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the proper sentence for the weapons conviction differently than the original sentencing judge. The possibility of a higher sentence is a legitimate risk of resentencing[33] and is a natural consequence when judges are allowed to use their discretion in sentencing.[34] Therefore, we conclude that Miller has failed to meet his burden of proving actual vindictiveness by the second district court judge.

CONCLUSION

[12] We conclude that the vindictiveness presumption does not apply when a judge, different from the original sentencing judge, sentences a defendant to a harsher sentence after a successful appeal. Furthermore, we reject Miller's contention that the second district court judge acted with actual vindictiveness.

AFFIRMED.

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[33] *Chaffin v. Stynchcombe*, *supra* note 10.

[34] *State v. Bruna*, *supra* note 2.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. JEREMY C. JORGENSON, RESPONDENT.

822 N.W.2d 367

Filed October 12, 2012. No. S-12-269.

Original action. Judgment of public reprimand.

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

PER CURIAM.

INTRODUCTION

Respondent, Jeremy C. Jorgenson, was admitted to the practice of law in the State of Nebraska on April 15, 2008. At all relevant times, he was engaged in the private practice of law in Omaha, Nebraska. On April 3, 2012, the Counsel for Discipline of the Nebraska Supreme Court filed

formal charges consisting of three counts against respondent. In the three counts, it was alleged that by his conduct, respondent had violated his oath of office as an attorney, Neb. Rev. Stat. § 7-104 (Reissue 2007), and Neb. Ct. R. of Prof. Cond. §§ 3-501.1 (competence), 3-501.3 (diligence), 3-501.5 (fees), 3-501.16 (declining or terminating representation), and 3-508.4 (misconduct).

On September 17, 2012, respondent filed a conditional admission pursuant to Neb. Ct. R. § 3-313 of the disciplinary rules, in which he knowingly chose not to challenge or contest the truth of the matters set forth in the formal charges and waived all proceedings against him in connection therewith in exchange for a judgment of public reprimand and 1 year of probation, including monitoring. If accepted, the 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. Respondent shall provide the name of the monitor within 30 days of this order. The monitoring plan shall include, but not be limited to, the following: During the first 6 months of probation, respondent will meet with and provide the monitor a weekly list of cases for which respondent is currently responsible, which list shall include the date the attorney-client relationship began, the general type of case, the date of last contact with the client, last type and date of 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, any applicable statutes of limitation and their dates, and the financial terms of the relationship (hourly, contingency, et cetera), and respondent shall provide the monitor with copies of all fee agreements entered into during the previous week. After the first 6 months through the end of the probation, respondent shall meet with the monitor on a monthly basis and provide the monitor with a list containing the same information set forth above; respondent shall reconcile his trust account within 10 days of receipt of the monthly bank statement and provide the monitor with a copy within 5 days; and respondent shall submit a quarterly compliance report to the Counsel for Discipline demonstrating that respondent is adhering to the foregoing terms of probation.

The quarterly report shall include a certification by the monitor that the monitor has reviewed the report and that respondent continues to abide by the terms of the probation. 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 public reprimand and the proposed probation plan "appears to be appropriate under the facts of this case."

Upon due consideration, we approve the conditional admission, and we order a public reprimand and 1 year of probation and monitoring.

FACTS

Count I.

With respect to count I, the formal charges state that in November 2008, Gabriel Albanese, with the assistance of counsel other than respondent, filed suit against an individual in the district court for Douglas County seeking to recover damages for injuries that he received in an automobile accident in December 2004. On June 16, 2009, Albanese was indicted for selling methamphetamine. Albanese entered a guilty plea, was sentenced to 37 months in prison, and began serving his sentence on May 27, 2010.

During the summer of 2010, respondent had discussions with Albanese's brother and a friend, John Blaiotta, who had introduced Albanese to respondent, regarding the possibility of respondent's representing Albanese in the personal injury case set forth above and a wrongful employment termination case. Respondent obtained the files from Albanese's former counsel on or before September 3, 2010.

On September 3, 2010, respondent wrote to Albanese to advise him that respondent had been unable to contact Albanese by telephone and that respondent did not intend to represent Albanese until they had the opportunity to speak. The September 3 communication further advised Albanese that a deposition in the personal injury case was scheduled for September 9 and that it would be necessary for Albanese to make arrangements with the prison for Albanese to participate

by telephone. On September 9, respondent did attend the scheduled deposition, but Albanese did not participate.

On September 23, 2010, respondent sent a letter to Albanese advising Albanese that respondent was concerned because he had not received any communications from Albanese directly. The letter further advised that the defendant in the personal injury case had filed a motion to dismiss based upon Albanese's repeated failure to attend his scheduled depositions. The letter further stated that respondent would like some sort of retainer before delving into the files.

