

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 18-115 and 19-126
)
JAMES D. HUFFMAN,)
)
Respondent.)

Counsel for the Bar: Samuel Leineweber

Counsel for the Respondent: John P. Salisbury

Disciplinary Board: None

Disposition: Violation of RPC 1.3, RPC 1.6(a), RPC 1.16(a)(1),
RPC 8.1(a)(2), RPC 8.1(c), and RPC 8.4(a)(4). Stipulation for
Discipline. 181-day suspension with formal reinstatement.

Effective Date of Order: February 1, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by James D. Huffman (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 suspended for 181 days, effective on February 1, 2022, for violation of RPC 1.3, RPC 1.6(a), RPC 1.16(a)(1), RPC 8.1(a)(2), RPC 8.1(c), RPC 8.4(a)(4).

DATED this 3rd day of November, 2021.

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

STIPULATION FOR DISCIPLINE

James D. Huffman, 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 19, 1975, and has been a member of the Bar continuously since that time, having his office and place of business in Columbia 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 July 14, 2020, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3, RPC 1.6(a), RPC 1.16(a)(1), RPC 8.1(a)(2), RPC 8.1(c), RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

OSB Case No. 18-115

In July 2015, Daniel Thomas (Thomas) retained Respondent to represent him in a divorce and child custody matter. The matter settled on July 13, 2016, at a settlement conference and the settlement was read in to the record. The Hon. Ted E. Grove directed Respondent to prepare and submit a written judgment, and Respondent agreed to do so.

6.

In October 2016, the court issued a notice of dismissal pending settlement. On February 23, 2017, the court issued another notice of dismissal pending settlement. Respondent received both dismissal notices.

7.

By November 2017, Respondent had still not submitted the judgment. On November 6, 2017, Thomas filed a Bar complaint against Respondent and on November 27, 2017, Thomas hired a new attorney to draft and submit the judgment.

8.

On March 22, 2018, Respondent wrote to the Client Assistance Office (CAO) in response to Thomas's Bar complaint. Respondent stated that he had not filed the judgment because Thomas had not paid him to do so. Respondent also included information about Thomas that was unrelated to defending himself against Thomas's complaint, such as criminal and family troubles that Thomas had. CAO referred the matter to Disciplinary Counsel's Office (DCO) on June 3, 2018.

9.

DCO wrote an inquiry letter to Respondent at his address on record with the Bar (record address) on June 19, 2018. When Respondent did not reply, DCO sent a second letter to Respondent's record address on July 13, 2018. When Respondent did not respond, DCO petitioned for a suspension of Respondent's license pursuant to BR 7.1. Respondent did not respond to the petition and was suspended on August 6, 2018. An order of suspension was again sent to Respondent at his record address and email address. Respondent then responded to DCO.

Violations

10.

Respondent admits that by failing to draft and submit the judgment in Thomas's case for 16 months after he had been entrusted with the task, he violated RPC 1.3.

Respondent admits that by choosing to neglect of Thomas's judgment for 16 months, his continued representation of Thomas during this time violated RPC 1.16(a)(1).

Respondent admits that by failing to timely submit Thomas's judgment, final disposition of the case was delayed and the circuit court was forced to expend additional time and resources, in violation of RPC 8.4(a)(4).

Respondent admits that by disclosing irrelevant information that was embarrassing and detrimental to Thomas in response to Thomas's Bar complaint, he violated RPC 1.6(a).

Respondent admits that during June and July 2018, he knowingly failed to respond to lawful demands for information from Disciplinary Counsel's office, and thus violated RPC 8.1(a)(2).

11.

OSB Case No. 19-126

In mid-March 2019, Respondent was referred to the State Lawyers Assistance Committee (SLAC) and attorney Kevin E. Lucey (Lucey) was designated by SLAC to investigate the referral. Lucey attempted to contact Respondent via telephone, email, and mail, but Respondent did not reply to him. In a letter, Lucey gave a deadline of April 10, 2019, for Respondent to reply or else Lucey said he would refer Respondent to DCO as non-cooperative. Respondent replied to this letter.

12.

Lucey met with Respondent on April 9, 2019, at which time he explained SLAC's role and his obligation to investigate whether SLAC should take jurisdiction. Lucey explained that as part of his investigation, he needed to review Respondent's medical and mental health records. On April 10, 2019, Lucey emailed Respondent a blank medical release with instructions to sign, date and initial next to "mental health information."

On April 11, 2019, Lucey emailed Respondent to assure him that SLAC had the right to require release of the medical records, and provided Respondent with the OSB Bylaw establishing that right.

13.

On April 20, 2019, Respondent emailed Lucey and stated that he wanted time to research the SLAC statutes. Lucey gave Respondent until April 24, 2019 to provide the medical release with a list of doctors. Respondent missed that deadline. On April 25, 2019, Lucey wrote to Respondent giving him a second chance to respond by May 1, 2019. Respondent also missed that deadline.

