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STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. JOHN A. SELLERS, RESPONDENT.

786 N.W.2d 685

Filed August 13, 2010. No. S-10-146.

Original action. Judgment of suspension.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

INTRODUCTION

Respondent, John A. Sellers, was admitted to the practice of law in the State of Nebraska on September 19, 2000. At all times relevant, respondent was engaged in the private practice of law in Grand Island, Nebraska.

Formal charges were filed on February 11, 2010. On June 7, 2010, respondent filed a conditional admission under Neb. Ct. R. § 3-313 of the disciplinary rules, in which he knowingly did not challenge or contest the facts set forth in the formal charges and waived all proceedings against him in connection therewith in exchange for a stated form of consent judgment of discipline outlined below. Upon due consideration, the court approves the conditional admission.

FACTS

In summary, the formal charges state that on August 13, 2008, a client hired respondent to represent him in a child custody modification case in the district court for Hall County. The client paid respondent an advance fee of $1,000. The client had custody of his minor children and was seeking permission from the court to relocate with his children to Nevada in order to start a new job.

On September 3, 2008, respondent learned that another member of his law firm was representing an individual in a civil suit in which respondent's client was a defendant. Respondent informed his client of the conflict and told him that respondent could "work around it." Respondent did not get his

client's informed consent or the informed consent of the other client involved in the conflict.

On September 5, 2008, respondent appeared in court for a pretrial conference regarding his client's custody modification case. Trial of the case was set for November 13. The court's pretrial order required final witness lists to be filed with the court and exchanged between the parties by October 10. No additional witnesses would be permitted to testify except upon stipulation by the parties or by order of the court.

Respondent failed to prepare and file his witness list by October 10, 2008. Respondent prepared the witness list on the day of trial, November 13, and brought the list to trial. Opposing counsel objected to respondent's witnesses due to his failure to comply with the pretrial order. The court sustained the objection. Respondent requested that the trial be continued. Respondent's request was granted; however, the court entered a temporary order on custody, ruling that respondent's client could not remove the children from the State of Nebraska. In the event the client chose to leave the state to pursue his employment, the mother of the children would be granted parenting time if she so desired. The court directed respondent to prepare a written order.

After the November 13, 2008, hearing, the client terminated the engagement with respondent. On November 26, respondent filed a motion to withdraw, which was granted on December 3.

Respondent told the Counsel for Discipline of the Nebraska Supreme Court that he prepared the proposed order as directed by the court and sent the order to opposing counsel. Opposing counsel did not receive the draft order, and respondent did not follow up to confirm that the order was filed with the court. The client made repeated calls to respondent's office in December 2008 seeking a copy of the order, but respondent did not return those calls or provide the client with a copy of the order.

On January 9, 2009, the client filed a grievance against respondent with the Counsel for Discipline. Notice of the grievance was mailed to respondent's business address by certified mail. Respondent was directed to file a written

response to the grievance within 15 working days. Respondent failed to respond to the notice, so a second notice was mailed to respondent by regular U.S. mail on February 25, 2009. Respondent again failed to respond, so a third notice was mailed to respondent on March 17. On March 30, respondent filed a response.

In his response, respondent acknowledged that he had a conflict of interest in representing the client. Respondent explained how he attempted to address the conflict, but acknowledged that because of that conflict, he was unable to prepare the witness list in a timely manner. Respondent claimed that he did prepare the proposed order and sent it to opposing counsel but did not follow up to determine if the order was filed. Respondent eventually submitted the proposed order to opposing counsel and the court on January 20, 2009.

On July 14, 2009, the Counsel for Discipline sent a letter to respondent seeking additional information. Respondent again did not respond to the request, and the Counsel for Discipline had to contact him three additional times before receiving a response.

The formal charges state that the foregoing acts and omissions by respondent constitute violations of his oath of office as an attorney licensed to practice law in the State of Nebraska as provided by Neb. Rev. Stat. § 7-104 (Reissue 2007) and the following provisions of the Nebraska Rules of Professional Conduct: Neb. Ct. R. of Prof. Cond. §§ 3-501.1 (competence), 3-501.3 (diligence), 3-501.4 (communications), 3-501.7 (conflict of interest; current clients), 3-501.10 (imputation of conflicts of interest; general rule), and 3-508.4 (misconduct).

ANALYSIS

Section 3-313 of the disciplinary rules provides in pertinent part:

> (B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her

> as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

Pursuant to his conditional admission, respondent knowingly does not challenge the allegations in the formal charges, conditioned on the receipt of the following discipline: that respondent be suspended from the practice of law for 90 days, effective 30 days after the filing of this opinion, and that respondent pay all costs and expenses related to the prosecution of this case pursuant to Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323(B) of the disciplinary rules.

Pursuant to § 3-313 of the disciplinary rules, and given the conditional admission, we find that respondent knowingly does not challenge or contest the formal charges, which we now deem to be established facts, and we further find that respondent violated his oath of office as an attorney licensed to practice law in the State of Nebraska and §§ 3-501.1, 3-501.3, 3-501.4, 3-501.7, 3-501.10, and 3-508.4 of the rules of professional conduct.

Respondent has waived all additional proceedings against him in connection herewith, and upon due consideration, the court approves the conditional admission and enters the orders as indicated below.

CONCLUSION

Based on the conditional admission of respondent, the recommendation of the Counsel for Discipline, and our independent review of the record, we find by clear and convincing evidence that respondent has violated his oath of office as an

attorney licensed to practice law in the State of Nebraska and §§ 3-501.1, 3-501.3, 3-501.4, 3-501.7, 3-501.10, and 3-508.4 of the rules of professional conduct and that respondent should be and hereby is suspended from the practice of law for 90 days, effective 30 days after the filing of this opinion. Respondent shall comply with Neb. Ct. R. § 3-316 of the disciplinary rules, and upon failure to do so, he shall be subject to punishment for contempt of this court. Respondent is directed to pay costs and expenses in accordance with §§ 7-114 and 7-115 of the Nebraska Revised Statutes and §§ 3-310(P) and 3-323(B) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF SUSPENSION.