The Supreme Court of South Carolina

In the Matter of Jarrett B. Lanford, Deceased.

Appellate Case No. 2017-000836

ORDER

The Office of Disciplinary Counsel (ODC) has filed a petition advising the Court that Jarrett B. Lanford, Esquire, passed away on October 22, 2016, and requesting the appointment of Christopher R. Antley, Esquire, and Bret R. Galloway, Esquire, as Co-Special Receivers to protect the interests of Mr. Lanford's clients pursuant to Rule 31 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition is granted.

IT IS ORDERED that Christopher R. Antley, Esquire, and Bret R. Galloway, Esquire, are hereby appointed to assume responsibility for Mr. Lanford's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Lanford maintained. Mr. Antley and Mr. Galloway shall take action as required by Rule 31, RLDE, to protect the interests of Mr. Lanford's clients. Mr. Antley and Mr. Galloway may make disbursements from Mr. Lanford's trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Lanford maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Lanford, shall serve as notice to the bank or other financial institution that Christopher R. Antley, Esquire, and Bret R. Galloway, Esquire, have been duly appointed by this Court.

This Order, when served on any office of the United States Postal Service, shall serve as notice that Christopher R. Antley, Esquire, and Bret R. Galloway, Esquire, have been duly appointed by this Court and have the authority to receive Mr.

Lanford's mail and the authority to direct that Mr. Lanford's mail be delivered to Mr. Antley's and Mr. Galloway's offices.

These appointments shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina

April 12, 2017

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

In the Matter of Joenathan S. Chaplin

Petitioner has filed a petition for reinstatement and that petition has been referred to the Committee on Character and Fitness pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules.

The Committee on Character and Fitness has now scheduled a hearing in this regard on May 18, 2017, beginning at 3:00 pm, in the Courtroom of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

Any individual may appear before the Committee in support of, or in opposition to, the petition.

Kirby D. Shealy, III, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

April 18, 2017

[1] The date and time for the hearing are subject to change. Please contact the Office of Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

In the Matter of Glenn Oliver Gray

Petitioner has filed a petition for reinstatement and that petition has been referred to the Committee on Character and Fitness pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules.

The Committee on Character and Fitness has now scheduled a hearing in this regard on May 18, 2017, beginning at 4:00 pm, in the Courtroom of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

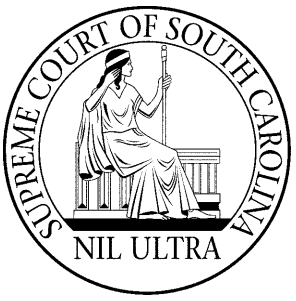
Any individual may appear before the Committee in support of, or in opposition to, the petition.

Kirby D. Shealy, III, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

April 18, 2017

[1] The date and time for the hearing are subject to change. Please contact the Office of Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.



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OF

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AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 16
April 19, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Robert Glenn Bacon, Respondent.

Appellate Case No. 2016-002271

Opinion No. 27710
Submitted March 28, 2017 - Filed April 19, 2017

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina C. Todd, Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Susan Batten Lipscomb, Lipscomb Law Firm, P.A., of Chapin, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand or a definite suspension not to exceed nine (9) months. We accept the Agreement and impose a definite suspension of six (6) months from the practice of law.

Facts and Law

The Loan Modification Matters

Prior to November of 2012, Mark Andrew Brunty, an attorney licensed to practice in South Carolina, hired INMN, Inc. (INMN), a marketing company, to solicit out-

of-state clients interested in modifying their home loans. Brunty hired Integrity Partners, LLC (Integrity), to process the loan modifications. This Court placed Brunty on interim suspension on November 21, 2012, *In re Brunty*¸ 405 S.C. 572, 748 S.E.2d 777(2012), and disbarred him on February 25, 2015, *In re Brunty*, 411 S.C. 434, 769 S.E.2d 426 (2015). About the time Brunty was placed on interim suspension, he introduced respondent to Terry Walden, the principal officer of Integrity, contemplating that respondent could assume Brunty's work with INMN and Integrity. Respondent questioned Walden multiple times to determine whether he could pursue the venture ethically. Respondent wrongly accepted Walden's assurances that Integrity and INMN were complying with federal laws and regulations and had a network of local attorneys licensed to practice in every jurisdiction in which clients were accepted.

