

Tri-State Regional Special Education Law Conference
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Legal Ethics and Special Education Disputes
Part II: Recent Attorney Discipline Cases

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The following cases involve application of the American Bar Association's Model Rules of Professional Conduct by the supreme courts of the three host states. 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

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 Disciplinary Bd. v. Barnhill, ___ N.W.2d ___ (Iowa Sept. 16, 2016)

- Frivolous claims, false statements, disobedience of court order, failing to follow discovery rules, and conduct prejudicial to the administration of justice.
- Court found violations of model rules 3.1, 3.3, 3.4, 4.1, 8.1, and 8.4.
- Six month suspension.

B. Iowa Supreme Court Attorney Disciplinary Bd. v. Weiland, ___ N.W.2d ___ (Iowa Sept. 9, 2016)

- Respondent repeatedly misled client on status of case and failed to return funds to client after termination of attorney-client relationship.
- Court found violations of model rule 1.3, 1.4, 1.15, 1.16, 3.2, and 8.4.
- Sixty day suspension.

C. *Iowa Supreme Court Attorney Disciplinary Bd. v. Smith*, ___ N.W.2d ___ (Iowa Sept. 9, 2016)

- Numerous failures of trust account rules, including failure to maintain records.
- Court found violations of model rules 1.15, 1.16, and 8.1.
- Sixty day suspension.

D. *Iowa Supreme Court Attorney Disciplinary Bd. v. Johnson*, ___ N.W.2d ___ (Iowa Sept. 2, 2016)

- Sexual relations with a client.
- Court found violations of model rule 1.8(j).
- Thirty day suspension.
- *Note:* The court did not find withdrawing from client's representation based on her sexual relationship with a client is conduct prejudicial to the administration of justice. The court reiterated that sexual relations with a client is not per se a violation of the rule prohibiting conduct prejudicial to the administration of justice.

E. *Iowa Supreme Court Attorney Disciplinary Bd. v. Reilly*, ___ N.W.2d ___ (Iowa Sept. 2, 2016)

- Respondent's license had been revoked in 2006 for misappropriating client funds. He sought reinstatement.
- Court gave weight to his compliance with treatment for his gambling addiction, his sound financial circumstances, and his reputation among attorneys in his locale.
- Application for reinstatement granted, with conditions.

F. *Iowa Supreme Court Attorney Disciplinary Bd. v. Stoller*, 879 N.W.2d 192 (Iowa 2016)

- Multiple instances of simultaneous representation of opposing parties without informed consent. Advising landlord client to convert tenant's property based on abandonment, and advising sending the required notice to a person who was no longer an officer of the tenant's business.
- Court found violations of model rules 1.7 and 8.4.
- Sixty day suspension.

G. *Inquiry Concerning Sevcik*, 877 N.W.2d 707 (Iowa 2016)

- Part-time judicial magistrate used confidential, expunged court files in his private practice.
- Court found violations of judicial canons 1 and 3.
- Public reprimand of judicial officer.

H. *Iowa Supreme Court Attorney Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728 (Iowa 2016)

- Domestic assault; criminal trespass.
- Court found violations of model rule 8.4.
- 3 month suspension.

I. *Iowa Supreme Court Attorney Disciplinary Bd. v. Attorney Doe No. 792*, 878 N.W.2d 189 (Iowa 2016)

- Ex parte e-mail to a judge, accusing the judge of a cover-up and unethical conduct.
- Court found violations of model rule 3.5.
- Private admonition.
- *Note*: The court rejected the Respondent's argument that the e-mail was entitled to First Amendment protection.

J. *Iowa Supreme Court Attorney Disciplinary Bd. v. Silich*, 872 N.W.2d 181 (Iowa 2015)

- Thirty-three months to resolve a Medicare subrogation lien in a products liability case, and failed to keep his client informed about his progress (or lack thereof). Eight months to respond to the Attorney Disciplinary Board
- Court found violations of model rules 1.3, 1.4, 3.2, 3.4, and 8.1.
- Thirty day suspension.
- *Note*: Respondent unsuccessfully attempted to blame a federal contractor for his delay.

K. *Iowa Supreme Court Attorney Disciplinary Bd. v. Nelissen*, 871 N.W.2d 694 (Iowa 2015)

- Failure to notify client of increased fee, failure to notify client of trust account withdrawals, trust account violations, misrepresentation on annual client security reports.
- Court found violations of model rules 1.5, 1.15, 8.1, and 8.4.
- Thirty day suspension.
- *Note*: The court found that seeking continuances in a child support matter did not violate model rule 3.2: "Nelissen's reasons for seeking continuances were justified, and the continuances were brief and nonprejudicial."
- *Note*: The court found that Nelissen's communication with her client did not violate model rule 1.4. "Nelissen was not always prompt in responding to [client's] emails. Nevertheless, the record shows that Nelissen normally responded to emails from [client] the same day or within one or two days."

