SUPREME COURT OF OKLAHOMA

STATE ex rel. OKLAHOMA BAR ASSOCIATION v. FRIESEN

2015 OK 34 (Okla. 2015) · No. SCBD-6178 · Decided May 26, 2015

SUMMARY

The Oklahoma Supreme Court considered a summary attorney-discipline proceeding arising from Larry Douglas Friesen's guilty pleas to three federal misdemeanor counts for willful failure to pay employment taxes. The court continued his suspension through the effective date of the decision, deferred further discipline during his federal probation, and conditioned resumption of practice on payment of proceeding costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Combs, V.C.J.; Reif, C.J.; Kauger, J.; Watt, J.; Winchester, J.; Edmondson, J.; Colbert, J.
JURISDICTION	Oklahoma
DECIDED	May 26, 2015
DOCKET	SCBD-6178
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding under Rule 7 of the Rules Governing Disciplinary Proceedings, based on Respondent's federal misdemeanor convictions for willful failure to pay taxes.
STANDARD OF REVIEW	Each aspect of a Rule 7 disciplinary proceeding is reviewed de novo.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Larry Douglas Friesen

TOPICS

employment tax · tax penalties · tax · remedies

PRACTICE AREAS

attorney discipline · tax law · professional responsibility

QUESTIONS PRESENTED

1. Whether Friesen's repeated willful failure to pay employment taxes, after withholding those taxes from employee paychecks, demonstrated unfitness to practice law.
2. What discipline was appropriate in light of the tax offenses, the absence of client harm, the federal probation sentence, and the mitigating evidence.
3. Whether the interim suspension should continue during federal probation and whether final discipline should be deferred subject to compliance with probation.

HOLDINGS

1. An attorney's repeated willful failure to pay employment taxes, particularly taxes withheld from employee paychecks, reflects adversely on the attorney's fitness to practice law, even when the attorney filed the required quarterly returns and was not convicted of failing to file tax returns.
2. The appropriate discipline was to suspend Friesen from the practice of law from the date of the interim-suspension order through the effective date of the Court's pronouncement, defer further discipline while he remains on federal probation, and reserve authority to impose additional discipline if he violates probation.

KEY QUOTATIONS

> *"We find such failure to pay taxes, especially after withholding those taxes from employee paychecks, reflects adversely on the Respondent's fitness to practice law."* (¶ 22)

> *"However, based upon the facts of this case, we defer the imposition of final discipline for so long as Respondent remains on probation, under the terms of probation imposed by the Court in United States v. Friesen, Case No. M-14-114-E (WDOK)."* (¶ 26)

FACTUAL BACKGROUND

Friesen, an Oklahoma attorney, withheld employment taxes from his law-office employees' wages during multiple quarters in 2006 and 2007 but intentionally failed to pay the taxes to the IRS. He pleaded guilty to three federal misdemeanor counts and was ordered to serve probation, incarceration and house arrest, and pay restitution. The Oklahoma Supreme Court considered his mitigation, including embezzlement by his former CPA, substantial legal fees, payment of back taxes, remedial office-management measures, remorse, cooperation, and lack of client harm.

PROCEDURAL HISTORY

Friesen pleaded guilty in federal court to three misdemeanor counts under 26 U.S.C. § 7203 for willfully failing to pay employment taxes. The Oklahoma Bar Association forwarded certified copies of the federal criminal case to the Oklahoma Supreme Court, which entered an interim suspension and held an evidentiary hearing before the Professional Responsibility Tribunal. The Tribunal recommended lifting the interim suspension and imposing a deferred two-year-and-one-day suspension subject to federal probation; the Supreme Court imposed discipline as described in its pronouncement.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Ass'n v. Hart, 2014 OK 96, 339 P.3d 895
- State ex rel. Oklahoma Bar Ass'n v. Livshee, 1994 OK 12, 870 P.2d 770
- State ex rel. Oklahoma Bar Ass'n v. Spradling, 2009 OK 39, 213 P.3d 570
- State ex rel. Oklahoma Bar Ass'n v. Givens, 2014 OK 103, 343 P.3d 214
- State ex rel. Oklahoma Bar Ass'n v. Edwards, 2011 OK 3, 248 P.3d 350
- State ex rel. Oklahoma Bar Ass'n v. Cooley, 2013 OK 42, 304 P.3d 453
- State ex rel. Oklahoma Bar Ass'n v. Wilburn, 2006 OK 50, 142 P.3d 420
- State ex rel. Oklahoma Bar Ass'n v. Strickland, 2011 OK 54, 256 P.3d 76
- State ex rel. Oklahoma Bar Ass'n v. Gann, 1995 OK 48, 895 P.2d 726
- State ex rel. Oklahoma Bar Ass'n v. Bernhardt, 2014 OK 20, 323 P.3d 222
- State ex rel. Oklahoma Bar Ass'n v. Wolfe, 1996 OK 75, 919 P.2d 427
- State ex rel. Oklahoma Bar Ass'n v. Stewart, 2003 OK 13, 71 P.3d 1
- United States v. Friesen, Case No. M-14-114-E (WDOK)