

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 21-50
)
GARY NELSON,)
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(3). Stipulation for Discipline.
180-day suspension.

Effective Date of Order: February 18, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Gary Nelson is suspended for 180 days, effective one day from the date of this signed order, for violation of RPC 8.4(a)(3).

DATED this 17th day of February 2022.

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

STIPULATION FOR DISCIPLINE

Gary Nelson, 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 May 7, 2015, and has been a member of the Bar continuously since that time. Respondent's residence is currently located in Washington 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 June 5, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent. On June 24, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging a violation of RPC 8.4(a)(3) 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.

In April 2018, Oregon State Police (OSP) began assisting in an investigation into the conduct of Respondent, who was then employed as a Polk County Deputy District Attorney (DDA). Law enforcement was investigating Respondent's pursuit of personal relationships with domestic violence victims he had met while prosecuting their abusers.

During an interview of Respondent at his home, Respondent acknowledged pursuing a relationship with one victim through social media but made several false statements regarding his contact with her—including his denial that they had engaged in sexual intercourse. Additionally, Respondent falsely stated that a cell phone he had used to communicate with the woman was broken.

Shortly after that interview concluded, Respondent contacted an investigator to correct some of his prior false statements. Respondent admitted that he had engaged in sexual intercourse on one occasion with the woman he had pursued. Several days later, during

subsequent questioning in his office, Respondent admitted the cell phone investigators had previously asked him about was not actually broken. Investigators then seized the phone in question.

The investigation did not produce clear and convincing evidence that Respondent pursued the relationship with the woman while the criminal case was pending. When a new case was filed in which the same woman was the listed victim, Respondent raised concerns about a conflict of interest and was transferred off the case.

Violations

6.

Respondent admits that a number of statements he made to investigators were false and material to their investigation and he knew those statements were false and material at the time he made them. Respondent admits that this conduct involved dishonesty, fraud, deceit or misrepresentation that reflected adversely on his fitness to practice law, in violation of RPC 8.4(a)(3).

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 to the public to maintain personal integrity. ABA Standard 5.0.
- 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 or, at least, knowingly, in providing false information to investigators.

- 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 9. Respondent's misrepresentations caused potential injury by misleading investigators and impeding the investigation.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Dishonest or selfish motive. ABA Standard 9.22(b). Respondent provided false information to investigators to avoid culpability, shame and embarrassment.
 2. Pattern of misconduct. ABA Standard 9.22(c). Respondent lied several times to investigators regarding a number of topics.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of prior disciplinary record. ABA Standard 9.32(a).
 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
 3. Inexperience in the practice of law. ABA Standard 9.32(f). Respondent was admitted to the Hawaii State Bar Association in January 2012, licensed to practice in Oregon in 2015, and these events occurred in 2017 and 2018.
 4. Imposition of other penalties. ABA Standard 9.32(k). Respondent resigned his position with the Polk County District Attorney's Office in May 2018.
 5. Remorse. ABA Standard 9.32(l). Respondent expressed remorse for his conduct, both as to the underlying relationship and as to not being truthful.

The mitigating factors outweigh the factors in aggravation.

8.

Without considering aggravating or mitigating factors, the following ABA Standards apply:

Disbarment is generally appropriate when "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." ABA Standard 5.11(b). Suspension is generally appropriate "when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in [ABA] Standard 5.11, and that seriously adversely reflects on the lawyer's fitness to

practice.” ABA Standard 5.12. Reprimand is generally appropriate “when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.” ABA Standard 5.13.

Although Respondent was not charged criminally regarding his conduct, his false statements to law enforcement investigating whether he engaged in criminal acts related to his employment as a DDA seriously adversely reflects on his fitness to practice law, and thus a suspension is warranted.

9.

Relevant Oregon cases suggest a significant suspension is warranted for engaging in dishonest conduct:

- *In re Strickland*, 339 Or 595, 124 P3d 1225 (2005) [**1-year suspension**] Attorney, upset about a construction project in his neighborhood, falsely reported to police that he had been threatened and assaulted by construction workers. The attorney’s resulting criminal convictions for initiating a false police report, improper use of the emergency reporting system and disorderly conduct adversely reflected on his honesty, trustworthiness or fitness in violation of the rule. He had no prior discipline.
- *In re Sanchez*, 29 DB Rptr 21 (2015) [**1-year suspension**] Attorney falsely represented to a company that sold him CLE courses that he had completed each course and misrepresented the same to the Bar for purposes of meeting his mandatory CLE requirements as a lawyer. He had no prior discipline.
- *In re Davenport*, 334 Or 298, 49 P3d 91 (2002) [**2-year suspension**] Attorney gave false sworn testimony during a Federal Rule of Bankruptcy Procedure 2004 examination. He had no prior discipline.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 180 days for violation of RPC 8.4(a)(3), the sanction to be effective one day after the stipulation is approved.

11.

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 represents that he does not maintain a law practice in Oregon and has no clients.

12.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of 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.

13.

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.

14.

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: Hawaii.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 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 16th day of February 2022.

/s/ Gary Nelson
Gary Nelson, OSB No. 151326

EXECUTED this 16th day of February 2022.

OREGON STATE BAR

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