

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 21-42
)
MARK COLEMAN,)
)
Respondent.)

Counsel for the Bar: Stacy R. Owen

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3 and RPC 1.4(a). Stipulation for Discipline. Public reprimand.

Effective Date of Order: June 29, 2021

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Mark Coleman (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 1.3 and RPC 1.4(a).

DATED this 29th day of June 2021.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Mark Coleman, 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 28, 2007, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas 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 April 24, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3 [diligence] and RPC 1.4(a) [communication] 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 2016, a client hired Respondent to assist her with a Chapter 13 bankruptcy proceeding. During the course of the representation, the bankruptcy trustee issued two motions to dismiss the matter for failing to provide tax returns. In January 2018, the client sent Respondent her 2016 tax return. Respondent did not provide it to the bankruptcy trustee until March 2018, after being prompted to do so by receipt of the trustee's motion to dismiss for failure to provide the 2016 return.

In January 2019, the client sent Respondent her 2017 tax return. In May 2019, the client sent Respondent her 2018 tax return and further correspondence regarding her 2017 return. In August 2019, the bankruptcy trustee filed a motion to dismiss for failure to provide 2017 return. Respondent provided his client's 2017 and 2018 tax returns in September 2019, after being prompted to do so by the bankruptcy trustee's motion to dismiss. There is no evidence that Respondent informed his client about the bankruptcy trustee's motion to dismiss or the withdrawal of that motion after Respondent provided the required return.

The client and Respondent communicated in May 2019. The client requested information from Respondent in July 2019 and August 2019, but he did not respond.

In September 2019, the client asked Respondent about her final payment plan. Respondent accessed her case records, but does not recall informing his client that he had done so or reporting what he had found. In December 2019, Respondent contacted the bankruptcy trustee and reported to his client what he had learned.

In April 2020, Respondent filed a motion to withdraw from the bankruptcy matter, but the court did not approve his withdrawal until December 2020. Respondent conceded that he did not provide the court with a proposed order until prompted to do so during the Bar's investigation.

Violations

6.

Respondent admits that his delay in providing his client's tax returns to the bankruptcy trustee, his delay in researching and reporting to his client regarding her final payment plan, and his delay in filing a proposed order for withdrawal constituted neglect of a legal matter entrusted to him in violation of RPC 1.3. Respondent admits that by not communicating with his client from May 2019 until December 2019, he failed to respond to his client's reasonable requests for information and he failed to keep his client apprised of developments in her case, which constituted a violation of RPC 1.4(a).

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 of diligence in representing a client, which includes the obligation to timely and effectively communicate. ABA Standard 4.4.
- b. **Mental State.** Respondent's neglect and failures to communicate with his client were knowing. Respondent acted with the knowledge of the nature or attendant circumstances of his conduct, but without the conscious objective or purpose to accomplish a particular result.

- c. **Injury.** Respondent's client suffered actual injury in the form of anxiety and frustration when he did not respond to her requests for information. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997).
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. Multiple offenses. ABA Standard 9.22(d).
 - 2. Substantial experience in the practice of law. ABA Standard 9.22(i).
- 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).

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). Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. ABA Standard 4.43.

9.

Under Oregon case law, generally, lawyers who knowingly neglect a legal matter or fail to keep clients informed are suspended. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010). In the matter of *In re Redden*, the Oregon Supreme Court noted that attorneys who knowingly neglect a client's legal matter are generally sanctioned with 60-day suspensions. 342 Or 393, 401, 153 P3d 113 (2007) (court so concluded after reviewing similar cases); *see also, 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); *In re Schaffner*, 232 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days, 60 days of which was attributed to lawyer's knowing neglect of clients' case for several months by failing to communicate with clients and opposing counsel).

10.

Because the factors in mitigation outweigh the aggravating factors, including Respondent's lack of prior discipline, the parties agree that Respondent shall be publicly reprimanded for violations of RPC 1.3 and RPC 1.4(a).

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.

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. 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 20th day of June 2021.

/s/ Mark Coleman

Mark Coleman, OSB No. 073526

EXECUTED this 21st day of June 2021.

OREGON STATE BAR

By: /s/ Stacy R. Owen

Stacy R. Owen, OSB No. 074826
Assistant Disciplinary Counsel