

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

MATTER OF RAYMOND SHANLEY, A SUSPENDED ATTORNEY, RESPONDENT.
GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT, PETITIONER. -

- Order of suspension entered. Per Curiam Opinion: Respondent was admitted to the practice of law by the Appellate Division, First Department, on February 29, 1988, and formerly maintained an office in Utica. In May 2022, the Grievance Committee filed a petition alleging against respondent seven charges of professional misconduct, including neglecting client matters, failing to communicate with clients, and failing to comply with certain conditions that this Court imposed upon respondent's continued practice of law in relation to a prior attorney disciplinary proceeding (see *Matter of Shanley*, 141 AD3d 106 [4th Dept 2016]). Although respondent was served with the instant petition in May 2022, he failed to file an answer thereto or to request from this Court an extension of time in which to do so. The Grievance Committee subsequently filed a motion for an order, inter alia, finding respondent in default on the petition and suspending him on an interim basis. Although respondent was served via hand delivery with the motion in August 2022, and his personal appearance before this Court was required on the return date pursuant to 22 NYCRR 1020.8 (c), respondent failed to file a response to the motion, appear on the return date, or otherwise contact this Court. Consequently, by order entered October 28, 2022, this Court granted the motion of the Grievance Committee, found respondent in default, deemed admitted the allegations in the petition, suspended respondent from the practice of law on an interim basis, and directed him to appear before this Court and to show cause why a final order of discipline should not be entered. Respondent subsequently filed written materials in mitigation and appeared before this Court to be heard in mitigation.

With respect to the charges in the instant petition, respondent admits in relation to charge one that, in June 2020, he accepted a retainer fee in the amount of \$2,500 to appear at a sentencing hearing and file a motion for postconviction relief on behalf of a client who had pleaded guilty to a felony. Although respondent appeared at the sentencing hearing, he thereafter failed to file a motion for postconviction relief and failed to contact the client from July through October 2020. Respondent did not refund the retainer fee until after the client filed a grievance complaint.

With respect to charge two, respondent admits that, in August 2020, he was assigned to represent a client who was incarcerated and had been charged with multiple felonies. From August 2020 through June 2021, respondent failed to respond in a

prompt manner to the client's requests for copies of certain discovery materials and failed to appear for two scheduled meetings with the client, without providing advance notification or an explanation to the client. Although respondent met with the client in the weeks prior to a jury trial that was held in July 2021, the client was subsequently convicted on all counts.

With respect to charge three, respondent admits that, in 2019, he was assigned to represent a client in a matter pending in Family Court, after which the client was incarcerated for reasons unrelated to that matter. In November 2019, respondent accepted a retainer fee in the amount of \$1,000 to represent the client on a civil claim for personal injuries allegedly sustained by the client while incarcerated. However, respondent asserted that the retainer fee was nonrefundable, failed to execute a written retainer agreement or letter of engagement for the representation, and failed to file within 90 days a notice of claim in relation to the personal injury matter. From December 2019 through July 2021, respondent failed to respond to several inquiries from the client and failed to deliver to the client in a timely manner certain documents, as requested by the client.

With respect to charge four, respondent admits that, in April 2021, he accepted a retainer fee in the amount of \$1,500 to represent a client in a child custody proceeding and, although in May 2021 the client executed and delivered to respondent certain documents to be filed in the proceeding, respondent failed to file the documents and, from May through August 2021, failed to respond to inquiries from the client regarding the matter, failed to provide to the client billing statements at least every 60 days, and failed to attend a scheduled meeting with the client. The client terminated the representation in August 2021 and, although respondent returned certain legal documents to the client, he failed to refund to the client unearned legal fees in his possession, despite his assurances to the client that a refund was forthcoming. In February 2022, respondent advised the Grievance Committee that he had refunded any unearned legal fees to the client, but as of March 2022 he had failed to do so.

With respect to charge five, respondent admits that, in April 2021, he accepted a retainer fee in the amount of \$1,000 to prosecute on behalf of a client a civil claim for breach of contract. However, respondent asserted that the retainer fee was nonrefundable and failed to execute a written retainer agreement or letter of engagement for the representation. From April 2021 through March 2022, respondent failed to take action on the matter or maintain communication with the client. In November 2021, the client demanded that respondent refund any unearned legal fees, but respondent failed to do so despite his subsequent assurances to the Grievance Committee that a refund was forthcoming.

