

Select Attorney Discipline Cases from 2017-2018: Iowa, Kansas, and Nebraska

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The following selected cases involve application of the American Bar Association's Model Rules of Professional Conduct from the three public , for a period of September 2017 to October 5, 2018. The Model Rules are located here:

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html)

Note: This presentation discusses reported decisions imposing discipline. It does not include referrals by courts for discipline, malpractice actions, discovery disputes or sanctions, Rule 11 sanctions or orders, voluntary license surrenders, consent orders, applications for reinstatement, applications to take a bar examination or for admission on motion, or opinions imposing reciprocal discipline without providing in-depth discussion.

Iowa, Kansas, and Nebraska have adopted the Model Rules. State-specific resources are listed below.

- Iowa:<https://www.legis.iowa.gov/docs/ACO/CR/LINC/05-29-2015.chapter.32.pdf>
- Kansas:<http://www.kscourts.org/rules/Rule-List.asp?r1=Rules+Relating+to+Discipline+of+Attorneys>
- Nebraska:<https://supremecourt.nebraska.gov/supreme-court-rules/ch3/art5>

*I. Iowa Cases*

*A. Iowa Supreme Court Attorney Discipline Bd. v. Mathahs, 2018 WL 4514008 (Iowa Sept. 21, 2018)*

- Pervasive overbilling while a contract public defender.
- Court found a violation of Model Rules 1.5 and 5.3.
- Sixty day suspension.

*B. Iowa Supreme Court Attorney Discipline Bd. v. Kowalke, 2018 WL 4376824 (Iowa Sept. 14, 2018)*

- Conversion of over \$30,000 from a probate estate.
- Court found violations of Model Rules 1.3, 1.5, 1.15, 3.3, and 8.4.
- Revocation.

- C. *Iowa Supreme Court Attorney Discipline Bd. v. Turner*, 2018 WL 4376823 (Iowa Sept. 14, 2018)
- competence [bankruptcy], diligence, missed hearings, dismissal of bankruptcy petition without client authorization, client communication issues [resulting in at least two clients being jailed], failure to pay sanctions.
  - Court found violations of 1.1, 1.3, 1.4, 1.5, 1.15, 3.1, 3.2, 3.3, 8.1, and 8.4.
  - One year suspension.
- D. *Iowa Supreme Court Attorney Disciplinary Board v. Hamer*, 915 N.W.2d 302 (Iowa 2018)
- Representing both parties to financial transactions without proper notice, waiver; financial dealings with clients.
  - Court found violations of Model Rules 1.7 and 1.8.
  - Six month suspension.
  - Note: The court rejected a “sophisticated party” defense to an improper joint representation allegation.
- E. *Iowa Supreme Court Attorney Discipline Bd. v. Suarez-Quilty*, 912 N.W.2d 150 (Iowa 2018)
- Conversion of client funds with no “colorable future claim.”
  - Court found a violation of Model Rule 8.4.
  - Revocation.
- F. *Iowa Supreme Court Attorney Disciplinary Bd. v. Barry*, 908 N.W.2d 217 (Iowa 2018)
- Among other things, to cover up lack of work on a dissolution, attorney forged a dissolution decree.
  - Court found violations of Model Rules 1.3, 1.4, and 8.4.
  - One year suspension.
- G. *Iowa Supreme Court Attorney Disciplinary Bd. v. Springer*, 904 N.W.2d 589 (Iowa 2017)
- Seven counts of bank fraud (fraudulent mortgage scheme).
  - Court found violations of Model Rules 1.2, 1.16, 4.1, and 8.4.
  - Two year suspension.
- H. *Iowa Supreme Court Attorney Disciplinary Bd. v. Smith*, 904 N.W.2d 154 (Iowa 2017)
- Trust account matter: failure to perform monthly reconciliations for each client.
  - Court found violations of Iowa Court Rule 45.2 and Model Rule 1.15.
  - Public reprimand.
  - Note: The court did not find a violation of Model Rule 8.4.
- I. *Iowa Supreme Court Attorney Disciplinary Bd. v. Lynch*, 901 N.W.2d 501 (Iowa 2017)
- Loans (totalling \$177,000 - still unpaid as of the date of the opinion) from current client, without advising the client to seek independent legal advice.
  - Court found violations of Model Rules 1.7 and 1.8.
  - Six month suspension, with a requirement to apply for reinstatement.

