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

799 N.W.2d 661

Filed April 8, 2011. No. S-11-180.

Original action. Judgment of suspension.

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

PER CURIAM.

INTRODUCTION

Respondent, Bruce G. Thomas, was admitted to the practice of law in the State of Nebraska on March 22, 1982, after having been previously admitted to the practice of law in the State of Iowa in 1976.

On March 2, 2011, the office of the Counsel for Discipline of the Nebraska Supreme Court filed a motion for reciprocal discipline pursuant to Neb. Ct. R. § 3-321 of the disciplinary rules. The motion stated that on February 18, 2011, the Iowa Supreme Court suspended the respondent for 60 days commencing February 18.

In its motion for reciprocal discipline, the Counsel for Discipline moves this court to impose a suspension of 60 days to run concurrently with the respondent's Iowa suspension.

On March 2, 2011, 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 motion for reciprocal discipline and waived all proceedings against him in connection therewith in exchange for a stated form of consent judgment of discipline outlined below. The motion for reciprocal discipline and the conditional admission are before the court for rulings. Upon due consideration, the court approves the conditional admission and grants the motion for reciprocal discipline.

FACTS

In summary, the decision of the Iowa Supreme Court which is attached and incorporated into the motion for reciprocal

discipline states that the Iowa Supreme Court Attorney Disciplinary Board initiated a disciplinary action against respondent in connection with his conduct in representing two clients in their personal injury claim arising from an automobile accident that occurred in December 2005. Respondent met with his clients about their claim in March 2006, and he timely filed a petition in Iowa district court in December 2007. Respondent, however, failed to timely serve the defendant until 28 days after the deadline for service, and consequently, the case was later dismissed on June 2, 2008, at which time it was time barred.

Respondent did not inform his clients about the dismissal until November 2008, because he was embarrassed by his conduct. In an effort not to tell his clients, he avoided calls, and in September 2008, he informed them that he would "'get to the bottom of the matter.'" Respondent defended his failure to accomplish timely service by confessing that he had been distracted by the poor health of his elderly mother.

As a result of the dismissal, respondent's clients lost the right to pursue a direct claim for their injuries against the defendant. Respondent suggested that they pursue a malpractice action against him to hold him accountable for his mistake. Respondent's clients pursued a malpractice action in June 2009, with respondent's insurance carrier. Respondent did not dispute that the lawsuit was dismissed as a result of his inaction.

In the Iowa disciplinary action, the parties moved to waive a hearing in this matter and submitted the complaint to the "Grievance Commission" based on the stipulated facts, stipulated ethical violations, stipulated mitigating and aggravating factors, and recommended sanctions.

On February 22, 2010, the commission filed findings of fact, conclusions of law, and recommendations. The commission adopted the parties' stipulation of facts and adopted the parties' stipulation that respondent violated the following provisions of the Iowa Rules of Professional Conduct: 32:1.1 (requiring lawyer to provide competent representation), 32:1.3 (requiring lawyer to act with reasonable diligence and promptness in representing client), 32:1.4 (requiring lawyer to keep client informed), 32:3.2 (requiring lawyer to make reasonable

efforts to expedite litigation), 32:7.1(a) (finding misconduct for lawyer to engage in false or misleading communication related to lawyer services), 32:8.4(a) (finding misconduct to violate disciplinary rule), and 32:8.4(d) (finding misconduct to engage in conduct that is prejudicial to administration of justice). The commission also found that respondent violated rule 32:8.4(c) (finding misconduct to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The commission recommended a 6-month suspension from the practice of law and recommended that, as a condition to reinstatement, respondent be required to demonstrate that he had adopted office practices and policies consistent with preventing further neglect of deadlines and ensuring more prompt and direct client communication.

Respondent appealed the commission report. The Iowa Supreme Court issued an order in the case and concluded that respondent's conduct violated rules 32:1.3, 32:1.4, 32:8.4(d), and 32:8.4(c). The Iowa Supreme Court declined to address the commission's conclusion that respondent violated rules 32:1.1 and 32:8.4(a) and concluded that respondent did not violate rule 32:7.1(a). The Iowa Supreme Court reviewed the aggravating and mitigating facts and suspended respondent's license to practice law with no possibility of reinstatement for 60 days from the date of the filing of the opinion, which was February 18, 2011.

ANALYSIS

Section 3-313 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.

For purposes of § 3-313, we read formal charges to include a motion for reciprocal discipline. See *State ex rel. Counsel for Dis. v. Chavez*, 279 Neb. 183, 776 N.W.2d 791 (2010). Pursuant to his conditional admission, respondent knowingly does not challenge the allegations in the motion for reciprocal discipline conditioned on the receipt of the following discipline: that respondent be suspended from the practice of law in Nebraska for a period of 60 days effective February 18, 2011, the date of the Iowa suspension, and that he be automatically reinstated to the practice of law in the State of Nebraska on the day after the 60-day suspension period expires, provided that he has paid all costs assessed against him herein.

Pursuant to § 3-313 of the disciplinary rules, and given the conditional admission, we find that respondent knowingly does not challenge or contest the facts contained in the motion for reciprocal discipline, which we now deem to be established facts. We further find that respondent violated the Nebraska Rules of Professional Conduct that are comparable to the rules he violated in Iowa, to wit: requiring a lawyer to act with reasonable diligence and promptness in representing a client, requiring a lawyer to keep clients informed, engaging in conduct that is prejudicial to the administration of justice, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent has waived all additional proceedings against him in connection herewith, and upon due consideration, the court approves the conditional admission, grants the motion for reciprocal discipline, and enters the orders as indicated below.

CONCLUSION

The motion for reciprocal discipline is granted, and the conditional admission is approved. 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 the Nebraska Rules of Professional Conduct that are comparable to the rules respondent violated in Iowa and that respondent should be and hereby is suspended from the practice of law in Nebraska for 60 days applied retroactively to February 18, 2011, the date of discipline in Iowa. 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 shall be eligible to be reinstated to the practice of law in the State of Nebraska on the day after the 60-day suspension period expires, provided that respondent has paid all 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) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by the court. In order to effectuate reinstatement, relator and respondent are ordered to submit a proposed order of reinstatement, signed by both parties, stating that respondent has complied with § 3-316 of the disciplinary rules and paid all costs and expenses, and that the parties are in agreement that reinstatement is therefore warranted.

JUDGMENT OF SUSPENSION.

WRIGHT, J., not participating.

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

795 N.W.2d 291

Filed April 8, 2011. No. S-11-227.

Original action. Judgment of disbarment.

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