

Summary of SC95331, *In re: Joel B. Eisenstein*

Original disciplinary proceeding

Argued and submitted February 24, 2016; opinion issued April 5, 2016

Attorneys: The chief disciplinary counsel, Alan D. Pratzel, represented himself along with Sam S. Phillips of the chief disciplinary counsel's office in Jefferson City, (573) 635-7400, and Special Representative Marc A. Lapp of the Region X Disciplinary Committee in St. Louis, (314) 440-9337; and Eisenstein was represented by Alan S. Mandel of Mandel & Mandel LLP in St. Louis, (314) 621-1701.

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 case involves a disciplinary proceeding against an attorney accused of possessing and using information his client improperly obtained during a divorce proceeding. In a decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri disciplines the attorney. All seven judges agree the attorney violated certain rules of professional responsibility. Five judges agree the attorney's law license should be suspended indefinitely, with no leave for him to apply for reinstatement for at least six months.

In an opinion joined by one other judge, Judge Zel M. Fischer dissents. He believes attorney should not be allowed to apply for reinstatement for at least 12 months under the standards for attorney discipline, the aggravating factors in this case, this Court's prior disciplinary decisions and the goals of attorney discipline.

In an opinion joined by one other judge, Judge Paul C. Wilson also dissents. He writes separately to stress that it is inappropriate for attorneys facing discipline to solicit letters of support from other attorneys and judges in an attempt to influence the Court. As this Court has made plain in the past, such letters demonstrate a lack of understanding of the discipline process and a lack of respect for the canons of judicial ethics.

Facts: This case arises out of attorney Joel Eisenstein's representation of a husband in an action to dissolve his marriage to his wife, who was represented by counsel. On the second day of trial in February 2014, Eisenstein gave the wife's attorney a stack of exhibits, which she discovered contained a list of the direct examination questions she intended to ask the wife. The wife's attorney requested a hearing on the record with the judge presiding over the divorce trial. At the hearing, the husband admitted he had accessed his wife's personal e-mail account without her permission and had obtained her current payroll documents and the list of direct examination questions the attorney had e-mailed the wife. The husband admitted he gave Eisenstein these improperly obtained documents. Eisenstein admitted he had viewed the improperly obtained information and had not disclosed his receipt of the information immediately to the wife's attorney. A few days later, Eisenstein sent the wife's attorney a threatening note. Following an investigation, the chief disciplinary counsel's office began disciplinary proceedings against Eisenstein, alleging certain violations of the rules of professional responsibility. A regional disciplinary hearing panel conducted a hearing and found that Eisenstein violated certain rules and recommended that his law license be suspended indefinitely with no leave to apply for

reinstatement for 12 months. Eisenstein rejected the recommendation. The chief disciplinary counsel asks this Court to discipline Eisenstein's law license.

SUSPENDED.

Court en banc holds: (1) A preponderance of the evidence supports a finding that Eisenstein violated certain rules of professional responsibility. He violated Rule 4-4.4(a) by receiving the information his client improperly obtained from the wife's e-mail account, reviewing the information – which he said he knew was “verboten” – failing to disclose immediately his receipt of the information to the wife's attorney, and then using the information during pretrial settlement negotiations. His violation of this rule also demonstrates a violation of Rule 4-8.4(c) by obtaining evidence procured through improper means and failing to disclose the evidence immediately to the wife's attorney. Eisenstein violated Rule 4-3.4(a) by concealing his possession of the wife's payroll information and her attorney's direct examination questions until the second day of trial. He also violated Rule 4-8.4(d) by threatening the wife's attorney during the course of litigation or to avoid an ethics complaint, which is conduct prejudicial to the administration of justice.

(2) The appropriate discipline is a suspension with no leave to apply for reinstatement for at least six months. Under the American Bar Association's standards, suspension is appropriate when a case involves conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation to a court. Eisenstein's retention and use of the improperly obtained evidence warrants a suspension. There are no mitigating factors. Aggravating factors include Eisenstein's four prior admonitions and previous suspension.

Dissenting opinion by Judge Fischer: The author agrees that Eisenstein violated the rules but believes he should be suspended indefinitely with no leave to apply for reinstatement for at least 12 months. Under the ABA standards, six months is the baseline suspension – the minimum time a suspension should last before an attorney is allowed to seek reinstatement. Eisenstein's suspension should have been increased in accordance with the aggravating factors because the majority agrees there are no mitigating factors. Additionally, this Court consistently has imposed discipline for repeat offenders of misconduct, and Eisenstein has been suspended previously. Discipline greater than the baseline also is in keeping with this Court's prior disciplinary decisions and the goals of attorney discipline – to protect the public, ensure the administration of justice and maintain the integrity of the profession.

Dissenting opinion by Judge Wilson: The author agrees with the disciplinary hearing panel's recommendation for the reasons expressed in Judge Fischer's dissent but writes separately to stress that it is not appropriate for an attorney facing discipline to solicit communications from members of the bar and judiciary to attempt to influence the Court. The letters of support that Eisenstein solicited before oral arguments in this Court – presented to the chief disciplinary counsel's office and later submitted to the clerk of this Court – are not before this Court. Even had Eisenstein sought to supplement the record, they likely would not have been admitted because they offer no value regarding either Eisenstein's misconduct or the appropriate discipline. Further, this Court has made it plain in the past that such letters demonstrate a lack of understanding of the discipline process and a lack of respect for the canons of judicial ethics.