

ATTORNEY DISCIPLINE

Competent representation. A Nebraska attorney was publicly reprimanded for violating his oath of office as an attorney and several Nebraska rules of professional conduct by failing to provide competent representation in the field of franchise law, according to the Nebraska Supreme Court.

The attorney had been contacted by the owner of a Nebraska coffee shop in connection with the franchising of his business. Despite never before representing a franchisor, the attorney responded to the client that he had recently reviewed a franchisee's agreement and that he believed he could "handle" the franchising of their business. Although he had never before drafted a franchise agreement, the attorney believed it was simply "a matter of contract drafting," which he believed he was competent to do. The attorney contacted counsel for assistance with the trademark and copyright portions of franchising and was warned by that counsel that franchising was a specialized field. Later, after the client became embroiled in franchise litigation with some of its franchisees, a specialist in the field of franchise law that was called in to review the franchise documents that had been prepared by the attorney concluded that those documents did not comply with FTC rules. The specialist characterized the deficiencies as "major."

Formal disciplinary charges were filed against the attorney and a referee concluded that he failed to provide competent representation to the franchisor. Even though the Counsel for Discipline argued that the appropriate sanction in the instant case was a 60-day suspension, the referee's findings that the attorney negligently determined that he was competent and did not knowingly engage in the incompetent practice of law were mitigating factors, the court determined. Moreover, there was no support in the caselaw for a suspension for incompetence without other misconduct, such as dishonesty.

As a lawyer who has been practicing law for 40 years, the attorney should have been aware that he was not competent to represent franchisors, the court commented. At the very least, the attorney should have done the research necessary to become competent in the area of franchise law. The fact that the attorney did little or no research into state or federal franchising law until long after he first received notice that there was a problem with the franchising documents was inexcusable, the court observed. Under the circumstances, the recommendation of the referee was accepted and the attorney was issued a public reprimand.

Nebraska v. Orr, Neb. Sup. Ct., ¶ 14,064

gress in removing its operations and employees from the market, concerns such as pricing and safety could be adversely affected should an injunction issue, according to the court.