

‘Clear and Convincing’ Is the New Standard for Attorney Disciplinary Matters

The Legal Intelligencer

March 17, 2025

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In two recent disciplinary matters, the Pennsylvania Supreme Court considered the applicability of offensive collateral estoppel in attorney disciplinary matters. The outcomes, both favorable to the attorneys involved, offer lawyers in this commonwealth some much-needed clarity on the standard applicable to attorney disciplinary matters and the types of conduct that can constitute “conduct prejudicial to the administration of justice” under Pennsylvania Rule of Professional Conduct 8.4(d).

First, in *ODC v. Anonymous*, 327 A.3d 192 (Oct. 24, 2024), the Supreme Court held that an attorney cannot be found to have violated Rule 8.4(d) if the lawyer has not otherwise engaged in conduct prohibited by the Rules. Rule 8.4(d) provides: “It is professional misconduct for a lawyer to: ... (d) engage in conduct that is prejudicial to the administration of justice.” R.P.C. 8.4(d). The administration of justice refers to the honesty and integrity required to be exercised by attorneys in the practice of law:

Because of the essential role of lawyers, the administration of justice has little tolerance for manipulation by lawyers who violate the rule[s] of conduct that pro-

hibit deceit, fraud, dishonesty and misrepresentations, generally and by implication, in court filings and proceedings.

The respondent had represented a client successfully in a bad faith matter. The respondent filed a fee petition, seeking attorney fees in an amount that far exceeded the jury verdict won by the respondent’s clients. The U.S. District Court for the Middle District of Pennsylvania denied the petition in its entirety, finding that it was “outrageous and abusively excessive.” The district court also directed that a copy of its opinion be reported to the Office of Disciplinary Counsel, which the respondent did. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed.

The Office of Disciplinary Counsel (ODC) charged the respondent with violating numerous Rules of Professional Conduct, most relevant here, Rule 1.5(a), which provides: “A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” In considering whether the fee petition violated Rule 1.5(a), the Supreme Court found: “the plain language of Rule 1.5(a) makes clear that its aim is to protect clients from being charged clearly excessive fees.” Thus, Rule 1.5(a) governs fee

agreements between the attorney and the client, not fee petitions seeking payment of attorney fees from a non-client. The court determined that Respondent did not violate Rule 1.5(a) (or any of the other Rules of Professional Conduct alleged to have been violated).

The court specifically took issue with the ODC's position that "significantly inconveniencing the district court, wasting limited judicial resources, and "negatively" impacting the administration of justice is necessarily prejudicial to the administration of justice as contemplated by Rule 8.4(d). The court stated that a violation of Rule 8.4(d) "arises when there is an attempt to interfere with the administration of justice through misrepresentation or other dishonest misuse of the legal system for improper means, when an attorney actually undermines proceedings through deception, or when an attorney's conduct in violation of the Rules of Professional Conduct otherwise obstructs the court's functions in administering justice." This is consistent with prior cases which have generally limited Rule 8.4(d) violations to circumstances where attorneys make blatantly false representations to the court or the conduct causes an inability to prosecute criminal matters. Fundamentally, because Respondent had not violated any other Rules of Professional Conduct, the Supreme Court held that he likewise could not have and did not violate Rule 8.4(d). The petition for discipline was dismissed.

Following this opinion, it is clear that in Pennsylvania, in order for an attorney to have violated Rule 8.4(d), the attorney

must both have engaged in conduct involving deceit, dishonesty, fraud or misrepresentations or engaged in conduct that actually thwarted or interfered with the administration of justice, and have violated another Rule of Professional Conduct.

Second, in *ODC v. Anonymous*, 2025 WL 524221 (Pa. Feb. 12, 2025), the Pennsylvania Supreme Court established the standard applicable to attorney disciplinary matters, expressly holding that the ODC is required "to establish attorney misconduct with evidence that is sufficient to satisfy a clear and convincing evidence standard of proof."

The respondent had represented a corporate creditor in bankruptcy court. During the course of the bankruptcy matter, the bankruptcy court found that the respondent and the respondent's client had violated the automatic bankruptcy stay. The court awarded sanctions in favor of the debtors and against the respondent and the respondent's client. Following the bankruptcy court's decision, the ODC filed a petition for discipline asserting that the respondent had violated several Rules of Professional Conduct. The ODC filed a motion to apply offensive collateral estoppel to preclude the respondent from re-litigating certain matters that had given rise to the sanctions in the bankruptcy court. The ODC argued that the bankruptcy court had already found that the respondent threatened to disclose purportedly incriminating information about the debtors, violated the automatic stay, and had altered a photograph of the debtor. These ac-

tions, the ODC argued, violated the respondent's duty of candor to a tribunal and fairness to opposing party. Because a court had already held that the respondent engaged in this conduct, the ODC argued that the respondent should not be permitted to offer evidence to the contrary during the disciplinary matter.

In response, the respondent argued that collateral estoppel should not apply where the preponderance of "clear and satisfactory" evidence standard applicable to attorney disciplinary matters was more stringent than the mere preponderance standard applied by the bankruptcy court judge in finding a willful violation of the automatic stay. Specifically, the respondent argued that "the disciplinary standard is 'a term of art indicating a burden of proof greater than 'mere preponderance' and (perhaps) less than 'clear and convincing' evidence.'" The ODC, to the contrary, argued that the applicable standard was "mere preponderance."

Ultimately the question of whether collateral estoppel applied turned on the appropriate burden of proof in attorney disciplinary matters. The Supreme Court acknowledged that the existing burden, "clear and satisfactory," lacked clarity. Moreover, the court reasoned, attorney disciplinary matters are neither strictly criminal nor strictly civil, but are instead quasi-criminal in nature. The court further noted that attorney disciplinary proceedings "can have a severe impact on the attorney's career and livelihood."

Thus, the Supreme Court expressly held that the standard of proof applicable to attorney disciplinary matters is clear and convincing:

We further clarify that the burden of proof that must be met by ODC in establishing attorney misconduct must be sufficient to satisfy a clear and convincing evidence standard of proof.

Thus, because "collateral estoppel is not applicable where the standard used in the prior proceeding is less stringent than that used in the subsequent matter," collateral estoppel, therefore, could not apply here. This matter was remanded for further consideration pursuant to the clear and convincing evidentiary standard.



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