

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 20-61
)
MICHAEL S. STERNER,)
)
Respondent.)

Counsel for the Bar: Veronica R. Rodriguez

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.1, RPC 1.3, and RPC 8.4(a)(4). Stipulation for Discipline. 60-day suspension.

Effective Date of Order: November 14, 2021

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Michael S. Sterner (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 60 days, effective 60 days after approval by the Disciplinary Board for violation of RPC 1.1, RPC 1.3, and RPC 8.4(a)(4).

DATED this 15th day of September, 2021.

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

STIPULATION FOR DISCIPLINE

Michael S. Sterner, 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 his 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 January 15, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.1 [competence], RPC 1.3 [neglect], and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice] 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 2015, Respondent became associated with the Florida law firm of Volks Anwalt (Volks) in a “partnership” whereby Volks would advertise for bankruptcy clients, handle virtually all contacts related to the case, prepare all necessary pleadings, and refer the clients’ cases to Respondent for filing after consultation.

6.

In August 2016, Marco and Tina Vitagliano (the Vitaglianos) were on the verge of losing their home in foreclosure. On August 17, 2016, Mr. Vitagliano signed a bankruptcy retainer agreement (retainer agreement) with Volks and paid Volks \$1,350 of a \$3,500 fee. Ms. Vitagliano did not sign the retainer agreement.

7.

Through his partnership with Volks, Respondent represented the Vitaglianos in their bankruptcy matter. Volks prepared a Chapter 13 petition (the petition) and sent it to Respondent to review with the Vitaglianos. Respondent did not notice that Ms. Vitagliano had not signed the petition or the retainer agreement, was unaware that the petition misrepresented Mr. Vitagliano's disability income, did not include a copy of the retainer agreement, and did not confirm that Volks had the Vitaglianos' inked signatures on the petition and other documents as required by bankruptcy rules. Respondent and Volks intended to file an amended petition to include the Vitaglianos' financial information, as required.

8.

The filed petition stayed the foreclosure sale of the Vitaglianos' home. However, because Respondent filed an incomplete petition with the bankruptcy court, the court entered an order directing the Vitaglianos to file a complete petition within 14 days. Respondent filed a motion to extend the time period for filing the ordered documents, which the court granted; however, Respondent did not file the court-ordered documents by the new deadline. As a result, the court dismissed the Vitaglianos' bankruptcy proceeding.

9.

The foreclosure sale of the Vitaglianos' home was rescheduled. Respondent filed a motion to reopen the Vitaglianos' dismissed case, but the court did not rule on this motion before the foreclosure sale. The Vitaglianos subsequently lost their home.

10.

Additionally, Respondent filed a Debtor's Attorney's Disclosure of Compensation (Disclosure of Compensation) which inaccurately stated that he and the Vitaglianos had entered into an employment agreement; falsely stated that the employment agreement was attached; omitted to disclose Volk's role or participation in Respondent's representation of the Vitaglianos; omitted to disclose that Mrs. Vitagliano had not signed a fee agreement; and did not accurately reflect that the Vitaglianos paid \$1,350 of the \$3,500 to Volks.

Violations

11.

Respondent admits that, by his conduct in paragraphs 5 through 10 above, he failed to provide competent representation in violation of RPC 1.1, neglected a legal matter entrusted to him in violation of RPC 1.3, and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

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.** The ABA Standards presume that the most important duties a lawyer owes are those owed to clients. ABA Standards at 5. Respondent violated his duties to provide his clients with competent representation and diligence in performing the services requested by the client. ABA Standards 4.4, 4.5. Respondent also violated his duty to the legal system to avoid abuse to the legal process. ABA Standard 6.2.
- b. **Mental State.** The ABA Standards recognize three types of mental states. "Intent" is the conscious objective or purpose to accomplish a particular result. "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. "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. ABA Standards at 9.

Respondent was negligent in failing to familiarize himself with the relevant bankruptcy rules and statutes, which resulted in filing the petition and Disclosure of Compensation in the Vitaglianos' matter with numerous inaccuracies and which omitted requisite information. Respondent was also negligent in failing to complete any substantial work on the Vitaglianos' case during an urgent time period.

- 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 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 failure to provide competent representation and his lack of diligence resulted in the dismissal of the bankruptcy proceeding, which allowed the foreclosure sale to take place in which the Vitaglianos lost their home, a substantial injury, and caused the bankruptcy court to suffer some actual injury, causing the court to expend additional time and resources.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A pattern of misconduct. ABA Standard 9.22(c). Respondent has recently engaged in the same or similar rule violations as those in this matter. In 2020, he was suspended for 30 days for violations of RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 1.4(b).¹ See *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018) (“...[A] pattern of misconduct... bears on whether the violation is a one-time mistake which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem.”).
 2. Multiple offenses. ABA Standard 9.22(d).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
 2. Cooperative attitude toward proceedings. ABA Standard 9.32(e).
 3. Imposition of other penalties or sanctions. Respondent has agreed to never again represent individuals or entities in bankruptcy court in the United States District Court for the District of Oregon. ABA Standard 9.32(k).
 4. Remorse. Respondent has expressed remorse for his conduct. ABA Standard 9.32(l).

13.

Under the ABA Standards, a suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. ABA Standard 4.52.

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 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.

¹ *In re Sterner*, 34 DB Rptr 7 (2020). However, this prior discipline does not qualify as a “prior disciplinary offense” under ABA Standard 9.22(a) because the prior sanction did not precede the acts that led to this proceeding. *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018).

14.

A suspension is in accord with Oregon cases. See *In re Eric J. Fjelstad*, 31 DB Rptr 268 (2017) (60-day stipulated suspension when an attorney took no further action after obtaining a default that was the result of the attorney not knowing how to electronically submit a proposed judgment in his client's wage claim); *In re Milton E. Gifford*, 29 DB Rptr 299 (2015) (60-day stipulated suspension when an attorney, while representing an heir to her uncle's intestate estate, revised and filed documents without reviewing statutes related to missing heirs and failed to file appropriate pleadings and documentation in accord with those statutes).

15.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for sixty (60) days for violations of RPC 1.1, RPC 1.3, and RPC 8.4(a)(4), the sanction to be effective 60 days after approval by the Disciplinary Board.

16.

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 Thomas A. Hackett 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 Thomas A. Hackett has agreed to accept this responsibility.

17.

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.

18.

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.

19.

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.

20.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 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 14th day of September, 2021.

/s/ Michael S. Sterner
Michael S. Sterner, OSB No. 101564

EXECUTED this 14th day of September, 2021.

OREGON STATE BAR

By: /s/ Veronica R. Rodriguez
Veronica R. Rodriguez, OSB No. 181818
Assistant Disciplinary Counsel