Subsequently, respondent hired INMN to solicit out-of-state clients interested in mortgage modifications and to hire Integrity to process the modifications, as Brunty had. However, he did not instruct Integrity regarding issues related to Brunty's existing loan modification clients. Integrity employees continued working on some of these clients' files when no licensed attorney was involved in the matter. Integrity employees also incorrectly advised many of Brunty's clients that their files had been assigned to respondent's firm. Some of Brunty's clients later became respondent's clients, but others did not. Finally, Integrity employees charged installment payments of fees to the credit cards of some of Brunty's clients. Although the clients originally authorized these payments to be made to Brunty, their credit cards were charged in favor of respondent's firm.

Respondent admits he violated federal rules against unfair or deceptive acts or practices with respect to loan modification matters.[1] Because respondent was not licensed to practice in any of the jurisdictions in which he accepted loan

[1] In 2009, Congress directed the Federal Trade Commission to prescribe rules prohibiting unfair or deceptive acts or practices with respect to mortgage loans; these provisions were subsequently codified at 12 C.F.R. Part 1015 and ultimately named "Regulation O." Regulation O places a number of restrictions on those who wish to provide mortgage relief services. For example, a provider may accept a fee only after the client has executed a written agreement for relief with the client's lender or lender's servicer. 12 C.F.R. § 1015.5. Attorneys are exempt from this rule if they meet certain criteria, including the attorney must be licensed to practice in the state where the consumer or the consumer's home is located, must hold any advance fee in a client trust account until earned, and comply with applicable trust account rules. 12 C.F.R. § 1015.7.

modification clients, he was not authorized to accept any fees before the client executed a loan modification agreement. Further, respondent failed to deposit the fees he received into a trust account, failed to maintain separate ledgers for his clients, and failed to properly supervise those who had access to the accounts into which loan modification clients' fees were deposited.

Respondent also failed to properly supervise INMN's marketing of his loan modification services. INMN salespeople identified themselves as employees of respondent's firm when communicating with prospective clients despite a contractual obligation to disclose their actual connection with the firm. When respondent learned of this practice, he insisted that it stop immediately. After respondent ceased using INMN's marketing services, he learned the company had created a website without his approval which INMN shared with prospective clients.

Respondent acknowledges he did not take sufficient efforts to ensure the nonlawyer employees of Integrity and INMN conducted themselves in a manner compatible with respondent's own professional obligations. Additionally, respondent admits he failed to fully investigate whether he could properly accept and represent loan modification clients in other jurisdictions. Respondent is not licensed to practice law in any other state. Consequently, respondent engaged in the unauthorized practice of law in several jurisdictions.

A. The California Matter

Client A agreed to hire respondent's firm after an INMN employee told him that if he hired respondent and then changed his mind about pursuing a loan modification, he would be entitled to a refund of any unearned fees. Three days after making an initial payment, Client A decided to file for bankruptcy using a California law firm. Client A immediately informed his INMN contact and requested a refund. He was promised a refund of one-half of the $1,500 payment he made, but respondent cannot show a refund was issued. By charging and collecting an upfront fee in a loan modification case, respondent admits he violated California Civil Code § 2944.7. Furthermore, respondent admits his conduct constituted the unauthorized practice of law in violation of § 6125 of the California Business and Professional Code and Rule 1-300 of the California Rules of Professional Conduct.

B. The Connecticut Matters

Clients B and C, who were married, hired and paid Brunty to obtain a modification of their mortgage. Upon Brunty's suspension, Integrity employees continued working on Client B and C's file for a period of time. They notified the couple their file had been transferred to respondent's firm. Integrity employees also asked the couple to complete a form authorizing their bank to communicate with respondent's firm. However, the couple never became respondent's clients. Respondent admits his failure to properly supervise Integrity employees caused confusion for Clients B and C. He also admits he failed to clarify the situation to the couple in writing, violating Rules 1.16 and 5.3(1) of the Connecticut Rules of Professional Conduct.

