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CONCLUSION

The district court erred in remanding the matter of the setoff to the county court. Determining the City's lien and whether and to what amount it should be deducted from the condemnation award was a judicial matter within the jurisdiction of the district court. It was properly presented to the district court through a timely motion by the City. We vacate the county court's order of setoff. We reverse, and remand to the district court to determine the extent to which the proceeds from the award should be given to the City in payment of its lien on the condemned property.

VACATED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. DAVID M. WALOCHA, RESPONDENT.

811 N.W.2d 174

Filed March 9, 2012. No. S-11-422.

1. **Disciplinary Proceedings.** A proceeding to discipline an attorney is a trial de novo on the record.
2. ____. The basic issues in a disciplinary proceeding against an attorney are whether the Nebraska Supreme Court should impose discipline and, if so, the appropriate discipline under the circumstances.
3. ____. To determine whether and to what extent discipline should be imposed in an attorney discipline proceeding, the Nebraska Supreme Court considers the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law.
4. ____. In imposing attorney discipline, the Nebraska Supreme Court evaluates each case in light of its particular facts and circumstances.
5. ____. In imposing attorney discipline, the Nebraska Supreme Court considers the discipline that it has imposed in cases presenting similar circumstances.
6. ____. In determining the proper discipline of an attorney, the Nebraska Supreme Court considers the attorney's acts both underlying the events of the case and throughout the proceeding.
7. ____. When determining appropriate discipline of an attorney, the Nebraska Supreme Court considers aggravating and mitigating factors.

8. ____. Because cumulative acts of attorney misconduct are distinguishable from isolated incidents, they justify more serious sanctions. Cumulative acts of misconduct can, and often do, lead to disbarment.

Original action. Judgment of disbarment.

Kent L. Frobish, Assistant Counsel for Discipline, for relator.

Robb N. Gage for respondent.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

The Counsel for Discipline filed formal charges against David M. Walocha, accusing him of practicing law for over a decade on a suspended license. The Counsel for Discipline asks that we disbar Walocha. Because we conclude that no other sanction adequately disciplines Walocha for his years of violations, we disbar him.

BACKGROUND

All we have before us are the formal charges filed by the Counsel for Discipline and Walocha's admissions to them. Walocha has admitted all of the formal charges that the Counsel for Discipline has alleged against him. The Counsel for Discipline moved for judgment on the pleadings.[1] The only issue before us is the appropriate sanction.

Walocha was admitted to the bar on September 22, 1994. On June 21, 1996, however, we suspended his license for failure to pay his bar dues. We never reinstated it.

Nevertheless, beginning in 1998 and continuing through 2011, Walocha engaged in the practice of law. He entered appearances in at least 65 criminal cases in Douglas County, Nebraska. At least one of these cases involved felony charges. He provided legal advice and charged his clients fees for his appearances. Further, in pleadings he filed, he represented himself to be a licensed attorney—which was not true.

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[1] See Neb. Ct. R. § 3-310(I).

STANDARD OF REVIEW

[1] A proceeding to discipline an attorney is a trial de novo on the record.[2]

ANALYSIS

[2,3] The basic issues in a disciplinary proceeding against an attorney are whether we should impose discipline and, if so, the appropriate discipline under the circumstances.[3] To determine whether and to what extent discipline should be imposed in an attorney discipline proceeding, we consider the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law.[4]

[4-6] In imposing attorney discipline, we evaluate each case in light of its particular facts and circumstances.[5] But we consider the discipline that we imposed in cases presenting similar circumstances.[6] And in determining the proper discipline of an attorney, we consider the attorney's acts both underlying the events of the case and throughout the proceeding.[7]

[7,8] When determining appropriate discipline, we consider aggravating and mitigating factors.[8] Because cumulative acts of attorney misconduct are distinguishable from isolated incidents, they justify more serious sanctions.[9] "'Cumulative acts of misconduct can, and often do, lead to disbarment.'"[10]

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[2] *State ex rel. Counsel for Dis. v. Switzer*, 280 Neb. 815, 790 N.W.2d 433 (2010).

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] See *id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 822, 790 N.W.2d at 439, quoting *State ex rel. Counsel for Dis. v. Carbullido*, 278 Neb. 721, 773 N.W.2d 141 (2009).