A hearing on the motion to dismiss was conducted on October 4, 2010, and respondent did not resist the motion nor attend the hearing. The personal injury case was dismissed on October 4. The formal charges state that a cursory review of the pleadings would have put respondent on notice that if the motion to dismiss was granted, Albanese's personal injury claim would be barred by the statute of limitations.

On October 5, 2010, respondent entered an agreement with Albanese's brother as power of attorney for Albanese to represent Albanese on both the personal injury claim and the wrongful termination claim. The agreement called for a $1,500 nonrefundable retainer to investigate both cases in addition to a one-third contingency fee of any sums collected. The formal charges state that by October 5, respondent knew, or with minimal review of the pleadings should have known, that the personal injury claim was now barred by the statute of limitations and that, therefore, there was nothing to investigate regarding the personal injury case. The formal charges further state that even a cursory review of the wrongful termination claim by a competent attorney would have likewise disclosed that the statute of limitations had long passed by the time respondent received the file.

The formal charges allege that respondent's actions constitute violations of his oath of office as an attorney as provided by § 7-104 and professional conduct rules §§ 3-501.1, 3-501.3, 3-501.5, 3-501.16, and 3-508.4.

Count II.

With respect to count II, the formal charges state that on or about December 30, 2009, Blaiotta (the friend mentioned

in count I) was injured in an automobile and motorcycle accident in San Francisco, California. Shortly thereafter, Blaiotta hired respondent to represent him regarding his claims for damages, both personal injury and property damage. At the time of hiring respondent, Blaiotta knew that respondent was not admitted to practice law in California and that respondent would have to associate with a California attorney or seek admission to the California Bar, which could be a costly and timely proposition.

The agreement between Blaiotta and respondent was not committed to writing, and the exact terms are unclear. However, it is agreed that respondent was doing the work on a contingency fee basis. A settlement was reached. It is the portion of the settlement that respondent would be entitled to as his fee that is in dispute. Further, there was nothing in writing as to how costs would be paid or reimbursed.

With respect to respondent's handling of the engagement, he began investigating Bliaotta's claim and contacting various insurance carriers in attempts to settle the matter. Over the next year, respondent was corresponding with various insurance companies. The other driver in the accident had the statutory minimum coverage, which did not cover Blaiotta's damages, so, at the urging of Blaiotta, respondent was seeking out other possible issuers that could be liable for the loss, including the other driver's parents' insurer even though the driver was not on their policy.

During 2010, respondent, Blaiotta, and Blaiotta's wife traveled together to San Francisco. Their trip was partly for pleasure and partly for examining the scene of the accident.

Blaiotta was not happy with the way negotiations were going with the insurance companies or with his inability to contact respondent whenever he wanted. After some disputes regarding the Blaiotta matter and other matters that had been referred to respondent by Blaiotta, respondent withdrew from representing Blaiotta on January 25, 2011. At the time respondent withdrew, Blaiotta still had roughly 11 months to file suit under California law. Respondent had previously forwarded the Blaiotta file to California counsel at Blaiotta's direction.

The formal charges allege that respondent's actions constitute violations of his oath of office as an attorney as provided by § 7-104 and professional conduct rule § 3-501.5.

Count III.

With respect to count III, the formal charges state that, as stated above, Blaiotta referred a number of other clients to respondent. One of these clients was Chelsey Foulk, who was injured in a motor vehicle accident. The respondent agreed to represent Foulk, commenced investigation of her claim, and began negotiations with the insurance companies. There was never a written fee agreement between Foulk and respondent, although it was understood that respondent was working on a contingency fee basis. Eventually, Foulk and her boyfriend became dissatisfied with respondent's efforts and terminated his services.

The formal charges allege that respondent's actions constitute violations of his oath of office as an attorney as provided by § 7-104 and professional conduct rule § 3-501.5.

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 formal charges. We further determine that by his conduct with respect to count I, respondent violated professional conduct rules §§ 3-501.1, 3-501.3, 3-501.5, 3-501.16, and 3-508.4, as well as his oath of office as an attorney licensed to practice law in the State of Nebraska. We further determine that by his conduct with respect to counts II and III of the formal charges, respondent violated professional conduct rule § 3-501.5, as well as his oath of office as an attorney. Respondent has waived all additional proceedings against him in connection herewith. Upon due consideration, the court approves the conditional admission and enters the orders as indicated below.

CONCLUSION

Respondent is publicly reprimanded and is placed on probation for a period of 1 year, including monitoring subject to the terms agreed to by respondent in the conditional admission and outlined above. Respondent is directed to pay costs and expenses in accordance with 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 PUBLIC REPRIMAND.