

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 21-54
)
LARA M. GARDNER,)
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: Peter R. Jarvis and Trisha Thompson

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(3). Stipulation for Discipline. Public reprimand.

Effective Date of Order: March 9, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Lara M. Gardner and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lara M. Gardner is publicly reprimanded for violation of RPC 8.4(a)(3).

DATED this 9th day of March 2022.

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

STIPULATION FOR DISCIPLINE

Lara M. Gardner, 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 26, 2003, and has been a member of the Bar continuously since that time, having her office and place of business in Benton 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 June 5, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of RPC 8.4(a)(3) 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 2019, Respondent was told that inmates incarcerated at Oregon State Prison (OSP) carry papers on their persons to show other inmates what crimes they had been convicted of. She was also told that convictions for certain crimes would result in the inmate being targeted by other inmates and frequently subjected to substantial harm or even killed.

6.

Between September 2019 and November 2019, Respondent was asked by her brother, who was then incarcerated at the Marion County Jail (MCJ), to create documents for other inmates whom he believed would be targeted for substantial harm or killed in OSP. In response, Respondent created two documents for inmates incarcerated at MCJ (the Recipients) to carry on their persons once they were transferred to OSP. The documents purported to show that the Recipients were charged or convicted of crimes that were different than the crimes that the Recipients were actually charged or convicted with. The first document purported to be an official order from the State of Oregon Board of Parole and Post-Prison Supervision (PPS order); the second document purported to be an indictment in a then-pending Marion County criminal

court case. Respondent did not forge any signatures on the documents. She sent both documents to her brother through the mail.

7.

Respondent did not intend for the documents to be used for any official purpose. Respondent believed that the documents would only be used by the Recipients to show other inmates for the purpose of avoiding substantial bodily harm or death.

8.

Respondent's brother told Respondent that he provided the PPS order she created to the inmate named on that document prior to that inmate's transfer to prison. The other document created by Respondent was intercepted by MCJ staff in the mail and turned over to the Marion County District Attorney's Office for investigation. Prosecutors considered using the intercepted document in its case against the intended recipient, but ultimately did not do so. Respondent did not know that that recipient's case was still pending when she created the document for him.

Violations

9.

Respondent admits that her conduct in paragraphs 5, 6, 7, and 8 above involved dishonesty, fraud, deceit, or misrepresentation that reflects adversely on her fitness to practice law, in violation of RPC 8.4(a)(3).

Sanction

10.

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 her duty to maintain her personal integrity. ABA Standard 5.1.
- b. **Mental State.** The ABA Standards recognize three mental states: 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.* Respondent acted intentionally in creating documents that she anticipated would be used by the Recipients to deceive other inmates.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Injury is defined as harm to a client, the public, the legal system, or the profession that results from a lawyer’s misconduct. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.

Here, Respondent’s conduct caused actual harm. The Marion County jail and district attorney’s office had to expend time and resources investigating the matter. *In re Carpenter*, 337 Or 226, 238, 95 P3d 203 (2004). Respondent’s conduct also created a risk of potential injury to one of the intended recipients when prosecutors considered using the false indictment as evidence against the inmate named on that document, whose criminal case was still pending.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since September 26, 2003.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 2. Character or reputation. ABA Standard 9.32(g).

11.

Under ABA Standard 5.13, reprimand is generally appropriate when a lawyer knowingly engages in non-criminal conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.

12.

Oregon lawyers found to have engaged in conduct involving misrepresentation and dishonesty in matters outside of their law practice have received public reprimands. *See, e.g., In re Carpenter*, 337 Or 226, 95 P3d 203 (2004) (lawyer engaged in dishonesty when he created an Internet account in the name of a high school teacher in his community and posted a message to an online bulletin board purportedly written by the teacher that suggested the teacher had engaged in sexual relations with his students); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003)

(lawyer gave false impression he was presently qualified to practice law when the lawyer, who was an inactive member of the bar, filed forms in connection with his candidacy for public office that listed his present occupation as attorney while omitting mention of his former occupation as practicing attorney).

13.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 8.4(a)(3), the sanction to be effective the day the stipulation is approved.

14.

In addition, on or before May 1, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$825.50, incurred for Respondent's deposition. Should Respondent fail to pay \$825.50 in full by May 1, 2022, the Bar may thereafter, without further notice to her, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

15.

Respondent acknowledges that she 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 her suspension or the denial of her reinstatement. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

16.

Respondent represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: Washington.

17.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 17, 2022. 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 8th day of March 2022.

/s/ Lara M. Gardner

Lara M. Gardner, OSB No. 033206

APPROVED AS TO FORM AND CONTENT:

/s/ Trisha Thompson

Trisha Thompson, OSB No. 164929

EXECUTED this 9th day of March 2022.

OREGON STATE BAR

By: /s/ Eric J. Collins

Eric J. Collins, OSB No. 122997

Assistant Disciplinary Counsel