Client D originally hired Brunty and made two of three payments to his firm. A payment of $966 was charged in favor of respondent's firm without Client D's authorization. Respondent was required by Connecticut rules to hold the funds in an IOLTA account at an institution authorized to do business in Connecticut but admits he failed to do so.

Respondent admits his conduct violated Rules 1.15(d), (h), and 5.5(c) of the Connecticut Rules of Professional Conduct.

C. The Georgia Matter

Client E received an email solicitation from an INMN employee who identified himself as an Underwriting Specialist for respondent's office. The INMN employee advised Client E her payment would be deposited into a trust account where it would remain until earned and that it would be immediately refunded if her bank did not agree to work with respondent's firm. He also stated to Client E:

> I personally have seen very few modifications that we accept that do not go through. The lenders tend to tell you anything to keep you from hiring someone like us. Because we do approximately 250 modifications per month, we know who will and who will not work with us because those who in the past have not agreed to work with us, have found they [sic] we will elevate the situation by doing forensic audits and such, which believe me when I tell you, they want to avoid at all costs.

Respondent admits these statements were misleading. Shortly after making a payment of $967, Client E was interviewed by an employee of respondent's firm to make certain the firm could assist her. Client E incorrectly reported she had not previously received a loan modification. Respondent claims if Client E had reported correctly that she had received a loan modification, he would have issued a refund to Client E because the firm would not have been able to help her. Respondent later did refund $600 to Client E pursuant to an award of the South Carolina Resolution of Fee Disputes Board. Respondent admits his firm's representation of Client E constituted the unauthorized practice of law in Georgia in violation of Rule 5.3, 5.5 and 7.1 of the Georgia Rules of Professional Conduct.

D. The Kentucky Matter

Client F hired Brunty to modify her home loan. However, her final payment for Brunty's legal services became due after his interim suspension. The final payment of $725 was charged to her credit card and paid to respondent's firm, even though she had not hired that firm. Her loan modification was denied shortly thereafter. Respondent admits his conduct in this matter violated Rule 3.130(1.5), (1.6) and (5.3) of the Rules of Professional Conduct of the Rules of the Kentucky Supreme Court.

E. The New Jersey Matter

Client G paid respondent's firm $1,934 to negotiate a loan modification. He received a loan modification offer, but rejected it and requested a refund. Respondent refunded $1,934 to Client G before receiving notice of ODC's investigation. However, by negotiating a loan modification for Client G, respondent admits he acted as an unauthorized debt adjuster in violation of New Jersey law. N.J.S.A. § 17-16G-2. Furthermore, respondent admits his conduct constituted the unauthorized practice of law in violation of Rule 5.5 of the New Jersey Rules of Professional Conduct.

F. The North Carolina Matter

Clients H and I, who were married, paid respondent $2,900 to negotiate a modification of their home loan. An INMN employee told the couple respondent could potentially reduce their monthly mortgage payment by more than half. Respondent admits the INMN employee's statement likely created an unjustified expectation about the result respondent could achieve in violation of Rule 7.1(a)(1) of the North Carolina Rules of Professional Conduct. By accepting an upfront fee

for this service, respondent also admits he engaged in the unlawful practice of debt adjusting in North Carolina in violation of N.C. Gen. Stat. § 14-424. Finally, respondent admits he engaged in the unauthorized practice of law in violation of N.C. Gen. Stat. § 84-4 and Rule 5.5 of the North Carolina Rules of Professional Conduct.

G. The Pennsylvania Matter

Client J hired Brunty and was communicating with Integrity employees. After Brunty was placed on interim suspension, Client J was advised by Integrity employees that her file had been assigned to respondent's firm. The Integrity employees had her confidential information and attempted to get her to sign paperwork authorizing respondent to represent her. Client J never became a client of respondent's firm. Respondent admits his conduct in this matter violated Rules 1.16(a) and 5.3 of the Pennsylvania Rules of Professional Conduct.

H. The Texas Matters

Client K, a former Brunty client, made a payment of $800 to respondent's firm to represent him. He later received a refund of $400.

