

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 21-41  
)  
THOMAS O. CARTER, )  
)  
Respondent. )

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: Anthony A. Buccino

Disciplinary Board: None

Disposition: Violation of RPC 5.5(a) and ORS 9.160(1). Stipulation for Discipline. Public reprimand.

Effective Date of Order: August 5, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is publicly reprimanded for violation of RPC 5.5(a) and ORS 9.160(1).

DATED this 5th day of August, 2021.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

**STIPULATION FOR DISCIPLINE**

Thomas O. Carter, 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 in September 1966, 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 advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 24, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 5.5(a) of the Oregon Rules of Professional Conduct and ORS 9.160(1). 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.

Between December 2019 and March 2020, the Bar sent Respondent five email reminders to file his 2020 IOLTA report by April 1, 2020. The Bar sent the reminders to Respondent's email address on record with the Bar, as previously provided by Respondent. On April 2, 2020, Respondent was administratively suspended and notified by email due to his failure to timely file his 2020 IOLTA report. At all relevant times, Respondent maintained an IOLTA account, and on April 3, 2020, Respondent emailed the Bar's Regulatory Services Coordinator, Brandi Norris (Norris), providing his IOLTA account information. On April 8, 2020, Norris informed Respondent via email of the need to submit a reinstatement form and fee. Respondent did not see Norris's email, so he did not realize that his April 3, 2020, email had not resolved the issue.

Prior to his administrative suspension, Respondent had been retained to represent a plaintiff in a minor personal injury matter. Not actually aware of his suspension Respondent continued to work on that matter during his administrative suspension. Respondent filed his

client's lawsuit on May 26, 2020, and worked on the matter until its resolution; the final judgment was entered on October 21, 2020.

On January 26, 2021, while Respondent was still administratively suspended, he sent a letter for another client seeking workers compensation benefits. On January 28, 2021, Respondent first learned that he had been administratively suspended since April 2, 2020. On January 29, 2021, Respondent sent a letter to Norris seeking to resolve his suspension. On February 1, 2021, Norris sent an email to Respondent to explain his need to file a reinstatement form and pay required fees. On February 4, 2021, despite the fact that Respondent was still administratively suspended and aware of his suspension, he did additional work on behalf of the client seeking workers compensation benefits, by sending a facsimile requesting records from the client's medical provider. Respondent later acknowledged that he had made an error in judgment on February 4, 2021, for which he expressed regret and remorse.

On February 8, 2021, Respondent submitted his reinstatement application and required fees. Respondent acknowledged that he had been administratively suspended since April 2, 2020, and explained that he had not regularly checked his email. Respondent disclosed that he had practiced law during his suspension. Respondent was reinstated on May 10, 2021.

### **Violations**

6.

Respondent admits that, by engaging in unauthorized practice of law, he violated RPC 5.5(a) and ORS 9.160(1).

### **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 his duty owed as a professional through his unauthorized practice of law. ABA Standard 7.0.
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the

failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Here, Respondent acted negligently between April 2, 2020, and January 28, 2021, when he learned of his suspension, but he acted knowingly on February 4, 2021.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Based upon the available evidence, there was the potential for injury to Respondent's clients through Respondent's unauthorized practice of law.
- d. **Aggravating Circumstances.** The aggravating circumstance includes:
  - 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was licensed to practice in Oregon in 1966.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
  - 1. Absence of prior disciplinary record. ABA Standard 9.32(a).
  - 2. Absence of dishonest motive. ABA Standard 9.32(b).
  - 3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
  - 4. Remorse. ABA Standard 9.32(l). Respondent expressed remorse for his conduct.

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.2. Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.3.

9.

Oregon decisions support suspensions for knowingly practicing while suspended. *In re Jones*, 308 Or 306, 779 P2d 1016 (1989) (imposing a 6-month suspension for knowingly assisting a non-lawyer in unlawful practice of law); *In re Butler*, 324 Or 69, 73 n 2, 921 P2d 401 (1996) (referencing similar conduct by the attorney in an earlier proceeding, in which the court had approved a stipulation for discipline suspending the attorney for 90 days for filing an answer to a complaint in Nebraska when he was not authorized to practice law in that state); *In re Kenney*, 28 DB Rptr 269 (2014) [stipulation] (imposing 30-day suspension on inactive MD attorney, for

practicing in OR before the Social Security Administration); *In re Foster*, 27 DB Rptr 163 (2013) [trial panel opinion] (imposing 30-day suspension where lawyer practiced administrative law while she knew that she was suspended and knowingly made misleading communications about her ability to perform services); *In re Johnson*, 20 DB Rptr 223 (2006) [trial panel opinion] (imposing 30-day suspension where, as a result of “willful ignorance ... tantamount to knowing” the reinstatement procedures, lawyer practiced law while suspended).

The Bar has stipulated to public reprimands for attorneys who have acknowledged practicing law while they were unaware of being suspended. In the matter of *In re Rose*, an attorney unknowingly practiced law seven months, during which time she worked on multiple client matters and billed approximately 850 hours. *In re Rose*, 33 DB Rptr 308 (2019). In the case of *In re Bassett*, 16 DB Rptr 190 (2002), an attorney practiced law for 15 days after he was suspended retroactively because he paid his otherwise timely PLF assessment with a non-sufficient funds check. Bassett sought reinstatement the same day he received notice of the suspension. In the matter of *In re Schmidt*, 2 DB Rptr 97 (1988), an attorney who was administratively suspended for one month engaged in settlement negotiations on one client matter while suspended.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that, despite Respondent’s instance of knowing misconduct, Respondent shall be reprimanded for violating RPC 5.5(a) and ORS 9.160(1), particularly because the mitigating factors, including Respondent’s lack of prior discipline during his long Bar membership, outweigh the aggravating factor. The sanction will be effective immediately after this stipulation is approved.

11.

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.

12.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: none.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 24, 2021, and June 5, 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 August 2021.

/s/ Thomas O. Carter

Thomas O. Carter, OSB No. 660275

APPROVED AS TO FORM AND CONTENT:

/s/ Anthony A. Buccino

Anthony A. Buccino, OSB No. 750571

EXECUTED this 2nd day of August 2021.

OREGON STATE BAR

By: /s/ Rebecca Salwin

Rebecca Salwin, OSB No. 201650

Assistant Disciplinary Counsel