

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2007-01881

OPINION & ORDER

In the Matter of Peter J. Schmerge, a suspended
attorney.

Grievance Committee for the Ninth Judicial
District, petitioner; Peter J. Schmerge,
respondent.

(Attorney Registration No. 1629799)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Ninth Judicial District. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the First Judicial Department on February 14, 1972. By decision and order on motion of this Court dated May 15, 2007, (1) the respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(l)(1)(i), (ii), and (iii), upon a finding that he engaged in misconduct immediately threatening the public interest by failing to cooperate with the Grievance Committee, and based upon substantial admissions under oath and other uncontroverted evidence of professional misconduct, (2) the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the respondent, and (3) the issues raised were referred to the Richard Greenblatt, Esq., as Special Referee to hear and report. By decision and order on motion of this

April 21, 2009

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MATTER OF SCHMERGE, PETER J.

Court dated June 21, 2007, (1) that branch of the Grievance Committee's motion which was to supplement the previously authorized petition with additional charges as set forth in a supplemental memorandum dated March 28, 2007, was granted, and (2) that branch of the motion which was to immediately suspend the respondent was denied as academic. By decision and order on motion dated November 21, 2007, (1) the Grievance Committee's motion, inter alia, to adjudicate the respondent in default was denied, (2) the respondent's motion, inter alia, to stay the proceeding or convert the grounds of his suspension was denied, (3) the Grievance Committee's motion for leave to supplement the previously filed petitions with a second supplemental petition dated September 28, 2007, was granted, and (4) Richard Greenblatt, Esq., was relieved as Special Referee and the Honorable Lewis L. Douglass was appointed as Special Referee to hear and report. By decision and order on motion dated January 29, 2008, the Grievance Committee's motion for leave to serve a third supplemental petition dated October 25, 2007, was granted.

Gary L. Casella, White Plains, N.Y. (Faith Lorenzo of counsel), for petitioner.

PER CURIAM.

The Grievance Committee for the Ninth Judicial District (hereinafter the Grievance Committee) served the respondent with a total of four petitions containing approximately 24 charges of professional misconduct. In essence, the charges include conversion of client funds, failing to comply with this Court's order suspending the respondent from the practice of law, and failing to cooperate with the Grievance Committee. More specifically, the respondent is charged with multiple counts of misappropriating client funds, failing to promptly pay or deliver, as requested, client funds in his possession, failing to cooperate with the Grievance Committee, failing to comply with court orders, failing to withdraw from a litigated matter, improperly communicating with a party represented by counsel, failing to satisfy a judgment against him which was related to the practice of law, neglecting a legal matter entrusted to him, and practicing law as a suspended attorney.

The respondent opposed each of the Grievance Committee's motions for his immediate suspension, denied the allegations of the supplemental petitions, and requested an opportunity to present evidence in mitigation and of his good character in the form of witnesses, documents, and other means to be determined and arranged with the Special Referee.

The respondent appeared at the Grievance Committee's offices on April 30, 2008, for a pre-hearing conference before Special Referee Douglass to resolve the preliminary issues of whether the respondent was represented by counsel and whether he suffers from some form of mental infirmity which would prevent him from continuing these proceedings. The respondent maintained that he had not terminated the services of his attorney, Chris McDonough, but no longer wanted his representation due to the communications sent by Mr. McDonough to this Court. The respondent indicated that he could not afford to retain new counsel.

At the pre-hearing conference, Grievance Counsel noticed a decline in the respondent's physical appearance since she had last seen him approximately 1½ years earlier. The respondent had advised Grievance Counsel that he is suffering from depression but could not afford to take his prescribed medication on a regular basis. The respondent revealed that his illness rendered it difficult for him to read. He admitted that he never read the petitions in this proceeding.

The respondent waived any privilege and agreed to allow the Grievance Committee access to medical information from his physician, Dr. Robert Werboff. He signed a waiver and indicated that his doctor already knew about the Grievance Committee proceeding.

In his report to the Court, Special Referee Douglass reached the following conclusion:

“The respondent is now facing eviction, has no money and for all practical purposes is dysfunctional. His official status as a member of the Bar is that he is a suspended attorney facing unresolved disciplinary proceedings. In view of his mental circumstances it is impossible to proceed with the disciplinary proceedings. The staff attorney recommends, and I agree, that this matter should be closed by the issuance of an order pursuant to 22 NYCRR 691.13(c) which is applicable to disciplinary proceedings where an attorney is mentally impaired and authorizes suspension until such time as the the respondent has the capacity to participate in his defense.”

In view of the medical records supplied by Dr. Werboff and the respondent's acknowledged disabilities, as evidenced during the preliminary conference and events subsequent

thereto, the Grievance Committee's motion to confirm the Special Referee's report is granted to the extent of adopting the Special Referee's recommendation to hold the disciplinary proceeding in abeyance and to suspend the respondent on the additional ground set forth in 22 NYCRR 691.13(c) until such time as he is fit to participate fully in his defense.

PRUDENTI, P.J., MASTRO, RIVERA, SKELOS and BALKIN, JJ., concur.

ORDERED that the Grievance Committee's motion to confirm the report of the Special Referee is granted to the extent of adopting his recommendation to hold the disciplinary proceeding in abeyance and to suspend the respondent, Peter J. Schmerge, on the additional ground set forth in 22 NYCRR 691.13(c) until such time as he is fit to participate fully in his defense; and it is further,

ORDERED that on the Court's own motion, Tracie A. Sundack, Esq., 19 Court Street, Third Floor, White Plains, New York 10601, is appointed as inventory attorney pursuant to 22 NYCRR 691.10(g) to take custody of and inventory the files of the respondent, Peter J. Schmerge, and to take such action as is deemed proper and advisable to protect the interests of the clients as well as the suspended attorney.

ENTER:



James Edward Pelzer
Clerk of the Court