

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 21-101
)
EDWARD P. BERNARDI,)
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3 and RPC 1.16(a)(2). Stipulation for Discipline. 30-day suspension.

Effective Date of Order: January 14, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Edward P. Bernardi (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective seven days from the date of this order, for violation of RPC 1.3 and RPC 1.16(a)(2).

DATED this 7th day of January, 2022.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Edward P. Bernardi, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the opportunity to seek advice from counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On December 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3 [neglect of a legal matter] and RPC 1.16(a)(2) [failure to withdraw when lawyer's physical condition materially impairs lawyer's ability to carry out the representation] of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In approximately 2008, Respondent represented a minor client (Client), and obtained a settlement in civil litigation on her behalf. The \$24,000 net recovery was placed in a conservatorship and was to be disbursed to Client on her 18th birthday, January 15, 2020. Respondent was appointed conservator. Respondent lost contact with Client and her mother.

When she reached age 18, Client contacted Respondent about releasing the funds. Although he intended to close the conservatorship, he was extremely ill, and was hospitalized and then convalescing at home. On April 13, 2020, the court issued a delinquency notice directing Respondent to seek a general judgment terminating the conservatorship due to Client's reaching the age of majority. Respondent received this notice, but was too ill to act or respond. He acknowledges that, when he eventually recovered to the point of returning to his office, he should have attended to this matter.

In October 2020, Client contacted Respondent again, and he assured her that he would close the conservatorship within 60 days. However, when he started working on that task, he realized that he had lost her contact information and had no way to reach her. Client complained to the Bar in January 2021 that she had not heard from Respondent.

Respondent represents that, in March 2021, he hired an attorney to take over the task of closing the conservatorship.

On April 5, 2021, the court entered a judgment on its own motion releasing the restricted funds and terminating the conservatorship. As of that date, no other counsel had appeared for Respondent, who remained identified as counsel for himself as conservator.

Violations

6.

Respondent admits that, by not taking steps to terminate the conservatorship and release the funds to Client when he knew as of January 2020 that he was required to do so, he neglected a legal matter in violation of RPC 1.3. Respondent further admits that his failure to withdraw from the matter when serious illness impaired his ability to carry out the duties of conservator and counsel for conservator violated RPC 1.16(a)(2).

Sanction

7.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards). The ABA Standards require that Respondent's conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. **Duty Violated.** Respondent violated the duty of diligence owed to his client, and his duty as a professional to properly withdraw from representation. ABA Standards 4.4, 7.0
- b. **Mental State.** Respondent acted both knowingly and negligently. It appears that, although distracted by his illness, Respondent acted knowingly, in that he was consciously aware of the nature and circumstances attendant to his conduct, but without the conscious objective or purpose to accomplish a particular result, when he failed to close out the conservatorship. However, it appears that he acted negligently when he failed to heed the substantial risk that his illness was impairing his ability to carry out the matter, and that he was required to withdraw.

- c. **Injury.** For the purposes of determining an appropriate sanction, both actual and potential injury are taken into account. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Client suffered actual injured by Respondent's failure to act, in that she was denied her \$24,000 for over one year after she should have received it.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Substantial experience in the practice of law. ABA Standard 9.2.2(i). Respondent was admitted to practice law in Oregon in 1981.
 2. Vulnerability of victim. ABA Standard 9.22(h). Although Client was legally an adult as of January 2020, she was a teenager and unfamiliar with the legal system.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior record of discipline. ABA Standard 9.32(a).
 2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
 3. Personal or emotional problems. ABA Standard 9.32(c). Respondent was hospitalized and then experienced a lengthy convalescence.
 4. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client. ABA Standard 4.42. Reprimand is generally appropriate when a lawyer negligently engages in conduct that violates a duty owed as a professional (such as failing to withdraw when required), and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.3.

9.

Recent case law demonstrates that sanctions for similar misconduct have resulted in a range of sanctions, from reprimands to 60-day suspensions.

In re Lyle Bosket, 32 DB Rptr 41 (2018) [30-day suspension, all stayed/2-year probation]. Shortly after lawyer was hired to pursue civil claims for his client, he began experiencing personal problems and serious health problems that impacted his ability to perform legal work. He did not respond to his client's requests for information for over six months, and did not

withdraw. The same aggravating and mitigating factors were present as in this matter, except that the stipulation also recited a pattern of misconduct and multiple offenses.

In re Eric J. Fjelstad, 31 DB Rptr 268 (2017) [stipulated 60-day suspension]. Lawyer failed to withdraw from his client's case despite a medical condition that impacted his ability to practice law. Aggravating factors included prior history of discipline and multiple offenses.

In re Ann B. Witte, 24 DB Rptr 10 (2010) [stipulated reprimand]. Lawyer failed to withdraw at a time when she recognized that her health was inhibiting her ability to communicate and effectively represent a client. The client's unemployment claim was dismissed due to failure to appear, and lawyer failed to timely file an appeal. Aggravating factors included a prior reprimand for neglect; mitigating factors are the same as in this matter.

Respondent's misconduct, alone, is most similar to *Witte* (reprimand) and *Fjelstad* (60-day suspension), but the actual injury caused to a vulnerable client justifies the more serious sanction of suspension. However, the mitigating factors justify the shortest possible suspension: 30 days.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 1.3 and RPC 1.16(a)(2), effective seven days after the Adjudicator issues an order approving this stipulation.

11.

Respondent acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension.

12.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

13.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14.

Respondent represents that, in addition to Oregon, he is not admitted to practice law in any other jurisdictions, whether his current status is active, inactive, or suspended.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 11, 2021. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of January, 2022.

/s/ Edward P. Bernardi

Edward P. Bernardi, OSB No. 811686

EXECUTED this 6th day of January, 2022.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer

Susan R. Cournoyer, OSB No. 863381
Assistant Disciplinary Counsel