With respect to charge six, respondent admits that, from October through December 2021, he failed to respond in a timely

manner to inquiries from the Grievance Committee concerning the allegations in charges one through five. Although respondent appeared for a formal interview at the offices of the Grievance Committee in October 2021, he was not prepared to discuss the matters under investigation and failed to produce at that time documents that had been previously requested by the Committee. In November and December 2021, several scheduled meetings between respondent and the Grievance Committee were postponed when respondent requested last-minute adjournments and, although he appeared at the office of the Grievance Committee in mid-December 2021, he was again unprepared to discuss the matters under investigation.

With respect to charge seven, respondent admits that he failed to comply with certain conditions that this Court imposed upon his continued practice of law by order entered on June 10, 2016, which suspended him from the practice of law for a period of two years, but simultaneously stayed the imposition of the suspension on the condition that he, inter alia, refrain from becoming the subject of additional disciplinary proceedings, enroll in an attorney mentoring program, and submit to the Grievance Committee quarterly reports from the mentor attorney confirming that respondent was implementing all recommendations of the mentor attorney (see *Shanley*, 141 AD3d at 110).

Based on respondent's admissions set forth above, we find respondent guilty of professional misconduct and conclude that he has violated the following provisions of the Rules of Professional Conduct (22 NYCRR 1200.0):

rule 1.3 (a)—failing to act with reasonable diligence and promptness in representing a client;

rule 1.3 (b)—neglecting a legal matter entrusted to him;

rule 1.4 (a) (3)—failing to keep a client reasonably informed about the status of a matter;

rule 1.4 (a) (4)—failing to comply in a prompt manner with a client's reasonable requests for information;

rule 1.5 (b)—failing to communicate to a client within a reasonable period of time, with such communication made in writing where required by statute or court rule, the scope of the representation and the basis or rate of the fee for which the client will be responsible, including any changes thereto;

rule 1.5 (d) (4)—entering into an arrangement for, charging, or collecting a nonrefundable retainer fee;

rule 1.15 (c) (4)—failing to pay or deliver to a client or another person, as requested by the client or other person, funds or other property in the possession of the lawyer that the client or other person is entitled to receive;

rule 8.4 (c)—engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

rule 8.4 (d)—engaging in conduct that is prejudicial to the administration of justice; and

rule 8.4 (h)—engaging in conduct that adversely reflects on

his fitness as a lawyer.

We also conclude that respondent has violated 22 NYCRR 1400.3, which requires that, when a lawyer is retained in a domestic relations matter, the lawyer must provide to the client itemized billing statements at least every 60 days.

We have considered, in determining an appropriate sanction, the matters submitted by respondent in mitigation, including his statement that the misconduct occurred at a time when he experienced a relapse in his recovery from alcohol abuse due to the stress and emotional difficulties related to the COVID-19 pandemic, that he has since resumed treatment and abstained from using alcohol, and that he has enrolled in a treatment monitoring program with the New York State Bar Association Lawyer Assistance Program. We have considered in aggravation of the charges respondent's relatively extensive disciplinary history, which includes the aforementioned two-year stayed suspension that was imposed for misconduct similar to the conduct at issue in this matter, as well as his default in responding to the instant petition, failure to refund unearned legal fees to certain clients in a timely manner, and apparent disregard of the legal interests of several of his clients. Accordingly, after consideration of all of the factors in this matter, we conclude that respondent should be suspended from the practice of law for a period of three years, effective October 28, 2022, and until further order of this Court. We direct, however, that respondent may apply to this Court for a stay of the suspension imposed herein after a period of 18 months from the effective date and upon proof that he has satisfied the conditions set forth in the order entered herewith, including that he has refunded unearned legal fees to certain clients, that he is continuing in treatment for alcohol abuse and following all treatment recommendations, and that he has enrolled in an attorney mentoring program and engaged a proposed mentor attorney who has been approved by counsel to the Grievance Committee. PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ. (Filed Nov. 17, 2023.)