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

811 N.W.2d 169

Filed March 9, 2012. No. S-11-814.

Original action. Judgment of suspension.

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

PER CURIAM.

INTRODUCTION

Respondent, Theresa A. Gase, was admitted to the practice of law in the State of Nebraska on March 9, 2001. At all relevant times, she was engaged in the private practice of law in Omaha, Nebraska. On November 8, 2011, the Counsel for Discipline of the Nebraska Supreme Court filed amended formal charges consisting of three counts against respondent. In the three counts, it was alleged that by her conduct with respect to three different client matters, respondent had violated her oath of office as an attorney, Neb. Rev. Stat. § 7-104 (Reissue 2007); Neb. Ct. R. §§ 3-303(B) (violation of disciplinary rule) and 3-309(E) (rev. 2011) (failure to respond); and Neb. Ct. R. of Prof. Cond. §§ 3-508.1(b) (bar admission and disciplinary matters) and 3-508.4(a) and (d) (misconduct). Also on November 8, the Counsel for Discipline filed additional formal charges consisting of a fourth count against respondent. In the fourth count, it was alleged that by respondent's conduct with respect to a client matter, she had violated her oath of office as an attorney and Neb. Ct. R. of Prof. Cond. §§ 3-501.4(a)(2), (3), and (4) (communications) and 3-501.5(f)(1) and (2) (fees).

On January 11, 2012, respondent filed a conditional admission pursuant to Neb. Ct. R. § 3-313 of the disciplinary rules, in which she knowingly chose not to challenge or contest the truth of the matters set forth in the amended formal charges and the additional formal charges and waived all proceedings against her in connection therewith in exchange for a judgment of suspension for 1 year and, following reinstatement, 1 year of probation, including monitoring. In the conditional admission,

it is specified that monitoring shall be by an attorney licensed to practice law in the State of Nebraska and who shall be approved by the Counsel for Discipline. The monitoring plan shall include but not be limited to the following: Respondent shall provide the monitor with copies of all fee agreements with clients; respondent shall provide the monitor with a monthly list of cases for which respondent is currently responsible, which list shall include the date the attorney-client relationship began, the general type of the case, the date of the last contact with the client, the last type and date of the work completed on file (pleading, correspondence, document preparation, discovery, court hearing), the next type of work and date that work should be completed on the case, and any applicable statute of limitations and its date; during the first 6 months of probation, respondent will personally meet with the monitor on a monthly basis to review the case list and the status of the cases; respondent will review with the monitor her office practices and continue to work to develop efficient office procedures that protect the clients' interests; the monitor shall have the right to contact respondent with any questions the monitor may have regarding respondent's then-pending cases; and if at any time the monitor believes respondent has violated the Nebraska Rules of Professional Conduct or has failed to comply with the terms of probation, he or she shall report such violation or failure to the Counsel for Discipline. Finally, respondent shall pay all the costs in this case, including the fees and expenses of the monitor, if any.

The proposed conditional admission included a declaration by the Counsel for Discipline stating that respondent's request for suspension and probation "appears to be appropriate under the facts of this case."

Upon due consideration, we approve the conditional admission, and we order a 1-year suspension and, following reinstatement, 1 year of probation and monitoring.

FACTS

Count I.

With respect to count I, the amended formal charges state that on December 13, 2010, the Counsel for Discipline received

a grievance letter from Marshall Berg, generally alleging that Berg had paid respondent to represent him in certain matters and that respondent had failed to complete the work and failed to communicate with the client. On that same date, a copy of Berg's letter was sent to respondent, along with a letter advising respondent that the Counsel for Discipline was conducting a preliminary investigation into the allegations and that respondent should submit a written response addressing the issues raised in Berg's letter.

By January 18, 2011, respondent had not responded, so the Counsel for Discipline sent a reminder. On February 3, an additional reminder was sent to respondent. By March 15, respondent still had not responded to Berg's grievance letter, so the Counsel for Discipline upgraded the matter to formal grievance status. The March 15 letter advised respondent that she had 15 working days to submit a written response and that her failure to do so could result in discipline. Respondent received this letter on March 26. On May 3, another reminder letter was sent to respondent. On July 15, respondent filed a response.

The amended formal charges allege that respondent's actions constitute violations of her oath of office as an attorney as provided by § 7-104, disciplinary rules §§ 3-303(B) and 3-309(E), and conduct rules §§ 3-508.1(b) and 3-508.4(a) and (d).

Count II.

With respect to count II, the amended formal charges state that on March 18, 2011, the Counsel for Discipline received a grievance letter from Mark Huss. The Counsel for Discipline sent respondent a copy of the grievance letter from Huss, along with a letter that directed respondent to submit an appropriate written response addressing Huss' concerns. The letter from the Counsel for Discipline further advised respondent that failure to respond to the inquiry could constitute a basis for discipline. Respondent received the letter on March 19.

By May 3, 2011, respondent had failed to submit a written response, so a reminder letter was sent. Respondent filed her response to Huss' grievance on July 21.