As mentioned, Walocha's misconduct spans over a decade. In fact, his violations occurred under two separate codes of ethics. His violations before September 1, 2005, constituted violations of his oath of office as an attorney; Neb. Rev. Stat. § 7-101 (Reissue 2007), which is a statute imposing a criminal sanction for the unauthorized practice of law; and the following provisions of the Code of Professional Responsibility: Canon 1, DR 1-102 (attorney misconduct), Canon 3, DR 3-101 (unauthorized practice of law), and Canon 7, DR 7-102.

His violations after September 1, 2005, again constituted violations of his oath of office; § 7-101; and certain provisions of the Nebraska Rules of Professional Conduct we adopted in 2005,[11] namely, Neb. Ct. R. of Prof. Cond. §§ 3-505.5 (rev. 2012) (unauthorized practice of law) and 3-508.4 (attorney misconduct).

The only allegations the Counsel for Discipline alleges against Walocha are that he practiced law during suspension. As mentioned, an important part of determining what discipline to impose is to consider the discipline we have imposed in similar circumstances. We generally, but not always, disbar attorneys who continue to practice law despite their suspensions.[12] Walocha argues that some of these cited cases involved other unethical conduct in addition to practicing on a suspended license. His stress on the particular facts of each case is well placed, as we evaluate each case in light of its particular facts and circumstances.[13]

Nonetheless, we do not think the differences between this case and our earlier cases are sufficient to lead to a different

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[11] See *State ex rel. Counsel for Dis. v. Thew*, 281 Neb. 171, 794 N.W.2d 412 (2011).

[12] See, *Switzer, supra* note 2; *Carbullido, supra* note 10; *State ex rel. Counsel for Dis. v. Villarreal*, 267 Neb. 353, 673 N.W.2d 889 (2004); *State ex rel. NSBA v. Stansel*, 248 Neb. 63, 531 N.W.2d 927 (1995); *State ex rel. NSBA v. Schafer*, 234 Neb. 862, 453 N.W.2d 389 (1990); *State ex rel. NSBA v. Frank*, 219 Neb. 271, 363 N.W.2d 139 (1985); *State ex rel. NSBA v. Thierstein*, 218 Neb. 603, 357 N.W.2d 442 (1984). But see, *State ex rel. Counsel for Dis. v. Frye*, 278 Neb. 527, 771 N.W.2d 571 (2009); *State ex rel. NSBA v. Garvey*, 235 Neb. 737, 457 N.W.2d 297 (1990); *State ex rel. NSBA v. Schafer*, 227 Neb. 449, 418 N.W.2d 228 (1988).

[13] See *Switzer, supra* note 2.

result. Walocha's (at least) 65 instances of misconduct spanned over a decade. Every pleading, every court appearance, every meeting with a client constituted a separate act of dishonesty. He continuously lied to clients, to other attorneys, and to courts. "'Cumulative acts of misconduct can, and often do, lead to disbarment.'"[14] His misconduct is egregious and unacceptable.

Under Neb. Ct. R. § 3-304, we may impose the following sanctions for misconduct: disbarment, suspension, probation, or censure and reprimand. We conclude that of these possible sanctions, disbarment is the only sanction that reflects the seriousness of Walocha's deceitful misconduct.

Given the quantity of serious violations, a censure, reprimand, or suspension is inadequate discipline. Walocha's license has been suspended since June 1996, which, at this point, is almost 16 years ago. If we were to continue to suspend his license, we would be returning Walocha to the status quo, which is really no sanction at all. Further, suspending Walocha was not enough to keep him from engaging in misconduct and putting the interests of his clients at risk in the past. We see no reason to assume that this has changed. Our attorney disciplinary system is, in large part, based on self-reporting and honesty. Walocha's conduct made a mockery of such concepts.

Accordingly, no sanction less than disbarment adequately reflects the seriousness of Walocha's misconduct. Walocha willfully flew under the radar for over a decade. We conclude that disbarment is the appropriate sanction for Walocha's transgressions. Walocha shall comply with all the terms of Neb. Ct. R. § 3-316, and upon failure to do so, shall be subject to punishment for contempt of this court. Further, Walocha is ordered to pay the costs and expenses of this proceeding in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323 within 60 days after an order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF DISBARMENT.

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[14] *Id.* at 822, 790 N.W.2d at 439, quoting *Carbullido, supra* note 10.