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Supreme Court clarifies standard for disciplinary actions against attorneys

SANTA FE – The state Supreme Court issued an opinion today clarifying the legal standard for determining whether an attorney violated ethical rules by making statements about a judge’s integrity with a “reckless disregard” as to their truth.

“Our judicial system depends on the public’s confidence in its fairness and authority. It cannot function if the public is misled to believe that judicial officers lack the necessary integrity or qualifications to perform their duties,” the Court wrote in a per curiam opinion.

The opinion provides the legal reasoning for the Court suspending Albuquerque attorney Victor Marshall from the practice of law for an indefinite period of at least 18 months. The Court announced its decision from the bench in January 2022, after hearing oral arguments in the disciplinary case.

“We hold that a lawyer makes a statement with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge when the lawyer makes the statement in the absence of an objectively reasonable factual basis,” the Court concluded.

Marshall was disciplined for statements made about Judge James Wechsler in pleadings filed in an appeal of a 2013 settlement agreement about water rights in the San Juan River and those of the Navajo Nation. Judge Wechsler presided over the case, and Marshall represented the San Juan River Agricultural Water Users Association and others who appealed the settlement approved by the judge.

Marshall sought to disqualify the judge from the water rights adjudication while the case was pending in the Court of Appeals and his “motion and supportive brief were replete with attacks on Judge Wechsler’s integrity and candor,” the Supreme Court noted.

Marshall alleged that Judge Wechsler violated ethical rules by not disclosing that he “previously worked as a lawyer for the Navajo Nation” more than four decades earlier and that he had a

“one-way bias” in favor of the Navajos. In the early 1970s, Wechsler worked for a nonprofit legal aid organization, DNA People’s Legal Services, which assisted people on the Navajo Nation who could not afford a lawyer.

The Disciplinary Board of the Supreme Court, which investigates ethical misconduct complaints involving attorneys, found no “clear or convincing evidence” that DNA acted as the law firm for the Navajo Nation in any matter. The Board recommended to the Court that Marshall be indefinitely suspended from practicing law in New Mexico for violations of the Rules of Professional Conduct.

“Accusing Judge Wechsler of bias and favoritism (specifically in his procedural and substantive rulings), implying that he could have ‘fixed the case in favor of his former client,’ and suggesting that he ‘concealed his ties to the Navajo Nation in order to award water to his former clients’ all impugn Judge Wechsler’s ethical and professional integrity as a judge,” the Court concluded.

The Court wrote, “When an attorney casts unfounded doubt on the integrity of a judge, the public’s perception of the legal system is at great risk because attorneys are rightly perceived by the public as being in a unique position to comment on the judiciary. Requiring that attorneys have an objectively reasonable factual basis for making a statement about the integrity of a judge provides an essential safeguard against this risk. Such a requirement does not deprive attorneys of their free-speech rights in pending cases; it simply means that they must not make accusations against judicial officers in the absence of an adequate factual grounding.”

The justices agreed with the Disciplinary Board that Marshall violated ethical rules by filing frivolous motions, making statements about a judge’s integrity with reckless disregard as to their truth and for engaging in conduct “prejudicial to the administration of justice.”

“Because Marshall continues to deny wrongdoing and steadfastly refuses to take responsibility for his actions, we believe discipline is necessary to prevent him from engaging in this type of conduct in the future,” the Court stated.

Marshall can seek reinstatement to practice law after serving his suspension, completing at least four hours of continuing legal education about ethics and passing the Multistate Professional Responsibility Examination, which covers legal ethics and professional conduct.

Marshall was initially suspended for no less than one year. However, the indefinite suspension period was extended to at least 18 months after Marshall was held in contempt of court in May 2022 for not complying with a requirement to notify clients, other courts and opposing counsel in cases of his suspension.

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To read the decision *In the Matter of Victor R. Marshall*, No. S-1-SC-37698, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521682/index.do>