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be signed by Ruffin's attorney. Jurisdiction did not vest in the appellate courts. Therefore, on further review, we affirm the order of the Court of Appeals which dismissed this appeal for lack of jurisdiction.

AFFIRMED.

HEAVICAN, C.J., not participating.

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STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. THOMAS J. LINDMEIER, RESPONDENT.

788 N.W.2d 555

Filed September 17, 2010. No. S-09-1079.

Original action. Judgment of suspension.

Kent L. Frobish, Assistant Counsel for Discipline, for relator.

David J. Cullan for respondent.

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

PER CURIAM.

## INTRODUCTION

Respondent, Thomas J. Lindmeier, was admitted to the practice of law in the State of Nebraska on July 2, 1976. At all relevant times, he was engaged in the private practice of law in Omaha, Nebraska. On October 30, 2009, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges consisting of two counts against respondent. In the first count, it was alleged that by his conduct in July and August 2008 with respect to a client matter, respondent violated his oath of office as an attorney and various provisions of the Nebraska Rules of Professional Conduct. In the second count, it was alleged that by his conduct in August and September 2008 with respect to a different client matter, respondent violated his oath of office as an attorney and two provisions of the Nebraska Rules of

Professional Conduct. Respondent filed an answer in which he admitted some and denied other allegations included in the formal charges.

This court appointed a referee, who conducted an evidentiary hearing and issued a report including findings of fact, conclusions of law, and a recommended sanction. On count I, the referee found by clear and convincing evidence that respondent had violated his oath of office and Neb. Ct. R. of Prof. Cond. §§ 3-501.5(e)(2) (fees), 3-501.15(c) (safekeeping property), and 3-508.4(a) (misconduct). The referee further determined that the evidence did not establish a violation of § 3-501.4(b) (communications), as alleged in the formal charges. On count II, the referee found by clear and convincing evidence that respondent had violated his oath of office and §§ 3-501.15(a), (b), and (c) (safekeeping property) and 3-508.4(a) (misconduct). As a sanction for these violations, the referee recommended that respondent's license to practice law should be suspended for a period of 6 months and that, upon reinstatement, he should be on probation for a period of 2 years during which time he must retain, at his expense, an accountant to audit his trust account every 6 months, for a period of 2 years, and submit the results of those audits to the Counsel for Discipline.

Respondent filed exceptions to the referee's report in which he requested that the report of the referee be amended to provide for a suspension of no more than 3 months, together with the other terms and conditions recommended by the referee. Before the matter was argued and submitted, respondent filed a conditional admission under Neb. Ct. R. § 3-313 in which he stated that he knowingly did not challenge or contest the facts as found by the referee and waived all proceedings against him in connection therewith in exchange for a judgment of discipline identical to that recommended by the referee. The proposed conditional admission included a declaration by the Counsel for Discipline stating that the sanction recommended by the referee was appropriate and requesting this court to enter an order of suspension and probation as recommended by the referee and requested by the respondent. Upon due consideration, the court approves the conditional admission.

## FACTS

### COUNT I

The referee found that the following facts pertaining to count I of the formal charges were established by clear and convincing evidence: In July and August 2008, respondent had a personal checking account and a client trust account at an Omaha bank, but he had no separate business checking account. Respondent was the only person authorized to write checks and make withdrawals from his trust account. He wrote checks for personal expenses on both the trust account and the personal checking account, and he occasionally deposited his own funds in the trust account to prevent an overdraft.

In July 2008, respondent was contacted by a couple regarding possible representation of their son in a criminal matter. Respondent testified that he told the couple that he would do some initial research, but because he was inexperienced in criminal law, he would refer the case to an experienced criminal defense attorney and would work with that attorney on the case. Respondent initially requested a $10,000 fee to represent the couple's son, but accepted $4,000 on July 28 when the couple signed a fee agreement. The agreement did not mention the retention of cocounsel or address the division of the $4,000 advanced fee between respondent and the other attorney.

On the same day the $4,000 advanced fee was received, respondent deposited $2,000 of the advanced fee into his personal account and the remaining $2,000 into his trust account. This resulted in a trust account balance of $2,312.83 at the end of that day. On July 29, 2008, respondent withdrew $802.98 from his trust account, leaving a balance of only $1,509.85. And on August 3, respondent gave the attorney with whom he said he would work on the criminal matter a $2,000 check drawn on the trust account. At the time he received this check, the attorney had not yet earned a fee in that amount.

