

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 20-60
)
CAROLINA SLYTHE,)
)
Respondent.)

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3, RPC 1.5(c)(3), RPC 1.15-1(c),
RPC 1.15-1(d), and RPC 7.1. Stipulation for Discipline.
30-day suspension.

Effective Date of Order: January 3, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Carolina Slythe (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 30-days, effective January 3, 2022, for violation of RPC 1.3, RPC 1.5(c)(3), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 7.1.

DATED this 3rd day of November, 2021.

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

STIPULATION FOR DISCIPLINE

Carolina Slythe, 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 6, 2010, and has been a member of the Bar continuously since that time, having her office and place of business in the County of Washington, State of 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 March 19, 2021, 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 1.5(c)(3), RPC 1.15-1(c), RPC 1.15-1(d), RPC 7.1, and 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.

Respondent was administratively suspended from practicing law in 2016. While suspended, on August 14, 2018, Respondent met with a client on an immigration matter, Margarita Herrera Aldaco (Herrera), who received Respondent's information from a business card. On August 23, 2018, Respondent posted statements to an online networking site promoting her firm, including that "as an immigration law attorney the best form of advertising has been word of mouth referrals based on the business cards I create," and that "I provide an in-depth case analysis of any situation that any one particular client is experiencing." It nowhere disclosed that she was suspended or otherwise unable to practice law.

6.

Respondent entered into a fee agreement with Herrera to perform a Freedom of Information Act (FOIA) request for \$500, intending to help Herrera with her immigration case. Respondent's fee agreement represented that Respondent was an attorney with Messidona Law Group, LLC, and referred to Respondent as "Attorney" throughout.

7.

Respondent's fee agreement stated the \$500 fee would be held in a lawyer trust account, however Respondent treated it as non-refundable, and did not maintain a lawyer trust account at the time. Respondent received the \$500 fee on August 14, 2018, but at no time deposited it into a lawyer trust account.

8.

For the next 14 months, Respondent did not complete the FOIA request or issue a refund to Herrera. On or about October 15, 2019, Herrera filed a claim with the Bar's Client Security Fund (CSF). Respondent returned the \$500 fee shortly thereafter.

Violations

9.

Respondent admits that, by not completing the FOIA request for 14 months, she neglected a legal matter entrusted to her in violation of RPC 1.3. Respondent admits that she violated RPC 1.5(c)(3) by treating Herrera's fee as non-refundable when her fee agreement did not comply with RPC 1.5(c)(3). Respondent further admits that by not depositing her client's funds into her lawyer trust account, she violated RPC 1.15-1(c). By not promptly refunding her client's fee that her client was entitled to receive, Respondent admits that she violated RPC 1.15-1(d). Respondent also admits that she made a false or misleading communication about herself or her services by holding herself out as an attorney licensed to practice law in Oregon both on her website and in her fee agreement with Herrera while she was suspended, and therefore violated RPC 7.1.

Upon further factual inquiry, the parties agree that the charge(s) of alleged violation(s) of RPC 8.4(a)(3) should be and, upon the approval of this stipulation, is dismissed.

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 the duties she owed to preserve her client's property by failing to return unearned funds. ABA Standard 4.0. Respondent violated her duty to act with reasonable diligence and promptness in

representing a client. ABA Standard 4.4. She violated the duties she owed as a professional to prepare and enter into the appropriate fee agreement and to abide by regulations concerning communications about her legal practice. ABA Standard 7.0.

- b. **Mental State.** “Intent” is 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 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 initially was negligent in handling her client’s FOIA request, but over time her failure to complete the work became knowing. Respondent negligently failed to use an appropriate fee agreement. Respondent knowingly made improper communications about her legal practice.

- c. **Injury.** Respondent harmed Herrera by delaying completing her FOIA request and returning her funds. Her conduct delayed Herrera’s ability to meet with a licensed attorney on her immigration matter. It also deprived Herrera of the use of her \$500 for approximately 14 months.

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

1. Multiple offenses. ABA Standard 9.22(d).
2. Vulnerability of victim. ABA Standard 9.22(h). As an undocumented person with limited English proficiency and limited income, Herrera was a vulnerable victim.

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

1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
2. Personal or emotional problems. ABA Standard 9.32(c). Respondent testified at length that she was distracted by personal problems such that she was not making careful or sensible decisions.
3. Cooperative attitude toward disciplinary proceedings. ABA Standard 9.32(e).

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. ABA Standard 4.12. 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 engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client. ABA Standard 7.2.

12.

Oregon case law demonstrates that some amount of suspension is warranted. *See, e.g., In re M. Christian Bottoms*, 31 DB Rptr 328 (2017) (stipulated 30-day suspension when an attorney deposited client funds in a business account without an appropriate fee agreement, and who had no other misconduct but had similar prior discipline); *In re Foster*, 29 DB Rptr 35 (2015) (stipulated 30-day suspension for holding self out as a practicing attorney on television and internet advertising, while suspended, then falsely denying that she did so to DCO); *In re Kenney*, 28 DB Rptr 269 (2014) (stipulated 30-day suspension when lawyer made misleading communications about her ability to perform legal services while inactive, and practiced administrative law); *In re Barker*, 24 DB Rptr 246 (2010) (stipulated 60-day suspension when attorney represented a client in an Oregon court during his administrative suspension, then falsely minimized his legal work to DCO).

13.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 1.3, RPC 1.5(c)(3), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 7.1, the sanction to be effective January 3, 2022.

14.

In addition, on or before December 3, 2021, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$676.05, incurred for Respondent's deposition. Should Respondent fail to pay \$676.05 in full by December 3, 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.

15.

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 represented that she currently has no client files in her possession, custody or control.

16.

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.

17.

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.

18.

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.

19.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 23, 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/ Carolina Slythe
Carolina Slythe, OSB No. 101525

EXECUTED this 2nd day of November, 2021.

OREGON STATE BAR

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