

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 21-86 & 21-106
)
JENNIFER N. TOWNE,)
)
Respondent.)

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: Amber Bevacqua-Lynott

Disciplinary Board: None

Disposition: Violation of RPC 1.7(a)(2) and RPC 4.2. Stipulation for discipline. Public reprimand.

Effective Date of Order: January 31, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jennifer N. Towne (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is publicly reprimanded for violations of RPC 1.7(a)(2) and RPC 4.2.

DATED this 31st day of January, 2022.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Jennifer N. Towne, 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 January 11, 2012, and has been a member of the Bar continuously since that time, having her office and place of business in Washington 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 September 11, 2021, and December 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.7(a)(2) and RPC 4.2 of the Oregon Rules of Professional Conduct. 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.

Arjun Matter – Case No. 21-86

In 2020, Respondent represented mother in a contested post-judgment family law matter. Patricia Asrani Arjun (Arjun) represented father. On or about December 16, 2020, Respondent emailed Arjun and copied both parents regarding the parents' son, who had recently attempted suicide. At the time Respondent emailed Arjun and copied father, Respondent knew Arjun represented father and communicated on the subject of the representation. Respondent did so without obtaining Arjun's prior consent to communicate directly with father.

6.

Guptill Matter – Case No. 21-106

In 2020, Respondent represented Steven M. Killion (Killion) in a domestic violence criminal matter pertaining to his brother and mother. On October 21, 2020, Killion was released

from custody subject to an order prohibiting him from contact with his alleged victims (the “no contact order”). On October 22, 2020, prior to learning of the no contact order, Respondent picked up Killion from jail and drove him to the house he shared with the alleged victims. While at the house with Respondent, Killion was arrested on contempt charges that he violated the no contact order. From the time of the charge through around December 2020, when substitute counsel was retained, Respondent represented Killion in connection with the contempt charges.

7.

There was a significant risk that Respondent’s representation of Killion may have been materially limited by a personal interest of Respondent, because she was a person who negligently enabled Killion’s alleged criminal conduct, and a reasonable attorney in that situation may have had concerns about her own culpability. At no point did Respondent receive Killion’s informed consent, confirmed in writing, to represent him on the contempt charges despite the significant risk that her representation may have been materially limited by a personal interest.

Violations

8.

Respondent admits that she communicated on the subject of the representation with a person she knew was represented by counsel, in violation of RPC 4.2 in the Arjun matter; and that in the Killion matter, she represented a client when the representation involved a current conflict of interest, without obtaining informed written consent, in violation of RPC 1.7(a)(2).

Sanction

9.

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. ABA Standard 3.0.

- a. **Duty Violated.** Respondent violated her duties to avoid improper communications with an individual in the legal system, and to avoid conflicts of interest. ABA Standards 4.3, 6.3.
- b. **Mental State.** “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, while “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. ABA Standards at 9. Respondent was negligent in determining whether her communication with father was proper. Similarly she was negligent in failing to obtain her client's informed written consent to her continued representation while she had a conflict of interest.

- c. **Injury.** Injury may be actual or potential. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). In the Arjun matter (RPC 4.2), Respondent injured father by causing him worry and potentially injured father to the extent that he maybe have been prompted to respond without the advice of legal counsel. In the Killion matter (RPC 1.7(a)(2)), Respondent potentially injured her client to the extent that Respondent's representation of him may have been materially impacted by her personal interests without Killion fully understanding the conflict.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Multiple offenses. ABA Standard 9.22(d). Respondent committed single violations with respect to two unrelated matters.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
 3. Personal or emotional problems. ABA Standard 9.32(c). At the time of these events, Respondent had recently purchased the law practice of her retired employer, and began attempting to establish a solo practice. A month later, in September 2020, Respondent discovered that her only employee had been stealing money from the practice and from Respondent personally, forging signatures, and lying about work performed on client matters.
 4. Cooperative attitude toward disciplinary proceedings. ABA Standard 9.32(e).
 5. Remorse. ABA Standard 9.32(l).

Under the ABA Standards, a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, and causes injury or potential injury to a client. ABA Standard 4.33. Reprimand is also 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 the legal proceeding. ABA Standard 6.33.

11.

Similar cases are in accord. *See, e.g., In re Kramer*, 27 DB Rptr 8 (2013) (stipulated reprimand for attorney who violated RPC 4.2(a) when he responded directly to an email from a represented party); *In re Moule*, 26 DB Rptr 271 (2012) (stipulated reprimand for attorney who violated RPC 1.7(a)(1) and RPC 1.7(a)(2) when he undertook to represent a client in a criminal matter stemming from a loan that the attorney had helped facilitate for that client); *In re David R. Ambrose*, 26 DB Rptr 16 (2012) (stipulated reprimand for attorney whose representation of business entities risked being materially limited by his own substantial personal and financial interests in those entities).

12.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be reprimanded for violations of RPC 1.7(a)(2) and RPC 4.2.

13.

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. 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, 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: Michigan.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 22, 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 26th day of January, 2022.

/s/ Jennifer N. Towne

Jennifer N. Towne, OSB No. 120175

APPROVED AS TO FORM AND CONTENT:

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280

EXECUTED this 26th day of January, 2022.

OREGON STATE BAR

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