

Tri-State Regional Special Education Law Conference
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Legal Ethics and Special Education Disputes
Part I: Recent Attorney Discipline Cases from the Tri-State Region

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The following selected 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>

Note: This presentation discusses reported decisions imposing discipline. It does not include referrals by courts for discipline, malpractice action, 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, memorandum opinions, or opinions imposing reciprocal discipline without providing in-depth discussion.

I. Iowa Cases

A. Iowa Supreme Court Attorney Disciplinary Bd. v. Powell, ___ N.W.2d ___ (Iowa Sept. 15, 2017)

- Respondent obtained loan from estate administrator while he was the estate's attorney.
- Court found a violation of Model Rule 1.8.
- Two year suspension.
- Note: Respondent's disciplinary history was a significant aggravating factor.

B. Iowa Supreme Court Attorney Disciplinary Bd. v. West, ___ N.W.2d ___ (Iowa Sept. 15, 2017)

- Significant problems with administration of an estate.
- Court found violations of Model Rules 1.1, 1.3, 1.4, 1.5, 8.1. and 8.4.

- The court made the following finding:

West's experience as an attorney was primarily in the area of criminal law, and he had no experience in probate matters. West admitted that he did not possess the requisite knowledge to handle this probate matter competently. He neither took steps to understand the probate requirements nor followed through in seeking outside expertise. Accordingly, West's failure to administer the estate constituted incompetent representation, violating rule 32:1.1.

- Sixty day suspension.

C. Iowa Supreme Court Attorney Disciplinary Bd. v. Lynch, ___ N.W.2d ___ (Iowa Sept. 15, 2017)

- Respondent borrowed money from long-term clients, without advising them to seek independent legal counsel. Respondent also did not pay them back.
- Court found violations of Model Rules 1.7 and 1.8.
- Six month suspension.
- Note: The failure to pay the loan back was a significant aggravating factor here.

D. Iowa Supreme Court Attorney Disciplinary Bd. v. Guthrie, ___ N.W.2d ___ (Iowa Sept. 15, 2017)

- Respondent billed clients for work on an appeal that was unnecessary after the opposing party dismissed the appeal (and which was never performed). Respondent directed his staff not to notify the client of the dismissal of the appeal.
- Court found this was a conversion of client funds and a violation of Model Rule 8.4.
- Revocation.
- Note: There were other allegations made by the Attorney Discipline Board; however, the supreme court discussed only this one matter, finding it dispositive.

E. Iowa Supreme Court Attorney Disciplinary Bd. v. Sporer, 897 N.W.2d 69 (Iowa 2017)

- False statement in a client's contempt action that he had immediately rejected opposing counsel's settlement offer by writing notes on the offer, and frivolous statement that opposing counsel's secretary's signature on the bottom of a letter bound the opposing party.
- Court found violations of Model Rules 3.1, 3.3, and 8.4.
- Six month suspension.

F. Iowa Supreme Court Attorney Disciplinary Bd. v. Crotty, 891 N.W.2d 455 (Iowa 2017)

- Taking a fee earlier than permitted by probate rules and continuing to practice in an administrative matter after a prior suspension.
- Court found violations of Model Rules 1.5, 1.16, and 5.5.
- Sixty day suspension.
- Note: The court did not find violations concerning filing documents with forged signatures in the probate matter. The court concluded that the Respondent did not know the signatures were forged when they were filed and orally disclosed to the probate court once he was aware. Stating that a written filing might have been better practice, the supreme court concluded that the oral disclosures were sufficient in these circumstances.

- G. *Iowa Supreme Court Attorney Disciplinary Bd. v. Kowassah*, 890 N.W.2d 647 (Iowa 2017)
- OWI-second offense and public intoxication.
 - Court found a violation of Model Rule 8.4.
 - Six month suspension.
 - Note: The Grievance Commission had recommended a one year suspension.
- H. *Iowa Supreme Court Attorney Disciplinary Bd. v. Waterman*, 890 N.W.2d 327 (Iowa 2017)
- Sexual relationship with a dissolution-of-marriage client.
 - Court found a violation of Model Rule 1.8.
 - Thirty day suspension.
 - Note: The Grievance Commission had recommended a forty-five day suspension, and two years of therapy. The supreme court rejected the therapy recommendation because of the court's lack of capacity to monitor therapy compliance.
- I. *Iowa Supreme Court Attorney Disciplinary Bd. v. Vandel*, 889 N.W.2d 659 (Iowa 2017)
- Multiple violations during representation of a child custody client. The supreme court was particularly upset about Respondent telling her client, three days before trial, that she needed \$10,000 or she would withdraw (without informing her client that court approval would be required - and not likely granted - and based on a "nonexistent" fee agreement). The court was also upset that Respondent, in an application to continue a hearing, falsely claimed that she needed a blood transfusion on the day of the hearing.
 - Court found violations of Model Rules 1.3, 1.4, 1.5, 1.15, 3.3, 3.4, 4.1, and 8.4.
 - Six month suspension.
 - Note: The Grievance Commission had recommended a one year suspension. Respondent's significant pro bono work was one major mitigating factor.
- J. *Iowa Supreme Court Attorney Disciplinary Bd. v. Willey*, 889 N.W.2d 647 (Iowa 2017)
- Respondent represented client X in a loan transaction with client Y, without obtaining required consent.
 - Court found violations of Model Rule 1.7.
 - Sixty day suspension.
- K. *Iowa Supreme Court Attorney Disciplinary Bd. v. Taylor*, 887 N.W.2d 369 (Iowa 2016)
- Failure to file state or federal tax returns for eleven years.
 - Court found violations of Model Rule 8.4 (and Model Code rule 1-102).
 - Six month suspension, with reinstatement conditioned on being current with the IRS and the state.
 - Note: The concurring opinion acknowledged that this suspension is unusually short. The dissent would have imposed a one year suspension.
- L. *Iowa Supreme Court Attorney Disciplinary Bd. v. Pederson*, 887 N.W.2d 387 (Iowa 2016)