## II. Kansas Cases

### A. *Matter of Mason*, 2018 WL 4655664 (Kan. Sept. 28, 2018)

- Failure to file corporation client's tax forms for several years (causing a loss of over \$45,000); misleading client regarding the status of those filings.
- Court found violation of Model Rules 1.3, 1.4, and 8.4.
- Indefinite suspension.

### B. *Matter of Buckner*, 421 P.3d 226 (Kan. 2018)

- Withholding of settlement funds, violation of fee agreement, accounting, failure to explain matters to clients, etc.
- Court found violations of Model Rules 1.4, 1.5, 1.15, 1.16, and 8.4.
- Disbarment.

### C. *Matter of Sullivan*, 420 P.3d 1 (Kan. 2018)

- Multiple controlled substances convictions; failure to file appeals; taking on new clients when unable to do so ethically; accepting compensation from a third party to represent a client without proper notice, disclosure.
- Court found violations of Model Rules 1.1, 1.3, 1.8, 1.16, and 8.4.
- Indefinite suspension, with reinstatement conditioned on, inter alia, compliance with recommended mental health treatment.

### D. *Matter of Davisson*, 419 P.3d 599 (Kan. 2018)

- Noncompliance with bankruptcy court rules, procedures, failure to take action to protect client interests, failure to communicate with clients; failure to cooperate with disciplinary authorities.
- Court found violations of Model Rules 1.3, 1.4, and 8.4.
- Disbarment.

### E. *Matter of Todd*, 418 P.3d 1265 (Kan. 2018)

- Completing only 15 of 16 CLE hours required based on a prior disciplinary diversion agreement; failure to respond to requests from information from disciplinary authorities (which the court found to be confusing).
- Informal admonition.
- **Notes:** The hearing panel had recommended a public reprimand. The reason Todd did not complete the final hour of CLE was that he was in treatment for stage four cancer.

### F. *Matter of Holmes*, 416 P.3d 143 (Kan. 2018)

- Practicing while suspended, false statements during disciplinary process.
- Court found violations of Model Rules 1.4, 1.16, 5.5, 8.1, and 8.4.
- One year suspension.

G. *Matter of Haley*, 411 P.3d 1216 (Kan. 2018)

- Failure to prosecute two criminal appeals, practicing law while suspended (drafting a codicil to his mother's will).
- Court found violations of Model Rules 1.3, 3.2, 5.5, and 8.4.
- One year suspension.

H. *Matter of Geniuk*, 411 P.3d 320 (Kan. 2018)

- While suspended, false statements about the status of his Kansas license, practicing law while suspended, failure to report out-of-state findings of misconduct to disciplinary authorities.
- Court found violations of Model Rules 5.5, 7.1, 8.3, and 8.4.
- Disbarment.

I. *Matter of Hult*, 410 P.3d 879 (Kan. 2018)

- Lack of diligence in immigration matters, failure to communicate with clients, failure to file reports required by other jurisdictions, unreasonable flat fees, safeguarding client property, failure to take appropriate action after termination of representation.
- Court found violations of Model Rules 1.3, 1.5, 1.8, 1.15, 3.3, 8.1, and 8.4.
- Indefinite suspension.

J. *Matter of Phillips*, 408 P.3d 942 (Kan. 2018)

- Sexually inappropriate telephone conversation with prospective divorce client.
- Court found violations of Model Rule 8.4.
- One year suspension, and reinstatement only after hearing.

K. *Matter of Hodge*, 384 P.3d 428 (Kan. 2016)

- Prohibited personal financial transaction with current clients, without disclosure and not on fair terms.
- Court found violations of Model Rules 1.7, 1.8, 4.2, and 8.4.
- Disbarment.
- Note: The court rejected a claim that the attorney-client relationship had been terminated, because Respondent continued to act as attorney even after the communication purporting to terminate his representation.

L. *Matter of Sutton*, 405 P.3d 1205 (Kan. 2017)

- Respondent used payments to employees' retirement plans for her own use.
- Court found violations of Model Rule 8.4.
- Three year suspension.
- Note: The court rejected the hearing panel's recommendation of probation.

*M. Matter of Najim*, 405 P.3d 1223 (Kan. 2017)

- Respondent pled guilty in federal court to one count of structuring a financial transaction to avoid reporting requirements.
- Court found violations of Model Rule 8.4.
- Indefinite suspension.