- L. *Iowa Supreme Court Attorney Disciplinary Bd. v. Kingery*, 871 N.W.2d 109 (Iowa 2015)
- Multiple missed filings and deadlines in multiple matters. Failure to respond to client calls or e-mails. Attempt to collect an unreasonable fee. Failure to withdraw when Respondent's addictions and mental disorders caused an "extended period of professional dysfunction."
 - Court found violations of model rules 1.3, 1.4, 1.16, 3.2, and 8.4.
 - Sixty day suspension.

II. Kansas Cases

- A. *In re Hall*, 377 P.3d 1149 (Kan. 2016)
- Attorney practiced law while under suspension and made false statements in an application for admission pro hac vice.
 - Court found violation of model rules 3.3 and 5.5.
 - Sixty day suspension.
- B. *In re Odo*, 375 P.3d 320 (Kan. 2016)
- Representation of both his real estate company and personal injury clients who borrowed from his company, extraordinary interest rates, providing financial assistance to clients, and representing a physician in a collection action against a former personal injury client.
 - Court found violations of model rules 1.7, 1.8, 1.9, 1.15, and 8.4.
 - One year suspension.
- C. *In re Stark*, 304 Kan. 630, 375 P.3d 956 (2016)
- Respondent failed to secure client's review and signature on affidavit in support of summary judgment, referencing the unsigned affidavit in memorandum in support of summary judgment, failing to inform court and opposing counsel that affidavit was unreviewed and unsigned, and failing to keep client informed of litigation status.
 - Court found violations of model rules 1.3, 1.4 and 8.4.
 - Two year suspension, stayed in lieu of two years' probation.
- D. *In re Casad*, 304 Kan. 621, 372 P.3d 1219 (2016)
- Failure to maintain contact with client during criminal appeal, filing of a brief that violated basic requirements, and failure to file a corrected brief after being ordered to do so.
 - Court found violations of model rules 1.1, 1.3, 1.4, and 8.4.
 - Sixty days suspension, stayed with terms and conditions.

- *Note:* The failure to file the corrected brief resulted in dismissal of the appeal, even though the State conceded two of three counts should be dismissed because of speedy trial violations.

E. *In re Holyoak*, 304 Kan. 644, 372 P.3d 1205 (2016)

- Forming an LLC with his spouse (a nonlawyer), advertising his spouse's mediation practice on his web site, falsely representing that he represented fifty property owners in a mineral rights dispute, offering to destroy evidence, and agreeing to settle a case for \$1.9 million, but only if the funds were wired to an offshore account in an attempt to avoid taxes.
- Court found violations of model rules 5.4, 7.1, and 8.4.
- Indefinite suspension.

F. *In re Haitbrink*, 304 Kan. 531, 375 P.3d 296 (2016)

- Client sought a loan modification and retained respondent, who failed to communicate with client and failed to return prepaid fee when it was determined that client was ineligible for a modification. Respondent's retainer agreement also purported to limit his malpractice liability. Respondent also associated with a nonlawyer and failed to disclose to the Kansas disciplinary authorities that he had been disciplined in Washington for practicing as a mortgage broker without a license.
- Court found violations of model rules 1.4, 1.8, 1.15, 1.16, 2.1, and 8.3.
- Published censure.
- *Note:* The court noted Respondent's violations were "largely a product of his depression, which is being successfully monitored and treated." *Id.* at 670, 346 P.3d at 339.

G. *In re Thurston*, 304 Kan. 146, 371 P.3d 879 (2016)

- Respondent failed to deposit flat fee retainer in trust account and failed to return unearned fee.
- Court found violations of model rules 1.15 and 1.16.
- Public censure.
- *Note:* The hearing panel purported to require the Respondent to perform certain acts between its decision and supreme court review. The court determined the panel lacked the authority to do so.

H. *In re Hawkins*, 304 Kan. 97, 373 P.3d 718 (2016)

- Failure to timely refund unearned fees; protracting litigation; failure to comply with discovery requests; directing without justification that a client not answer a question in a deposition; false statements in pleadings and oral argument; failure to cooperate with disciplinary authorities.
- Court found violations of model rules 1.16, 3.2, 3.3, 3.4, 8.1, and 8.4.
- Eighteen month suspension.
- *Note*: A minority of the court would have imposed lesser discipline.

I. *In re Mandelbaum*, 304 Kan. 67, 373 P.3d 710 (2016)

- Borrowing from trust account, advancing money to clients, commingling client and personal funds, and placing personal funds in client trust account to avoid a tax levy.
- Court found violations of model rules 1.8, 1.15, and 8.4.
- Indefinite suspension, stayed with two years of probation.

