

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 20-55
)
GARY R. LUISI,)
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: Christopher R. Hardman

Disciplinary Board: None

Disposition: Violation of RPC 4.2. Stipulation for Discipline. Public Reprimand.

Effective Date of Order: March 12, 2021

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Gary R. Luisi and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Gary R. Luisi is publicly reprimanded for violation of RPC 4.2.

DATED this 12th day of March 2021.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Gary R. Luisi, 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 17, 1971, and has been a member of the Bar continuously since that time, having his office and place of business in Umatilla 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 October 17, 2020, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of Oregon Rule of Professional Conduct (RPC) 4.2 (communication with person represented by counsel). 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 2015, Peter J. Hall (Peter) undertook to administer the estate of his deceased father (decedent) as the claiming successor. Peter hired counsel to represent him.

6.

Peter filed three Affidavits of Small Estate: on February 24, 2015, June 5, 2015, and October 30, 2015. The various affidavits did not identify the decedent's mother and brother as creditors of the estate, did not identify the decedent's wife and daughter as heirs of the estate, and did not identify all of the decedent's property.

7.

The decedent's brother, mother and wife hired Respondent to represent them.

8.

On or about March 13, 2015, Respondent mailed directly to Peter claims against the estate on behalf of the decedent's brother and mother. ORS 114.540(1) allowed claims against an estate to be presented to the affiant within four months of the filing of the affidavit. However, Respondent accompanied the claim forms with a cover letter in which he notified Peter and his sister that he would pursue a no-contact order if they contacted the decedent's mother again. In the letter, Respondent also advised Peter about the decedent's bank accounts and inquired about the whereabouts of the funds from those accounts. Respondent knew that Peter was represented at the time Respondent sent the letter and sent a copy of the letter to Peter's attorney.

9.

On or about March 23, 2015, Peter's attorney mailed a letter to Respondent on behalf of Peter. The letter explained Peter's position regarding the reason for denial of the claims submitted by Respondent on behalf of his clients. The letter also addressed the issue of the potential no-contact order but did not reference the decedent's bank accounts or the whereabouts of the money from those accounts.

10.

On or about April 20, 2015, Respondent mailed directly to Peter a claim against the estate on behalf of the decedent's wife. ORS 114.540(1) allowed claims against an estate to be presented to the affiant within four months of the filing of the affidavit. A cover letter from Respondent again accompanied the claim form. The letter repeated Respondent's query regarding the whereabouts of the funds from decedent's bank accounts. Respondent also requested from Peter an itemized inventory of the personal property from the decedent's home and copies of any videos taken of the decedent's possessions. Respondent additionally asked Peter to explain how Peter intended to sell the property. Respondent knew that Peter was still represented at the time Respondent sent the letter. Respondent sent a copy of the letter to Peter's attorney as well.

Violations

11.

Respondent admits that, while representing clients, he communicated with Peter, in addition to presenting claims allowed by ORS 114.540, on subjects related to that representation while knowing that Peter was represented by a lawyer on those subjects. Respondent thus admits he violated RPC 4.2.

Sanction

12.

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 avoid improper communications with individuals in the legal system. ABA Standard 6.3.
- 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.* Respondent sent correspondence on the subject of the representation directly to Peter, when he knew that Peter was represented. Although the law allowed Respondent to send claim forms directly to Peter as the affiant in the Affidavit of Small Estate, Respondent negligently and erroneously determined that the additional communication and queries in the cover letters that accompanied those forms was proper.
- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. ABA Standards at 19. Respondent's communications with Peter caused potential injury to Peter in the form of potential interference with the client-lawyer relationship and the potential for the uncounseled disclosure of information relating to the representation.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in Oregon in 1971.
- 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. ABA Standard 9.32(e).

13.

Under the ABA Standards, a public reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system and causes injury or potential injury to a party or interference or potential interference with the outcome of a legal proceeding. ABA Standard 6.33.

14.

This sanction is in accord with Oregon case law. *See In re Newell*, 348 Or 396, 234 P3d 967 (2010) (reprimanding an attorney for summoning a witness to a deposition without giving him time to consult with his attorney).

15.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall receive a public reprimand for violation of RPC 4.2, the sanction to be effective upon approval of this stipulation by the Disciplinary Board Adjudicator.

16.

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.

17.

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.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 17, 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 26th day of February 2021.

/s/ Gary R. Luisi
Gary R. Luisi, OSB No. 711053

APPROVED AS TO FORM AND CONTENT:

/s/ Christopher R. Hardman
Christopher R. Hardman, OSB No. 792567

EXECUTED this 9th day of March 2021.

OREGON STATE BAR

By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel