

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 20-59
)
DAVID J. CELUCH,)
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3),
RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d).
Stipulation for Discipline. 60-day suspension.

Effective Date of Order: June 11, 2021

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by David J. Celuch and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 60 days, effective June 11, 2021, for violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and two counts of RPC 1.15-1(d).

DATED this 4th day of March 2021.

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

STIPULATION FOR DISCIPLINE

David J. Celuch, 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 22, 1995, 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 5, 2020, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of Oregon Rules of Professional Conduct (RPC) 1.3 (duty of diligence), RPC 1.4(a) (duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), RPC 1.5(c)(3) (using an earned-upon-receipt fee agreement without required disclosures), RPC 1.15-1(a) (failure to deposit unearned fees into trust), RPC 1.15-1(c) (failure to deposit and maintain client funds in trust until earned or expenses incurred) and two counts of RPC 1.15-1(d) (failure to promptly deliver to the client any funds or other property that the client is entitled to receive). 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.

On November 30, 2018, Shelli Alinari (Alinari) hired Respondent to seek to set aside records of arrest and conviction in five cases, one in Multnomah County and four in Washington County. She signed a flat fee retainer agreement. That agreement did not contain a specific disclosure required under RPC 1.5 for fees earned upon receipt. Specifically, it failed to explain—as required by RPC 1.5(c)(3)—that the \$2,055 flat fee paid by Alinari would not be deposited into a lawyer trust account. Respondent did not deposit the \$2,055 flat fee into his lawyer trust account because of his mistaken belief that the fees were earned upon receipt and, therefore, should not be deposited into a trust account.

Approximately nine months after hiring Respondent, Alinari determined that Respondent had not filed any paperwork related to her legal matters. On September 2, 2019, she sent Respondent a certified letter requesting a written update and copies of all correspondence related to the work for which she hired him or a full refund. Alinari requested a response by September 20, 2019.

Respondent did not respond to Alinari nor did he provide her with her client file. Respondent did file one motion in Multnomah County on September 20, 2019, but he did not communicate that to Alinari. After not hearing from Respondent, Alinari complained to the Bar. Ultimately, five months later, on February 21, 2020, Respondent sent Alinari a full refund along with drafts of motions for the Washington County matters.

Violations

6.

Respondent admits that by failing to work on Alinari's matter and by failing to respond to her reasonable inquiries, he violated RPC 1.3 and RPC 1.4(a). Respondent further admits that his fee agreement pertaining to the representation of Alinari did not contain the requisite disclosures that pertain to an earned-upon-receipt fee agreement as required by RPC 1.5(c)(3). Respondent also admits that, by not having a fee agreement that comported with the requirements of RPC 1.5(c)(3), he should have deposited fees into his trust account until they were earned and that his failure to do so violated RPC 1.15-1(a) and RPC 1.15-1(c). Additionally, Respondent admits that by failing to promptly deliver a refund to Alinari or promptly provide her with her client file, he violated RPC 1.15-1(d).

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 to his client by failing to diligently attend to her matter and also by failing to communicate with her in a timely and effective manner. ABA Standard 4.4. Respondent violated his duty to preserve client property, which incorporates his delayed refund to his client and failure to provide the client file. ABA Standard 4.1. Finally, Respondent violated his duty as a legal professional related to his handling of legal fees, which includes his non-compliant fee agreement and his handling of Alinari's payment. 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 knowingly and negligently in his violations of his duties.
- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). The client suffered actual injury through Respondent’s failure to advance the client’s legal matters. The Oregon Supreme Court has held that there is actual injury to a client when an attorney fails to actively pursue the client’s matters. *See, e.g., In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). The client also suffered actual injury in the form of anxiety and frustration that she experienced as a result of Respondent’s failure to adequately communicate with her or work on her legal matters. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as the result of attorney neglect can constitute actual injury under the ABA Standards); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). The client also suffered actual injury due to the delay in obtaining her refund.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Prior disciplinary offenses. ABA Standard 9.22(a). Respondent was admonished in July 2008 for violating RPC 1.4(a) when he failed to respond to his client’s request for information for five months and failed to apprise his client of a development in his case for months.
 2. Pattern of misconduct. ABA Standard 9.22(c).
 3. Multiple offenses. ABA Standard 9.22(d).
 4. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was licensed to practice in Oregon in 1995.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of dishonest motive. ABA Standard 9.32(b).
 2. 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 a client. ABA Standard 4.42(a). Suspension is also generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.12. As to Respondent's flat fee agreement and his handling of the retainer, admonition is generally appropriate when a lawyer engages in an isolated instance in determining whether the lawyer's conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system. ABA Standard 7.4.

9.

Oregon case law supports the imposition of a suspension. The presumption is that knowing neglect of a client's legal matter typically results in a 60-day suspension. *See In re Redden*, 342 Or 393, 401, 153 P3d 113 (2007) (court so concluded after reviewing similar cases). Similar sanctions have been imposed in cases involving neglect and failure to communicate. *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (imposing a 60-day suspension for neglect, including failure to adequately communicate with clients); *In re Lebahn*, 335 Or 357, 67 P3d 381 (2003) (attorney suspended for 60 days for knowing neglect of a client matter and failure to communicate).

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violating RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and two counts of RPC 1.15-1(d). The suspension will take effect June 11, 2021. Though the postponement of sanction is much longer than usual, the parties agree to the delay due to the COVID pandemic and Respondent's high-volume caseload.

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. In this regard, Respondent has arranged for Eric J. Hale, an active member of the Bar with a business address of 1318 SW 12th Ave., Portland, OR, 97201, to either take possession of or have ongoing access to Respondent's client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Eric J. Hale has agreed to accept this responsibility.

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 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.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 5, 2020. 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 1st day of March 2021.

/s/ David J. Celuch

David J. Celuch, OSB No. 952291

EXECUTED this 3rd day of March 2021.

OREGON STATE BAR

By: /s/ Eric J. Collins

Eric J. Collins, OSB No. 122997

Assistant Disciplinary Counsel