J. *In re Hardy*, 303 Kan. 1071, 373 P.3d 706 (2016)

- Felony driving under the influence of alcohol.
- Court found violations of model rule 8.4.
- Two year suspension

K. *In re Vaughn*, 303 Kan. 976, 368 P.3d 1088 (2016)

- Reciprocal discipline. Respondent also admitted in Florida. In a Florida divorce matter, Respondent withheld a corrected final decree until client paid his fees.
- Court found violations of model rules 1.2, 1.3, 1.15, and 8.4.
- Suspended until reinstated by The Florida Bar.

L. *In re Minter*, 303 Kan. 776, 367 P.3d 1238 (2016)

- Possession of marijuana with intent to deliver, possession of paraphernalia.
- Court found violations of model rule 8.4.
- Indefinite suspension.

M. *In re Fickler*, 303 Kan. 504, 362 P.3d 1102 (2015)

- Failure to file appellate brief, failure to respond to order to show cause, failure to cooperate with disciplinary authorities.
- Court found violations of model rules 1.3, 3.2, 8.1, and 8.4.
- Indefinite suspension.

N. *In re Meyer*, 303 Kan. 465, 362 P.3d 598 (2015)

- Four convictions of driving under the influence of alcohol.
- Court found violations of model rule 8.4.
- Indefinite suspension.

O. *In re O'Leary*, 303 Kan. 456, 362 P.3d 1092 (2015).

- Attempting to negotiate a settlement on behalf of a client after his license had been suspended. Multiple criminal convictions.
- Court found violations of model rules 5.5 and 8.4.
- Disbarment.

P. *In re Riebschlager*, 303 Kan. 373, 361 P.3d 499 (2015).

- Respondent is a Texas attorney. In his application for admission pro hac vice, he failed to disclose prior professional discipline.
- Court found violations of model rule 8.1.
- Indefinite prohibition on admission pro hac vice.

Q. *In re Hueben*, 302 Kan. 979, 362 P.3d 809 (2015).

- Conviction of OWI, failure to inform disciplinary authorities of that conviction, failure to notify disciplinary authorities of charge of felony possession of cocaine.
- Court found violations of model rule 8.4.
- Two year suspension, suspended, with two years of supervised probation.

R. *In re Williams*, 302 Kan. 990, 362 P.3d 816 (2015)

- Client abandonment. False statements and forged evidence during a disciplinary proceeding.
- Court found violations of model rules 1.3, 1.4, 8.1, and 8.4.
- Disbarment.

S. *In re Renkemeyer*, 302 Kan. 954, 359 P.3d 77 (2015)

- Mishandling of disbursements from the sale of a trucking company the respondent owned.
- Court found violations of model rule 8.4.
- One year suspension.
- Consider the following observation from the court (emphasis added):
When respondent spoke for himself at the hearing before this court, he asserted that he had not thought of himself as a fiduciary in the trucking company transaction, that he had been a passive investor who thought of himself as a mere seller, and that he had left the

details of receivables and their correct distribution to his fellow seller. These arguments do not fill us with confidence that, even today, respondent has a firm grasp on the nature and wrongfulness of his ethical lapses, and we are particularly troubled because of his substantial training and experience *not only as a tax lawyer but also as a certified public accountant*.

T. *In re Betts*, 302 Kan. 944, 359 P.3d 70 (2015)

- Multiple criminal “no contest” pleas: driving under the influence, possession of marijuana, possession of paraphernalia, and open container.
- Court found violations of model rule 8.4.
- Indefinite suspension, with conditions on reinstatement (completing therapy, abstaining from alcohol and illegal drugs, complying with treatment, limiting practice to criminal law, no solo practice).

III. Nebraska Cases

A. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Martin*, 294 Neb. 805, 884 N.W.2d 727 (2016)

- Attorney filed an immigration action without investigating whether client would qualify for that relief and charging an unreasonable fee.
- Court found violations of his oath of office and model rule 1.1, 1.5, 2.1, and 8.4.
- Public reprimand.

B. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Moore*, 294 Neb. 283, 881 N.W.2d 283 (2016)

- Multiple violations of multiple model rules.
- Court found violations of his oath of office and model rules 1.1, 1.3, 1.4, 1.15, 8.1, and 8.4.
- Two year suspension, followed by two years of supervised probation.

C. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Weinberg*, 294 Neb. 289, 881 N.W.2d 928 (2016)

- Attorney withheld funds in an attempt to get client to renegotiate fee agreement.
- Court found violations of her oath of office and model rules 1.5, 1.15, and 8.4.
- Public reprimand.

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

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