14.

On the evening of May 6, 2019, Respondent sent releases to Lucey via email, but he had placed Lucey's name in the space for the medical provider. On May 7, 2019, Lucey wrote back and asked Respondent's permission to delete Lucey's name from the release. Respondent did not respond. Lucey sent reminder emails on May 8 and May 9, 2019, but Respondent did not respond. On May 13, 2019, Lucey set a deadline for his response of May 14, 2019, by 5 p.m. Respondent did not respond to that email until May 17, 2019, at which point he authorized Lucey to modify the form he had signed. Lucey then noticed that Respondent had not checked the mental health information box, and so wrote to Respondent asking that he do so, and requesting information regarding specific medical providers he had used.

15.

On May 20, 2019, Respondent wrote to Lucey, stating he had just seen his request, but did not comply. On May 21, 2019, Lucey renewed his request for a properly signed and initialed medical release, and asked that it be provided that day. On May 23, 2019, having received no response, Lucey wrote to Respondent, informing him that there was a SLAC meeting that day and that Lucey would recommend that SLAC report Respondent as non-cooperative. SLAC referred Respondent to DCO for non-cooperation.

Violations

16.

Respondent admits that by failing to provide a properly executed medical release of information to SLAC when it was requested, he violated RPC 8.1(c).

Sanction

17.

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. ABA Standards 3.0.

- a. **Duty Violated.** The ABA Standards provide that the most important ethical duties are those which lawyers owe their clients. ABA Standards at 5. In violating RPC 1.3, Respondent violated his duty to provide diligent representation to his client. ABA Standard 4.4. In violating RPC 1.6(a), Respondent violated his duty to preserve his client's confidences. ABA Standard 4.2. In violating RPC 1.16(a)(1), RPC 8.1(a)(2), and RPC 8.1 (c), Respondent violated his duty as a professional. ABA Standard at 7.0. In violating RPC 8.4(a)(4), Respondent violated his duty owed to the legal system. ABA Standard 6.0.
- b. **Mental State.** Respondent's mental state for the conduct in each of these violations amounts to knowledge. "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. ABA Standards at 7. Respondent was aware of his responsibility to draft and submit a judgment in Thomas's case, and he was aware that the court intended to dismiss the proceeding on multiple occasions if he did not submit the judgment. Respondent knowingly neglected Thomas's case for 16 months.

Respondent knew that he was disclosing information that was likely to be embarrassing or detrimental to Thomas. Respondent also knew, or should have known, that this information was unnecessary to establish a defense to Thomas's complaint which was limited to his lack of diligence in preparing and submitting the judgment.

Respondent knowingly failed to respond to DCO and knowingly failed to cooperate with SLAC; Respondent's course of conduct demonstrates that he decided to pick and choose which requests he would respond to and when he would respond.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). The ABA Standards define "injury" as harm to the client, the public, the legal system, or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. ABA Standards at 7. An injury does not need to be actual to support the imposition of sanctions. *In re Williams*, 314 Or at 546.

In neglecting Thomas's case, Respondent caused actual injury to his client. A client sustains actual injury when an attorney fails to actively pursue the client's case. *See, e.g., In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). Respondent's neglect also caused his client stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). Finally, Respondent's conduct in Thomas's case forced Thomas to hire a second lawyer to draft and submit his judgment.

A lawyer's inaction can injure the court by creating an unnecessary burden on court resources. *In re Hartfield*, 349 Or 108, 116, 239 P3d 992, (2010). Here, Respondent's failure to draft and submit a judgment caused actual injury to the court as it was required to expend resources to calendar and send dismissal notices on two occasions.

Respondent caused actual harm to Thomas by revealing embarrassing details about him in response to a Bar complaint. Respondent's conduct in this violation also caused potential harm to the profession by ignoring the commitment to confidentiality that the public expects from attorneys. *See In re Huffman*, 328 Or 567, 588, 983 P2d 534 (1999).¹

¹ This was not Respondent.

Respondent's failure to respond to the Bar and to cooperate with SLAC caused actual injury to the Bar and the public. See *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (the Bar is prejudiced when a lawyer fails to cooperate as it makes investigations more time-consuming, and public respect for the Bar is diminished because the Bar cannot provide timely and informed responses to complaints); *In re Chandler*, 306 Or 422, 432, 760 P2d 243 (1988)(a lawyer's failure to cooperate with SLAC is quite serious, as it increases the risk to the public and impairs the integrity of the legal profession).

- d. **Preliminary Sanction.** Absent aggravating or mitigating circumstances, the following ABA Standards apply:

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.

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. ABA Standard 4.22.

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.