Respondent testified that he deposited $2,000 of the advanced fee into his personal account because he had already earned at least $2,000 at the time he received the check. But this testimony was refuted by respondent's own billing statement dated August 4, 2008. The billing statement did not reflect the $2,000

payment to the other attorney and indicated that $986.60 of the advanced fee remained in the trust account. On the date of the statement, however, only $331.97 remained in respondent's trust account.

The referee found that (1) respondent did not obtain the clients' written consent to the fee-division agreement with the other attorney; (2) respondent failed to deposit the entire $4,000 advanced fee into the client trust account and withdraw funds only as fees were earned; and (3) respondent paid the other attorney $2,000 before he had earned that amount in fees. From these facts, the referee concluded that respondent violated §§ 3-501.5(e)(2), 3-501.15(c), and 3-508.4(a) and (c). The referee found that the evidence did not establish a violation of § 3-501.4(b), as alleged in count I of the formal charges, because respondent sufficiently explained to his clients his lack of experience in criminal law and the role the other attorney would play in the criminal case.

### Count II

In 2007 and 2008, respondent was separately retained by a husband and wife to represent them with respect to personal injury and property damage claims arising from a motor vehicle accident. Both clients signed fee agreements stating that respondent would receive a 33⅓-percent contingency fee on all moneys received from settlement before filing suit. Respondent negotiated a settlement of the wife's claim for $1,222. Of this amount, a $158 subrogation claim was paid directly by the settling party, and the remaining $1,064 was paid by a check dated August 7, 2008, payable to respondent and his client. Pursuant to the fee agreement, respondent was entitled to $407.33 of this amount and his client was entitled to the remaining $656.67.

At various times during August and September 2008, respondent's trust account balance fell below the amount due his client from the settlement. During this same period, respondent deposited personal funds in his trust account and paid personal expenses from that account. From these facts, the referee concluded that respondent violated §§ 3-501.15(a), (b), and (c), and 3-508.4(a).

## ANALYSIS

Section 3-313, which is a component of our rules governing attorney disciplinary proceedings, 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 § 3-313, and given the conditional admission, we find that respondent knowingly does not challenge or contest the findings of the referee with respect to the formal charges, which we now deem to be established facts. We further determine that by his conduct with respect to count I of the formal charges, respondent violated §§ 3-501.5(e)(2), 3-501.15(c), and 3-508.4(a) and (c), as well as his oath of office as an attorney licensed to practice law in the State of Nebraska. Further, we determine that by his conduct with respect to count II of the formal charges, respondent violated §§ 3-501.15(a), (b), and (c) and 3-508.4(a), as well as his oath of office as an attorney licensed to practice law in the State of Nebraska. Respondent has waived all additional proceedings against him in connection herewith, and upon due consideration, the court approves the conditional admission.

## CONCLUSION

Respondent is suspended from the practice of law for a period of 6 months, effective 30 days after the filing of

this opinion. Should respondent apply for reinstatement, his reinstatement shall be conditioned upon respondent's being on probation for a period of 2 years following reinstatement, subject to the terms agreed to by respondent in the conditional admission and outlined above. Respondent shall comply with Neb. Ct. R. § 3-316, and upon failure to do so, he shall be subject to punishment for contempt of this court. Respondent is also directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323(B) within 60 days after the order imposing costs and expenses, if any, is entered by the court.

JUDGMENT OF SUSPENSION.

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STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. W. CRAIG HOWELL, RESPONDENT.

788 N.W.2d 559

Filed September 17, 2010. No. S-10-627.

Original action. Judgment of disbarment.

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

PER CURIAM.

## INTRODUCTION

This case is before the court on the voluntary surrender of license filed by respondent, W. Craig Howell. The court accepts respondent's surrender of his license and enters an order of disbarment.

## STATEMENT OF FACTS

Respondent was admitted to the practice of law in the State of Nebraska.

Respondent is currently under investigation by the office of the Counsel for Discipline of the Nebraska Supreme Court