluge, accused v. Oregon State Bar

TOPICS

appellate procedure · insurance · administrative law

PRACTICE AREAS

legal ethics and professional responsibility · lawyer discipline · appellate procedure · insurance regulation · administrative law

QUESTIONS PRESENTED

1. Whether, following Kluge's default, the allegations in the Oregon State Bar's complaint could be deemed true and used to establish disciplinary violations on de novo review.
2. Whether falsely representing that he was a notary public and administering an oath established violations of DR 1-102(A)(3) and DR 7-102(A)(5), including whether materiality or reliance was required.
3. Whether continuing to represent Wogan after learning that he might be called as a prejudicial witness violated DR 5-102(C).
4. Whether practicing law without Professional Liability Fund insurance violated DR 3-101(B), in light of ORS 9.080(2)(a) and Oregon State Bar Bylaws 15.1 and 15.2.
5. Whether Kluge's false representations to the Professional Liability Fund established additional violations of DR 1-102(A)(3), including for 1995.
6. Whether, in a defaulted disciplinary proceeding, the Bar may present additional evidence of a more culpable mental state at a sanctions hearing.
7. What sanction was appropriate for the established violations.

HOLDINGS

1. When an accused lawyer defaults, the court may deem the allegations in the disciplinary complaint true and determine de novo whether those allegations establish the charged violations.
2. Kluge's knowing false representation that he was a notary public, followed by his administration of an oath, violated DR 1-102(A)(3) and DR 7-102(A)(5); reliance was not required, and the allegations established materiality.
3. Reliance or proof that a false statement actually misled its recipient is not required to establish a violation of DR 7-102(A)(5).
4. Kluge violated DR 5-102(C) by continuing to represent Wogan after learning that he would or might be called as a witness and that his testimony might be prejudicial to Wogan.
5. Practicing law in Oregon without the professional liability insurance required by ORS 9.080 and the Oregon State Bar's bylaws violated DR 3-101(B).
6. Kluge violated DR 1-102(A)(3) by falsely representing from 1995 through 1998 that he was exempt from Professional Liability Fund coverage because he did not engage in private practice.
7. After default, the Bar must rely on the complaint's deemed-true facts to establish responsibility for the charged violations, but BR 5.8(a) permits the trial panel to consider additional sanctions-phase evidence showing a more serious mental state when determining the appropriate sanction.

8. A three-year suspension from the practice of law was the appropriate sanction for Kluge's multiple intentional violations involving dishonesty, practicing without required insurance, failure to withdraw as a lawyer-witness, and false representations.

KEY QUOTATIONS

> *“Because the accused defaulted, we deem the allegations in the complaint to be true.”* (104)

> *“We see no reason to require proof of reliance as an element of a charge of misrepresentation under DR 1-102(A)(3).”* (105)

> *“BR 5.8(a) allows the trial panel to determine the appropriate sanction by considering evidence admitted in a sanctions hearing that the accused acted with a state of mind that is more serious than that indicated by the allegations in the complaint.”* (108-109)

> *“We conclude that a suspension of three years is appropriate.”* (110)

FACTUAL BACKGROUND

Kluge represented his wife and himself in a property-tax matter and later represented appraiser Wogan in proceedings before the Appraiser Certification and Licensure Board. During a deposition in that matter, Kluge falsely stated that he was a notary public and administered an oath despite knowing he lacked authority to do so; he also continued representing Wogan after learning that he would be called as a potentially prejudicial witness. From 1995 through 1998, Kluge practiced law without required Professional Liability Fund insurance and falsely represented each year that he was exempt because he did not practice law in Oregon.

PROCEDURAL HISTORY

The Oregon State Bar charged Kluge with violations of several disciplinary rules. Kluge failed to file a timely answer, so the trial panel deemed the complaint's allegations true, found violations, and imposed an 18-month suspension. The Oregon Supreme Court conducted automatic de novo review, affirmed the findings of misconduct, rejected Kluge's arguments and counterclaims, and increased the sanction to a three-year suspension.

DISPOSITION

other

CASES CITED

- In re Parker, 330 Or. 541, 543, 9 P.3d 107 (2000)
- In re Brandt, 331 Or. 113, 138, 10 P.3d 906 (2000)
- In re Claussen, 331 Or. 252, 261, 14 P.3d 586 (2000)
- In re Gustafson, 327 Or. 636, 649, 656, 968 P.2d 367 (1998)
- In re White, 311 Or. 573, 586, 815 P.2d 1257 (1991)
- In re Staar, 324 Or. 283, 288, 291, 924 P.2d 308 (1996)

- In re Koliha, 330 Or. 402, 408-09, 411, 9 P.3d 102 (2000)
- In re Crist, 327 Or. 609, 615-16, 965 P.2d 1023 (1998)
- In re Hiller, 298 Or. 526, 532-34, 694 P.2d 540 (1985)
- In re Devers, 328 Or. 230, 244-45, 974 P.2d 191 (1999)
- In re Wyllie, 327 Or. 175, 184, 957 P.2d 1222 (1998)
- In re Morris, 326 Or. 493, 506, 953 P.2d 387 (1998)
- In re Porter, 320 Or. 692, 710, 890 P.2d 1377 (1995)
- In re Morin, 319 Or. 547, 566, 878 P.2d 393 (1994)
- In re McKee, 316 Or. 114, 133, 849 P.2d 509 (1993)
- In re Dinerman, 314 Or. 308, 319, 840 P.2d 50 (1992)
- In re Boardman, 312 Or. 452, 458, 822 P.2d 709 (1991)
- In re Hawkins, 305 Or. 319, 751 P.2d 780 (1988)
- In re Jones, 312 Or. 611, 619-20, 825 P.2d 1365 (1992)