- e. **Aggravating Circumstances.** Aggravating circumstances include:

1. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent's actions in relation to Thomas's judgment, DCO's investigation, and SLAC's investigation prioritized his own interests over those of this client, the court system, and the legal profession.
2. A pattern of misconduct. ABA Standard 9.22(c). A pattern of misconduct does not necessarily require proof of a prior sanction. Rather, this aggravating factor bears on whether the violation is a one-time mistake, or part of a larger pattern.² Here, Respondent violated duties to his client over a long period of time and then failed to cooperate with the Bar. In a separate matter, Respondent also failed to cooperate with SLAC.
3. Multiple offenses. ABA Standard 9.22(d).
4. Substantial experience in the practice of law. ABA Standard 9.22(j). Respondent has been licensed to practice law in Oregon since 1975.

² See *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018).

e. **Mitigating Circumstances.** Mitigating circumstances include:

1. Absence of a prior record of discipline. ABA Standard 9.32(a).

18.

Fact matching between cases is a difficult endeavor, especially when multiple violations are at issue, however Oregon case law holds that a suspension is warranted.

The court typically imposes a presumptive sanction of at least 60 days for a knowing neglect violation. *In re Redden*, 342 Or 393 (2007) (60-day suspension imposed for single serious neglect despite an inexperienced lawyer with no prior discipline). In cases where neglect is accompanied by additional violations similar to Respondent's, the sanction increases to approximately 120 days. *In re Worth*, 337 Or 167, 92 P3d 721, (2004) (attorney was suspended for 120 days for violations of the predecessors of RPC 1.1, RPC 1.3, RPC 8.4(a)(4), and RPC 8.4(a)(3) when he failed to move a client's case forward despite several warnings from the court, resulting in the court granting the opposing party's motion to dismiss); *In re Paul Lars Henderson III*, 31 DB Rptr 95 (2017) (lawyer was suspended 120 days for neglect, failure to communicate, failure to withdraw, and failure to respond to the Bar).

The sanction for a violation of RPC 1.6(a) often depends on the circumstances of the disclosure. A reprimand is imposed in cases where the disclosure is negligent or without a selfish motive. See *In re Vandergaw*, 31 DB Rptr 9 (2017)(negligent disclosure in open court); *In re Langford*, 19 DB Rptr 211 (2005) (disclosure made in withdrawal motion). The Oregon Supreme Court recently reprimanded a lawyer who revealed unnecessary information about his client's criminal history in response to an online complaint. *In re Conry*, 368 Or 349, 491 P3d 42 (2021). In departing from the 30 day suspension that the Trial Panel imposed, the court noted that the case was one of first impression, given the relatively new nature of online complaints. *Conry*, 368 Or at 377. Respondent's case does not present an issue of first impression.

Conversely, a suspension is imposed where the disclosure is intentional or with a selfish motive. See *In re Lackey*, 333 Or 215, 229, 37 P3d 172 (2002)(attorney suspended for one year when he disclosed information to the press in an effort to retaliate against his employer); *In re Huffman*, 328 Or 567, 591, 983 P2d 581 (1999)(attorney suspended for two years when he disclosed a former client's confidences and threatened criminal prosecution during former client's bankruptcy proceeding).

Furthermore, the court has held that the "failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation." *In re Parker*, 330 Or 541, 551, 9 P3d 107 (2000). The court has no tolerance for violations of this rule. *In re Miles*, 324 Or 218, 222-23, 923 P2d 1219 (1996) (although no substantive charges were brought, the court imposed a 120-day suspension and required formal reinstatement for non-cooperation with the Bar). In *Miles*, the attorney failed to respond to inquiries from DCO, failed to respond to the Bar's formal complaint, and did not appear at trial, and a default was entered against her. *In re Miles*, 324 Or at 220, 224-25. A respondent's failure to respond not only prejudices the Bar, by

causing a more time-consuming investigation, but also diminishes the public's respect for the Bar's ability to address complaints. *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993).

19.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 181 days for violations of RPC 1.3, RPC 1.6(a), RPC 1.16(a)(1), RPC 8.1(a)(2), RPC 8.1(c), and RPC 8.4(a)(4) , the sanction to be effective February 1, 2022.

20.

In addition, on or before February 1, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$691.45, incurred for attempted service of the formal complaint and Respondent's deposition. Should Respondent fail to pay \$691.45 in full by December 1, 2021, the Bar may thereafter, without further notice to him, 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.

21.

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 John P. Salisbury, OSB No. 823860, an active member of the Bar, 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 John Salisbury has agreed to accept this responsibility.

22.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to apply for formal reinstatement pursuant to 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.

23.

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.

24.

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.

25.

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 1st day of November, 2021.

/s/ James D. Huffman

James D. Huffman, OSB No. 751857

APPROVED AS TO FORM AND CONTENT:

/s/ John P. Salisbury

John P. Salisbury, OSB No. 823860

EXECUTED this 2nd day of November, 2021.

OREGON STATE BAR

By: /s/ Samuel Leineweber

Samuel Leineweber, OSB No. 123704

Assistant Disciplinary Counsel