

In the Supreme Court of Iowa

**Supreme Court No. 22-0376
Grievance Commission No. 920**

**Iowa Supreme Court
Attorney Disciplinary Board,
Complainant-Appellee/Cross-Appellant,
vs.
Bonnie J. Heggen,
Respondent-Appellant/Cross-Appellee**

**Appeal from the Report of the Iowa Supreme Court Grievance
Commission**

Complainant-Appellee/Cross-Appellant's Final Reply Brief

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DID HEGGEN VIOLATE RULE 32:1.5(a)?

Cases

Iowa Supreme Ct. Att’y Disciplinary Bd. v. D’Angelo, 710 N.W.2d 226 (Iowa 2006)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Parrish, 801 N.W.2d 580 (Iowa 2011)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Saunders, 919 N.W.2d 760 (Iowa 2018)

Rules

Iowa R. Prof’l Conduct 32:1.5(a)

II. DID HEGGEN VIOLATE RULE 32:8.4(b) AND (c)?

Cases

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Fischer, 973 N.W.2d 267 (Iowa 2022)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Kozlik, 943 N.W.2d 589 (Iowa 2020)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Muhammad, 935 N.W.2d 24 (Iowa 2019)

Rules

Iowa R. Prof’l Conduct 32:8.4(b)

Iowa R. Prof’l Conduct 32:8.4(c)

III. WHAT IS THE PROPER SANCTION?

Cases

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Muhammad, 935 N.W.2d 24 (Iowa 2019)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Smith, 904 N.W.2d 154 (Iowa 2017)

Iowa Supreme Ct. Att’y Disciplinary Bd. v. Sobel, 779 N.W.2d 782 (Iowa 2010)

ARGUMENT

I. HEGGEN VIOLATED RULE 32:1.5(a).

In her reply, Heggen poses the wrong question regarding whether she violated Iowa Rule of Professional Conduct 32:1.5(a), which states that “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses, or violate any restrictions imposed by law.” According to Heggen, the question is only whether she returned the unearned fees, not also whether she illegally took them before they had been earned at all. The latter is the relevant question here according to both the plain language of rule 32:1.5(a) and *Iowa Supreme Court Attorney Disciplinary Board v. Parrish*, 801 N.W.2d 580, 586 (Iowa 2011). In *Parrish*, the court noted that “taking fees in advance of earning them is illegal.” *Id.* (quoting *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. D'Angelo*, 619 N.W.2d 333, 337 (Iowa 2000)) (alteration omitted). The court noted that “[i]t is *also* illegal to fail to return unearned portions of advance fees.” *Id.* (emphasis added). Parrish both took unearned fees and failed to return them, in so doing committing two illegal acts regarding his fees. *See id.* Both amounted to a violation of rule 32:1.5(a). *Id.*; *cf. Iowa Supreme Ct. Att'y Disciplinary Bd. v. Saunders*, 919 N.W.2d 760, 763 (Iowa 2018) (finding the attorney violated rule

32:1.5(a) when he withdrew probate fees before the final report was filed in violation of Iowa Court Rule 7.2(4)); *D'Angelo*, 619 N.W.2d at 337 (finding a violation of the predecessor rule to rule 32:1.5(a) for the same reason). Because the attorney in *Parrish* had withdrawn his clients' entire advanced fees before they had been earned—an illegal act—the attorney had collected an unreasonable fee in violation of rule 32:1.5(a). 801 N.W.2d at 586. Here, Heggen committed one of those illegal acts in withdrawing the Burgetts' fees before they had been earned and thus violated rule 32:1.5(a).

II. HEGGEN VIOLATED RULE 32:8.4(b) AND (c).

Heggen states that she did not violate either rule 32:8.4(b) or (c) and claims that the Board “misrepresents” the evidence in the record to state that she misappropriated client funds because of the existence of the attorney-fee contract. It is unfortunately Heggen who mischaracterizes the basis of the misappropriation. The Board recognizes that Heggen had a colorable future claim to the *retainer* when she immediately spent the \$3000 in January 2020. Heggen did not, however, have a colorable future claim to the funds from *the insurance company*. Heggen did not have a colorable future claim to the settlement funds because, as she admitted at the hearing, she did not have a right

those funds at any point. (App. 242 (Tr. II 211:11–15)). Heggen’s conversion without a colorable future claim to the Burgetts’ funds was a violation of rule 32:8.4(b).

Additionally, Heggen cites *Iowa Supreme Court Attorney Disciplinary Board v. Muhammad*, 935 N.W.2d 24 (Iowa 2019), for the contention that the Board did not prove that Heggen converted client funds because Heggen did not have “the specific intent to do so.” *Muhammad* states the opposite. The court there stated, “It could well be, of course, that Muhammad did not realize the ethical implications of her conduct. Theft by misappropriation, however, is a general intent crime.” *Id.* at 38 (citing *Eggman v. Scurr*, 311 N.W.2d 77, 79–81 (Iowa 1981)).

Furthermore, Heggen violated rule 32:8.4(c), despite her claims that she was “honest to a fault with the Burgetts.” Unfortunately, Heggen’s honesty with the Burgetts *after* having misappropriated the Burgetts’ funds does not save Heggen from a violation of that rule. Heggen converted client funds without a colorable future claim, and “misappropriation of funds is a clear violation of both [rule 32:8.4(b) and (c)].” *See Iowa Supreme Ct. Att’y Disciplinary Bd. v. Kozlik*, 943 N.W.2d 589, 595 (Iowa 2020) (citations omitted); *see also Iowa Supreme Ct. Att’y Disciplinary Bd. v. Fischer*, 973 N.W.2d 267, 273 (Iowa 2022).

III. SMITH AND SOBEL ARE INAPPOSITE FOR DETERMINING SANCTIONS.

Heggen relies upon *Iowa Supreme Court Attorney Disciplinary Board v. Sobel*, 779 N.W.2d 782 (Iowa 2010), and *Iowa Supreme Court Attorney Disciplinary Board v. Smith*, 904 N.W.2d 154 (Iowa 2017), to claim that the Court should impose a public reprimand. Neither case applies here because neither case involves conversion of client funds without a colorable future claim. The appropriate sanction here is revocation. *See, e.g., Muhammad*, 935 N.W.2d at 38.

CONCLUSION

The Court should conclude that Heggen converted client funds without a colorable future claim and should revoke her license to practice law.

IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD

By /s/ Alexis W. Grove

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ATTORNEY FOR COMPLAINANT

REQUEST FOR NONORAL SUBMISSION

The Board requests submission of the case without oral argument.

/s/ Alexis W. Grove
Alexis W. Grove

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 point and contains 878 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

7/8/22
Date

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