- Respondent, while attorney for an estate, communicated directly with beneficiaries who were represented by counsel. Respondent borrowed money from the estate's executor about the time she was removed as the estate's attorney. She also improperly took the second half of her fee. In a child custody matter, the respondent accepted a flat fee, did not provide an accounting, and did not cooperate with her replacement as counsel.
- Court found violations of Model Rules 1.2, 1.4, 1.5, 1.8, 1.15, and 4.2.
- Sixty day suspension, with reinstatement conditioned on repayment of the loan from the executor.

M. Iowa Supreme Court Attorney Disciplinary Bd. v. Arzberger, 887 N.W.2d 353 (Iowa 2016)

- Collection of extraordinary probate fee without court approval.
- Court found a violation of Model Rule 1.5.
- Thirty day suspension, with reinstatement conditioned on refunding the unauthorized excess fee.
- Note: The dissenting judge disagreed with the court's purported failure to use the "objective" criteria in the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992).

N. Iowa Supreme Court Attorney Disciplinary Bd. v. Morse, 887 N.W.2d 131 (Iowa 2016)

- Clients gave Respondent \$1400 for a court reporter bill. Respondent did not pay the court reporter, after being ordered to do so, and applied the \$1400 to his fee bill.
- Court found violations of Model Rules 1.3, 1.15, 1.16, and 8.4.
- Thirty day suspension.
- Note: The dissenting justice considered this as conversion of client funds, and would have imposed a greater discipline. The concurring justices noted that the Attorney Discipline Board did not allege conversion of client funds in its filing.

II. Kansas Cases

A. In re Nwakanma, 397 P.3d 403 (Kan. 2017)

- Respondent violated multiple rules in criminal and immigration matters in Texas, where he was practicing immigration and criminal law (not admitted in Texas). In a malpractice settlement agreement, Respondent asked his former client to agree to not cooperate with Kansas and Texas attorney discipline personnel. In an immigration action, in which another wanted his lawful permanent residence restored, Respondent asked client to sign a form I-212, but the form was never filed. Had respondent filed the form, the client would have been ineligible to re-enter the United States for twenty years.
- Court found violation of Model Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.16, 3.4, 8.1, and 8.4.
- Disbarment.
- Note: Respondent had been suspended six times for failure to make required annual payments and reports.

B. In re Lundgren, 394 P.3d 1274 (Kan. 2017)

- Reciprocal discipline. Respondent had been disbarred in Utah for conversion of client funds (\$2500 from settlement that client directed to be applied to outstanding medical bills). Respondent also failed to report his Utah discipline to Kansas bar authorities.
- Court found violations of Model Rules 1.15, 8.3, and 8.4.
- Disbarment.

C. In re Sutton, 394 P.3d 836 (Kan. 2017)

- A trial court, in a family law action, ordered client's child to attend a school that was not the school that the client wanted. Respondent misrepresented that order to his client.
- Court found violations of Model Rules 1.4 and 8.4.
- Public censure.

D. In re Fahrenholtz, 392 P.3d 125 (Kan. 2017)

- Reciprocal discipline (in part). Failure to file actions, failure to prepare for cases, failure to communicate with clients, fee issues, "chaotic" recordkeeping; abandonment of the practice of law.
- Court found violations of Model Rules 1.1, 1.3, 1.4, 1.15, 1.16, and 3.2.
- Disbarment.

E. In re Giardine, 392 P.3d 89 (Kan. 2017)

- Respondent, when running for judicial office, made false statements about his criminal/arrest history.
- Court found violations of Model Rules 8.2 and 8.4.
- Public censure.
- Note: A minority of the court would have imposed a one year suspension, the discipline recommended by the Disciplinary Administrator.

F. In re Biscanin, 390 P.3d 886 (Kan. 2017)

- Client loaned Respondent \$10,000 without required disclosures, consents, (Respondent testified it was held in safekeeping), failed to deposit it in his trust account, and failed to promptly return it.
- Court found violations of Model Rules 1.8 and 1.15.
- Two year suspension, stayed after six months.

