

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 20-27, 20-28, and 20-29
)
JESSICA LEE MOLLIGAN,)
)
Respondent.)

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.4(a), RPC 1.15-1(a), RPC 1.16(c),
RPC 1.16(d), RPC 8.1(c)(4), and RPC 8.4(a)(4). Stipulation
for discipline. 120-day suspension.

Effective Date of Order: October 4, 2021

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jessica Lee Molligan (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 120-days, effective 60 days from the date that the stipulation is approved by the Disciplinary Board, for violations of RPC 1.4(a), RPC 1.15-1(a), RPC 1.16(c), RPC 1.16(d), RPC 8.1(c)(4), and RPC 8.4(a)(4).

DATED this 5th day of August, 2021.

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

STIPULATION FOR DISCIPLINE

Jessica Lee Molligan, 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 21, 2000, and has been a member of the Bar continuously since that time, having her 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 July 9, 2020, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.4(a), RPC 1.16(c), RPC 1.16(d), RPC 8.1(c)(4), and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. On July 15, 2021 an amended formal complaint was filed to add a violation of RPC 1.15-1(a). 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.

Case No. 20-27 - Gutierrez-Cabanas

Facts

5.

In 2018, Maria Gutierrez-Cabanas (Maria) and her husband, Jose Gutierrez-Solis (Jose), retained Respondent for a political asylum and deportation case involving Jose. Respondent entered into a Legal Services Agreement with Jose and Maria, which recited that Respondent would represent them in connection with immigration and related matters and be paid a refundable, flat fee of \$1,500. Jose and Maria paid Respondent \$500, and a charity, Latino Network, paid Respondent \$1,000 on their behalf.

6.

Under federal regulations, “[w]ithdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.” 8 C.F.R. § 1003.17(b).

7.

In February 2019, Jose and Maria told Respondent that they were terminating her representation. Respondent did not move to withdraw from representation, but she ceased representing Jose and Maria or performing legal work on their behalf.

8.

At the time she was terminated, Respondent still held unearned funds on behalf of Jose and Maria in her lawyer trust account. Respondent did not maintain complete records of their account funds. She did not know the final account balance for their funds once she was terminated. Respondent did not refund any unearned fees to either her clients or to Latino Network.

Violations (Gutierrez)

9.

Respondent admits that, by her conduct aforementioned in paragraphs 5 through 8, she violated Rule of Professional Conduct (RPC) 1.15-1(a) [complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation]; RPC 1.16(c) [failure to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation]; and RPC 1.1.6(d) [failure to take reasonably practicable steps to protect her clients' interests upon the termination of the representation].

Case No. 20-28 - Ross

Facts

10.

April Ross (Ross) retained Respondent for a dissolution matter in April 2018. Opposing counsel served a request for production of documents (RFP) that included a deadline of May 24, 2018, for Respondent to produce responsive documents. On May 3, 2018, Ross emailed Respondent and opposing counsel a number of responsive documents, but Respondent instructed opposing counsel not to access them. Respondent did not respond to the RFP by May 24, 2018, nor did she advise Ross to provide her with specific additional documents for production.

11.

After attempting to confer with Respondent regarding Ross's response to the RFP in June, July, August, and September 2018, a number of documents remained outstanding. Opposing counsel filed a motion to compel production of documents.

12.

The court set the motion for a hearing for November 26, 2018, but neither Respondent nor her client appeared, and Respondent had not advised her client to appear. The same day as the hearing, the court entered an order granting the motion to compel in its entirety, imposing a deadline of December 17, 2018, and outlining specific, substantive sanctions that would be imposed for each category of documents if not timely produced. Respondent did not inform Ross until four days before the ordered production was due. Although Ross rushed to provide documents to Respondent within the deadline, Respondent did not produce most of the required disclosures until the evening before trial, January 9, 2019, at about 4:00 p.m.

13.

On May 7, 2019, Respondent's opposing counsel filed a "Statement for Attorney Fees and Costs for Respondent Pursuant to ORCP 68," seeking to recover attorney's fees and costs from Ross. The statement was based, in part, on discovery efforts. The court granted it, awarded \$10,000 in attorney's fees against Ross, and found that Ross took unreasonable positions causing an undue expenditure of attorney time.

Violations (Ross)

14.

Respondent admits that, by her conduct in aforementioned paragraphs 10 through 13, she violated RPC 1.4(a) [failure to keep her client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; and RPC 8.4(a)(4) [engaging in conduct that is prejudicial to the administration of justice].

Case No. 20-29 - SLAC

Facts

15.

On August 9, 2019, Respondent entered into a State Lawyers Assistance Committee (SLAC) monitoring agreement that required, among other things, for Respondent to abstain from alcohol consumption, to submit attendance logs from recovery support group meetings

through the Oregon Attorney Assistance Program (OAAP), and to submit to random substance-use testing.