The amended formal charges allege that respondent's actions constitute violations of her oath of office as an attorney as

provided by § 7-104, disciplinary rules §§ 3-303(B) and 3-309(E), and conduct rules §§ 3-508.1(b) and 3-508.4(a) and (d).

Count III.

With respect to count III, the amended formal charges state that on May 26, 2010, the Counsel for Discipline sent respondent a copy of a grievance letter received from Roger Gast. The Counsel for Discipline directed respondent to submit a written response addressing Gast's concerns.

By June 29, 2010, respondent had not submitted a response, so a reminder letter was sent. A second reminder letter was sent on July 14. On that same date, respondent faxed a letter to the Counsel for Discipline advising that she would submit her response to the Gast matter by July 26. The Counsel for Discipline received respondent's response on July 20.

On September 2, 2010, the Counsel for Discipline sent a letter to respondent requesting that respondent call to arrange a time when the Counsel for Discipline could review her file concerning Gast. On September 11, respondent advised that Gast's file was in long-term storage in Texas and that she would not be able to retrieve it until around the Thanksgiving holiday. On November 23, the Counsel for Discipline sent respondent an e-mail message reminding her to obtain Gast's file when she was in Texas for the holiday.

On December 15, 2010, respondent and the Counsel for Discipline met to discuss the Gast matter and review the documents that respondent found. Respondent had not located the actual file. During their discussion, respondent indicated that she would obtain statements from two employees who had assisted her in the review of Gast's case file.

As of January 24, 2011, respondent still had not provided the requested file or statements from her employees; the Counsel for Discipline sent a letter to her reminding her to submit the requested information. As of February 22, respondent had not responded to the January 24 letter, nor had she provided the requested information. The Counsel for Discipline sent another reminder letter.

By April 1, 2011, respondent had not responded. As a result, the Gast matter was upgraded to formal grievance status and a letter was sent to respondent advising her of this and further requesting that she furnish the information and documents previously requested. Respondent received this letter on April 14. On April 19, respondent furnished some of the requested documents and a letter of explanation.

The amended formal charges allege that respondent's actions constitute violations of her oath of office as an attorney as provided by § 7-104, disciplinary rules §§ 3-303(B) and 3-309(E), and conduct rules §§ 3-508.1(b) and 3-508.4(a) and (d).

Count IV.

The additional formal charges allege that on or about March 24, 2008, respondent was retained by Gast, the same client from count III of the amended formal charges, to evaluate Gast's criminal case to determine whether there were grounds for possible postconviction relief. At the time respondent was retained, Gast's fiance, Mary Davis, paid respondent $1,200 of an agreed upon fee of $2,500 and by the terms of the agreement, the balance was to be paid within 90 days. No further payments were made by Gast or Davis.

Gast made numerous attempts to contact respondent throughout the spring and summer of 2008 to determine the results of respondent's efforts in reviewing his case. Gast did not hear from respondent by either mail or telephone calls until October 3, 2008, when respondent sent Gast a letter stating that she would respond to him in writing within 5 days. She further apologized for the lack of communication.

On October 29, 2008, respondent wrote to Gast and advised him that she had completed some research regarding his case, but that she would not perform any further work until he paid the balance of the agreed upon retainer.

Respondent did not correspond again with Gast until February 17, 2009, at which time respondent again advised Gast that she would not do any more work on his case until the balance of the agreed-upon fee was paid.

On May 18, 2009, according to the additional formal charges, respondent sent a letter to Gast advising him that she had met

with Davis and had advised Davis that "since less than half of the agreed upon amount had been paid, it was difficult to render half an opinion." In the letter, respondent also advised Gast regarding his upcoming parole board hearing.

On July 2, 2009, respondent returned Gast's documents to him, but she did not provide him with the results of her research or an evaluation of his case. Despite Gast's requests, respondent never provided Gast with an accounting of her time.

The additional formal charges allege that respondent's actions constitute violations of her oath of office as an attorney as provided by § 7-104 and conduct rules §§ 3-501.4(a)(2), (3), and (4) and 3-501.5(f)(1) and (2).

ANALYSIS

Section 3-313, which is a component of our rules governing procedures regarding attorney discipline, 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 matters set forth in the amended formal charges and additional formal charges. We further determine that

by her conduct with respect to counts I through III of the amended formal charges, respondent violated disciplinary rules §§ 3-303(B) and 3-309(E) and conduct rules §§ 3-508.1(b) and 3-508.4(a) and (d), as well as her oath of office as an attorney licensed to practice law in the State of Nebraska. We further determine that by her conduct with respect to count IV of the additional formal charges, respondent violated conduct rules §§ 3-501.4(a)(2), (3), and (4) and 3-501.5(f)(1) and (2), as well as her oath of office as an attorney. Respondent has waived all additional proceedings against her in connection herewith, and upon due consideration, the court approves the conditional admission and enters the orders as indicated below.

CONCLUSION

Respondent is suspended from the practice of law for a period of 1 year, effective 30 days after the filing of this opinion. Should respondent apply for reinstatement, her reinstatement shall be conditioned upon respondent's being on probation for a period of 1 year, including monitoring 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, she 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.