

Summary of SC95098, *In re: Sanford P. Krigel*

Original attorney discipline proceeding

Argued and submitted October 28, 2015: opinion issued January 26, 2016

Attorneys: The chief disciplinary counsel's office was represented by Chief Disciplinary Counsel Alan D. Pratzel and Sharon K. Weedin and Sam S. Phillips of his office in Jefferson City, (573) 635-7400, and special regional representative Kevin J. Odrowski, an attorney in Kansas City, (816) 931-4408. Krigel was represented by Jacqueline A. Cook of Franke Schultz & Mullen PC in Kansas City, (816) 421-7100, and David J. Achtenberg, an attorney in Kansas City, (816) 523-6834.

Various law professors and practitioners of professional responsibility and family law, who filed a brief as a friend of the Court, were represented by Barbara A. Glesner Fines of the University of Missouri-Kansas City School of Law in Kansas City, (816) 235-2380.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: This disciplinary case alleges that an experienced adoption attorney misrepresented information to a birth father's attorney and a circuit court as part of a "passive strategy" to help his client put her child up for adoption. In a decision written by Judge George W. Draper III, the Court finds the attorney violated particular rules of professional conduct and imposes discipline. All seven judges agree that the attorney violated three particular rules of professional misconduct; six judges agree he violated a fourth rule as well. Four judges agree that, as a result of his misconduct, the attorney should be suspended for six months, with the suspension stayed and the attorney placed on probation for two years.

Chief Justice Patricia Breckenridge concurs in part and dissents in part. Although she agrees with the discipline imposed and three instances of misconduct found, she disagrees that the attorney's conduct also violated another of the rules.

In an opinion joined by two other judges, Judge Zel M. Fischer dissents. He agrees the attorney violated multiple rules of professional conduct as explained in the principal opinion. The author would hold, however, that case law and the disciplinary panel's recommendation require suspension without leave to reapply for six months, at a minimum, but the author would disbar the attorney.

Facts: This case arises from an attorney's conduct in an adoption case. When a young unmarried couple came together with their parents to discuss their unexpected pregnancy, the birth father said he wanted to raise the child with his parents; he did not want to place the child up for adoption. The relationship ended after this discussion, and the birth mother's parents prevented the birth father from having further contact with the birth mother. The birth father retained an attorney in Kansas; the birth mother contacted a social worker who also operated an adoption agency. The social worker referred the birth mother to Sanford Krigel, a Missouri attorney specializing in adoption law with whom she had worked for about 20 years. When the birth mother and her parents met with Krigel in March 2010, they gave him the birth father's name and address and told Krigel the birth father would not consent to adoption. Krigel employed a "passive strategy" in his representation, in which he and the birth mother would "actively do nothing" to communicate with the birth father or his attorney and would not advise the birth father or his attorney about the adoption plans, the child's birth or the instigation of any legal proceedings. Later in March, the birth father's attorney called Krigel, who represented that the child would not be put up for adoption without the birth father's consent. When the birth father's attorney suggested the couple needed counseling away from their parents, Krigel suggested they meet with the same social worker with whom he and the birth mother already were

working (without disclosing that fact). During their counseling session, the birth father reiterated he would not consent to adoption and wanted to raise the child, preferably with the birth mother. In late March, the birth mother told the birth father her due date had been changed from early April 2010 to early May, which it had not. When the child was born, the birth father's name was not indicated on the birth certificate, and no one notified either the birth father or his attorney. A hearing regarding the birth mother's consent to terminate her parental rights was held April 6, 2010, in Jackson County; neither the birth father nor his attorney was aware of the hearing and so did not appear. In response to questioning from Krigel, the birth mother agreed that the birth father had been consulted at length and that he had not stepped forward since the child's birth to claim any rights to the child. The circuit court terminated the birth mother's parental rights and, immediately thereafter, heard a motion to transfer custody and for adoption. It then transferred custody of the child to the prospective adoptive parents. At some point in early May 2010, the father learned of the child's birth and the mother's deception about her due date, and he placed his name on the putative father registry. Later that month, he learned about the adoption proceedings and moved to intervene. In May 2011, the circuit court entered its judgment in the adoption proceeding, denying the adoptive parents' petition and awarding legal and physical custody of the child to the birth father. The chief disciplinary counsel began disciplinary proceedings against Krigel in February 2014. Following a December 2014 hearing, a disciplinary hearing panel found Krigel violated four rules of professional conduct and recommended he be suspended indefinitely from the practice of law with no leave to apply for reinstatement for six months. Krigel rejected the panel's recommendation; the chief disciplinary counsel asks this Court to impose appropriate discipline.

DISCIPLINE IMPOSED.