16.

From mid-August until early November, Respondent partially complied with the agreement, but continued drinking alcohol and did not attend or submit attendance logs for recovery group meetings through OAAP.

17.

In late November 2019, Respondent told her SLAC monitor that she was taking the week off from checking in daily in for randomized drug testing. On December 2, 2019, Respondent emailed her SLAC monitor that she was terminating her agreement with SLAC. Respondent then stopped reporting to her SLAC monitor or checking in daily for randomized substance-use testing.

Violations (SLAC)

18.

Respondent admits that, by her conduct in aforementioned paragraphs 15 through 17, she violated RPC, she violated RPC 8.1(c)(4) [failure to participate in or comply with a remedial program established by SLAC or its designees].

Sanction

19.

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 duties owed to the Gutierrezes to preserve and promptly return client property and funds and her duty as a professional through improper withdrawal from representation. ABA Standards 4.1 and 7.0. She violated her duty of diligence to Ross by failing to inform her on the status of her discovery, and violated her duty to the legal system by failing to expedite litigation and obey an obligation under the rules of a tribunal. ABA Standards 4.4 and 6.2. She violated her duties to the profession to comply with SLAC. ABA Standard 7.0.

- b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 3. “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 of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Here, Respondent terminated SLAC knowingly. Respondent negligently neglected her duties in the Ross and Gutierrez matters.
- 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). Respondent injured the Gutierrezes by denying them use of their funds for several months. Respondent injured Ross because her mishandling of discovery led to monetary sanctions against Ross. Respondent also injured the opposing party in the Ross matter, by causing him to expend additional resources trying to obtain discovery, and receiving much of it no sooner than the eve of trial.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A prior record of discipline. ABA Standard 9.22(a). Respondent has a prior admonition for improper IOLTA management and record keeping. A letter of admonition constitutes prior discipline if it was for similar misconduct and received by the lawyer before the misconduct at issue. See *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018) (citing *In re Cohen*, 330 Or 489, 499, 8 P3d 953 (2000); *In re Jones*, 326 Ore. 195, 200, 951 P2d 149 (1997)).
 2. Multiple offenses. ABA Standard 9.22(d).
 3. Vulnerability of victim. ABA Standard 9.22(h). Jose Gutierrez was facing deportation and both Gutierrezes were financially vulnerable. April Ross was financially vulnerable and living in her car during her dissolution.
 4. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed since 2000.
 5. Indifference to making restitution. ABA Standard 9.22(j).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

20.

Under the ABA Standards, suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client; while a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA Standards 4.12 and 4.13.

Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. ABA Standard 4.42

Suspension is generally appropriate when a lawyer knows that she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding; while a reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. ABA Standards 6.22 and 6.23.

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

21.

Failure to comply with SLAC, combined with neglecting client matters, typically results in a several-month suspension with reinstatement proceedings. *See, e.g., In re William B. Wyllie*, 326 Or 447, 952 P2d 550 (1998) (one-year suspension ordered for attorney who failed to cooperate with SLAC's remedial program for his alcoholism, and who engaged in conduct prejudicial to the administration of justice); *In re Mariel Marjorie Ettinger*, 27 DB Rptr 76 (2013) (2-year suspension imposed by trial panel for attorney who failed to respond to SLAC and who neglected multiple client matters, among other misconduct); *In re Matthew C. Daily*, 31 DB Rptr 155 (2017) (stipulated 180-day suspension with formal reinstatement proceedings, for attorney who violated his SLAC agreement, failed to return unearned client funds to one client, and failed to communicate with another client or to DCO).

22.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 120 days, for violation of RPC 1.4(a), RPC 1.15-1(a), RPC 1.16(c), RPC 1.16(d), RPC 8.1(c)(4), and RPC 8.4(a)(4), the sanction to be effective 60 days after approval by the Disciplinary Board. The parties further agree that Respondent will be required to apply for reinstatement under BR 8.1 ("Formal Reinstatement"), which requires action by the Supreme Court.

23.

In addition, on or before September 1, 2021, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$1,098.80, incurred for Respondent's deposition. Should Respondent fail to pay \$1,098.80 in full by September 1, 2021, 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.

24.

Respondent acknowledges that she 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 her clients during the term of her suspension. In this regard, Respondent has arranged for Michael S. Scott, 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 her suspension. Respondent represents that Michael S. Scott has agreed to accept this responsibility.

25.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

26.

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.

27.

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: none.

28.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 29, 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 4th day of August, 2021.

/s/ Jessica Lee Molligan
Jessica Lee Molligan, OSB No. 001823

EXECUTED this 4th day of August, 2021.

OREGON STATE BAR

By: /s/ Rebecca Salwin
Rebecca Salwin, OSB No. 201650
Assistant Disciplinary Counsel