G. In re McDaneld, 389 P.3d 976 (Kan. 2017)

- During the term of his suspension for not filing his CLE report, Respondent engaged in the practice of law, appearing in at least eight criminal cases and entering an appearance and filing at least one motion in a civil action (eight months into his suspension).
- Court found violations of Model Rules 5.5, 8.1, and 8.4.
- Disbarment.

H. In re Mason, 385 P.3d 523 (Kan. 2017)

- In a worker compensation case, Respondent provided incorrect advice on the relationship between work comp and Medicare, failed to file an application to reconsider a work comp award, and misled the client about the status of the case. In another action, Respondent missed deadlines, failed to respond to discovery requests, etc.
- Court found violations of Model Rules 1.1, 1.3, 1.4, and 8.4.
- Six month suspension, and three years of probation.
- Note: A minority would have imposed lesser discipline.

I. In re Harrington, 385 P.3d 905 (Kan. 2016)

- Respondent abused a power of attorney that he had been granted by a client, during the client's life and while serving as executor of her estate. False statements to disciplinary investigators.
- Court found violations of Model Rules 1.3, 1.5, 1.8, 1.15, 3.3, 8.1, and 8.4.
- Disbarment.
- Note: Respondent unsuccessfully raised a due process argument, alleging that he was denied due process when his request to continue the disciplinary hearing was denied.

J. In re Knox, 385 P.3d 500 (Kan. 2016)

- Family law representation gone horribly - but typically - wrong.
- Court found violations of Model Rules 1.3, 1.4, 1.5, 1.15, 1.16, 8.1, and 8.4.
- One year suspension.

K. In re Knopp, 384 P.3d 428 (Kan. 2016)

- After client was evicted from a mobile home park for nonpayment of lot rent, the Respondent filed a frivolous conversion action against the mobile home park.
- Court found violations of Model Rules 3.1, 3.3, and 8.4.
- Ninety day suspension, stayed pending six months of probation.
- Note: A minority would have imposed lesser discipline.

L. In re Bergman, 382 P.3d 455 (Kan. 2016)

- Reciprocal discipline. Respondent had a sexual relationship with the president of a corporation, who was her client. Respondent billed the corporation for assisting the current and past corporation presidents in purchasing a rail car, which the two presidents proposed leasing to the corporation.
- Court found violations of Model Rules 1.7, 1.8, 1.13, and 8.4.
- Indefinite suspension.
- Note: The court rejected Respondent's request for probation (Missouri bar officials had placed her on probation.).

III. Nebraska Cases

A. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Gast*, 896 N.W.2d 583 (Neb. 2017)

- Respondent falsely alleged that a judge engaged in a “cover-up” of his (non-existent) personal relationship with opposing counsel, and wrote several emotional-to-extortionate *ex parte* letters to the judge.
 - Regarding the letters, the court found:

Within exhibits A and C, Gast urged the judge to decide the case on the basis of the judge's reputation, the judge's “Christian ** upbringing[],” the judge's own interests, and the health and well-being of his client. But a judge is to make judicial decisions on the basis of the facts of the case and the applicable law.
 - Court found violations of his oath of office and Model Rules 3.5, 8.2, and 8.4.
 - One year suspension and two years of probation.
 - Note: The court made the following observation:

We also agree with the referee that during the hearing in this case, Gast engaged in unnecessary and inappropriate verbal attacks on the Counsel for Discipline. The Counsel for Discipline has an important job to do in our profession and has performed that job ably in this case.
- Not a good idea.

B. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Island*, 894 N.W.2d 804 (Neb. 2017)

- Respondent’s client was a witness in a murder case (the deceased was client’s daughter and the defendant was the client’s boyfriend) , who refused to testify and was jailed for contempt. Respondent issued the following press release:

[The client] continues to desire to cooperate with the Prosecution, however, the only testimony they want to believe is their version of the truth. The Prosecution's version of the truth, while inconsistent with the actual events, forces [respondent's client] to either lie or face perjury charges. She continues to desire justice for her daughter ... but will not lie to achieve that result.
- Court found violations of Model Rules 3.6, 4.1, and 8.4.
- Public reprimand.

C. *State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Ubbinga*, 893 N.W.2d 694 (Neb. 2017)

- Child custody representation gone wrong: fee disputes, failure to follow through, concerns about competence to practice family law, misleading statements, failure to transfer files.
- Court found violations of her oath of office and Model Rules 1.1, 1.3, 1.4, 1.15, 1.16, 8.1, and 8.4.
- One year suspension, followed by two years of probation.

D. State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Tighe, 886 N.W.2d 530 (Neb. 2016)

- Follow-through problems. Failure to file documents in a bankruptcy action, failed to provide files to clients, and failure to respond to the Counsel for Discipline's investigation into respondent's handling of certain criminal matters.
- Court found violations of his oath of office and Model Rules 1.1, 1.3, 1.4, 8.1, and 8.4.
- Indefinite suspension, with reinstatement conditioned on answering pending disciplinary charges and demonstrating fitness to practice law.

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

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