*N. Matter of Works*, 404 P.3d 681 (Kan. 2017)

- Failure to prosecute two criminal appeals.
- Court found violations of Model Rules 1.2, 1.3, 1.4, 1.16, and 3.2.
- Two year suspension, stayed upon successful completion of three years of probation.

*O. Matter of Schneider*, 404 P.3d 338 (Kan. 2017)

- Failure to respond to motions, discovery requests; failure to explain a court order to a client (here, a bankruptcy court's order revoking a discharge).
- Court found violations of Model Rules 1.4 and 1.5.
- Public censure.

*P. Matter of James*, 409 P.3d 848 (Kan. 2017)

- Family law practice in disarray.
- Court found violations of Model Rules 1.3, 1.4, 1.7, 1.15, 1.16, 3.2, and 8.4.
- One year suspension, stayed upon successful completion of three years of probation.

### *III. Nebraska Cases*

*A. State ex rel. Counsel for Discipline v. Wolfe*, 301 Neb. 117 (2018)

- Diligence, failure to communicate, fees, failure to return files, failure to respond to disciplinary authorities for eight months.
- Court found violations of Model Rules 1.1, 1.3, 1.4, 1.5, 1.16, and 8.4.
- Two year suspension, followed by two years probation.

*B. State ex rel. Counsel for Discipline v. Nimmer*, 300 Neb. 906 (2018)

- Multiyear pattern of commingling.
- Court found violations of Model Rules 1.15 and 8.4.
- Disbarment.

*C. State ex rel. Counsel for Discipline v. Troshynski*, 300 Neb. 763 (2018)

- Neglect (missing hearings, missing discovery deadlines), failure to communicate with clients, failure to cooperate with disciplinary authorities.
- Court found violations of Model Rules 1.3, 1.4, 3.4, 8.1, and 8.4.
- Forty-five day suspension followed by two years probation.

D. *State ex rel. Counsel for Discipline v. Trembly*, 912 N.W.2d 764 (Neb. 2018)

- Felony false tax return [underreporting income by over \$1 million].
- Court found violation of Model Rule 8.4.
- Three year suspension.

E. *State ex rel. Counsel for Discipline v. Jorgenson*, 906 N.W.2d 43 (Neb. 2018)

- Failure to appear for oral argument in the Eighth Circuit, failure to supervise support staff, failure to cooperate with Counsel for Discipline.
- Court found violation of Model Rules 1.1, 1.3, 3.4, 8.1, and 8.4.
- Indefinite suspension, with no possibility of reinstatement for two years.
- Note: Respondent had previously been publicly reprimanded and placed on one year of probation.

F. *State ex rel. Counsel for Discipline v. Motta*, 905 N.W.2d 641 (Neb. 2018)

- Attorney admitted pro hac vice made extrajudicial statements to the media in violation of a protective order in a criminal case.
- Court found violation of Model Rules 3.6 and 8.4.
- Public reprimand.

G. *State ex rel. Counsel for Discipline v. Gast*, 903 N.W.2d 259 (Neb. 2017)

- Practicing while suspended (for failure to file CLE reports); frivolous pleadings.
- Court found violation of Model Rules 1.4, 1.16, 3.1, and 8.4.
- Indefinite suspension, with a minimum of one year.
- Note: Respondent was also in last year's materials (896 N.W.2d 583 (Neb 2017)).

H. *State ex rel. Counsel for Discipline v. Halstead*, 902 N.W.2d 701 (Neb. 2017)

- False annual reports in a guardianship for an adult ward.
- Court found violation of Model Rules 1.1, 1.3, 1.4, 3.3, and 8.4.
- One year suspension followed by one year probation.
- Note: Respondent voluntarily surrendered his license based on other professional misconduct. (300 Neb. 69 (2018)).

I. *State ex rel. Counsel for Discipline v. Fitch*, 900 N.W.2d 907 (Neb. 2017)

- While secretary-treasurer of an LLC, Respondent filed financial documents with a bank without informing the bank that the LLC president who signed the documents was no longer the LLC's president.
- Court found violation of Model Rules 1.3, 1.8, and 8.4.
- Public reprimand.

Questions, comments, insults? Feel free to contact me.

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