Court en banc holds: (1) Based on the record, a preponderance of the evidence shows Krigel committed multiple violations of the rules of professional conduct.

(a) Krigel violated Rule 4-3.3(a)(3), which prohibits a lawyer from offering evidence the lawyer knows to be false. Krigel's representation to the court, during his questioning of the birth mother during the April 2010 hearing was designed to portray the false impression that the birth father was not interested in the child or in asserting his parental rights.

(b) Krigel violated Rule 4-4.1(a), which prohibits a lawyer from making a false statement of material fact or law to a third person. In communicating with the birth father's attorney, Krigel indicated the child would not be adopted without the birth father's consent. At the time, Krigel knew he had advised his client not to communicate any information to the birth father about the child, including the child's birth or the subsequent adoption proceedings.

(c) Krigel violated Rule 4-4.4(a), which prohibits a lawyer from using means that have no substantial purpose other than to embarrass, delay or burden a third person. Krigel actively concealed factual information from the birth father and his attorney and, despite actual knowledge that the birth father wanted to raise the child, pursued a course of action that disregarded the birth father's parental rights and the best interest of a child in remaining with a natural parent. Krigel's actions served no substantial purpose other than to impair and delay the birth father's assertion of his parental rights.

(d) Krigel violated Rule 4-8.4(d), which provides it is professional misconduct to engage in conduct that is prejudicial to the administration of justice. Krigel thwarted the birth father's opportunity to assert his parental rights actively when he signed and submitted the petition to

transfer custody to the prospective adoptive parents, stating that the birth mother did not know of any other person who claims to have custody or visitation rights to the child.

(2) In accord with the American Bar Association standards, this Court suspends Krigel from the practice of law, stays the suspension and places Krigel on probation for two years. The record contains evidence of both aggravating and mitigating circumstances. He committed multiple offenses – the most egregious of which was his lack of candor toward the circuit court – and fails to grasp the severity of these charges. But he has been a practicing attorney for more than 30 years in this area of law with no prior disciplinary history. Given that, disbarment is not appropriate, but suspension is appropriate when an attorney knows that a false statement is being submitted to a court and takes no remedial action. Should Krigel violate the terms of his probation, he may be subject to having his probation revoked or further discipline being imposed.

Opinion concurring in part and dissenting in part by Chief Justice Breckenridge: The author agrees with the factual findings of the disciplinary hearing panel. Based on these findings, she concurs that Krigel violated Rule 4-3.3(a)(3) when he knowingly elicited and permitted false and misleading testimony at the April 2010 hearing that effectively represented to and caused the circuit court to believe the birth father had knowledge of the child and had not done anything to assert his parental rights. She also concurs that Krigel violated Rule 4-4.1 when he told the birth father’s attorney that there would not be an adoption without the birth father’s consent. She also agrees Krigel violated Rule 4-8.4(d). The author further concurs that Krigel’s multiple acts of professional misconduct justify a six-month suspension, with the suspension stayed subject to Krigel’s completion of a two-year term of probation.

The author dissents from the principal opinion’s finding that Krigel violated Rule 4-4.4(a). The principal opinion’s finding would require an attorney to divulge to a potential opposing party information that not only is detrimental to the attorney’s client but that the principal opinion also does not show the party had a legal duty to disclose at that time. To the extent Krigel concealed information from the birth father and his attorney, Krigel did so to avoid harm to his client.

Dissenting opinion by Judge Fischer: The author agrees Krigel violated multiple rules of professional conduct as explained in the principal opinion. The author would hold, however, that Krigel’s actions in misleading both opposing counsel and the circuit court require suspension without leave to reapply for six months, at a minimum, but the author would disbar Krigel. The author notes that Krigel used what he termed a “passive strategy” that worked so well that – had the birth mother not made comments to a third party on Facebook – the father likely would not have found out about the birth of his child for months after it happened. This strategy resulted in the most serious of Krigel’s offense, his violation of Rule 4-3.3(a)(1) through his lack of candor toward the circuit court. The author notes that every attorney licensed to practice law in Missouri first must take an oath, the third paragraph of which provides: “That I will never seek to mislead the judge or jury by any artifice or false statement of fact or law.”

Further, the author points to the circuit court’s judgment granting the birth father custody and denying the adoption, which begins: “The facts of this case shock the justice system that the people of Missouri enjoy.” The circuit court found Krigel’s actions were, at a minimum, “disturbing to the administration of justice” and, echoing the words of Krigel’s oath, described a “fraud” on the court that resulted in the birth father not receiving custody of his child for more than a year and Krigel receiving \$22,000 “for a minimal role in the litigation.” The author additionally notes that violations of Rule 4-3.3(a) traditionally have resulted in disbarment or indefinite suspension.