Client L paid respondent's office $2,900 to represent him in obtaining a loan modification; the lender ultimately denied the modification.

Client M, a former Brunty client, paid respondent firm $250 to represent her.

Respondent was not licensed to practice law in Texas and admits his conduct violated Section 81.102 of the Texas Government Code. Furthermore, respondent admits he violated Rule 1.14(a) of the Texas Rules of Professional Conduct which requires that an unearned fee belongs to the client who paid it and must be held in a trust account until earned. Finally, respondent admits his conduct also constituted the unauthorized practice of law in violation of Rule 5.05 of the Texas Rules of Professional Conduct.

I. The Virginia Matter

Client N paid respondent's firm $2,500 after an INMN employee identified herself as an Intake Specialist with respondent's firm. The employee gave the same misleading information to Client N that was given to Client E in the Georgia matter discussed above.

Respondent admits he failed to ensure the conduct of INMN employees was compatible with his professional obligation and therefore violated Rules 5.3(a) and 7.1(a) of the Virginia Rules of Professional Conduct. Additionally, respondent admits his conduct constituted the unauthorized practice of law in violation of Rule 5.5 of the Virginia Rules of Professional Conduct.

J. The Washington Matters

Client O hired Brunty and paid him in full. Shortly after respondent hired Integrity and INMN, Client O was advised his file had been transferred to respondent. Integrity employees continued to work on his file even though he did not officially become respondent's client for a few months. Respondent briefly negotiated on Client O's behalf without charging a fee before the loan modification was denied.

Clients P and Q, who were married, authorized respondent to negotiate a loan modification on their behalf. Client P paid respondent's firm $2,495.

Respondent admits he did not ensure the conduct of Integrity's employees was compatible with his professional obligations in violation of Rule 5.3 of the Washington State Rules of Professional Conduct (WSRPC). By negotiating loan modifications on behalf of Washington residents, respondent admits he engaged in the unauthorized practice of law in Washington in violation of Rule 5.5, WSRPC. Additionally, respondent admits he acted without a license in violation of Washington's Mortgage Broker Practices Act and Consumer Loan Act. Wash Rev. Code Ann. §§ 19.146.005 to 19.146.905 and §§ 31.04.015 to 31.04.310. Further, because respondent did not have a written advance fee agreement with Clients P and Q, he admits he violated Rule 1.15A(c)(2) of the Washington Rules of Professional Conduct.

The Advertising Matter

Respondent's website for his law firm contained three instances of language that compared his services with services of other lawyers in a way that could not be factually substantiated. The website also indicated that the attorneys in respondent's firm had the "expertise" to assist clients in specific practice areas.

Violations of Rules of Professional Conduct

Respondent admits that by his conduct in the Loan Modification Matters and the Advertising Matter, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 5.5 (a lawyer may not practice law in a jurisdiction in which the lawyer has not been admitted to practice); Rule 7.1(c) (a lawyer shall not make false or misleading communications about the lawyer, including statements that compare the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated); and Rule 7.4(b) (any lawyer who concentrates in a particular field may not use any form of the word "expert" in his advertisements).

Respondent admits his misconduct constitutes grounds for discipline under Rule 7(a)(1), (2), and (5), RLDE, Rule 413, SCACR (it shall be a ground for discipline for a lawyer to: (a)(1)violate the Rules of Professional Conduct, Rule 407, SCACR, (a)(2) engage in conduct violating applicable rules of professional conduct in another jurisdiction); and (a)(5) engage in conduct tending to pollute the administration of justice or to bring the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

Conclusion

We accept the Agreement for Discipline by Consent and impose a definite suspension for six months from the practice of law from the date of this order.

Respondent shall pay restitution as follows:

(a) $1,500.00 to Client A;
(b) $966 to Client D;
(c) $367 to Client E;
(d) $725 to Client F;
(e) $2,900 to Clients H and I;
(f) $400 to Client K;
(g) $2,900 to Client L;
(h) $250 to Client M;
(i) $2,500 to Client N; and
(j) $2,495 to Client P.

Within thirty (30) days of the date of this opinion, ODC and respondent shall enter into a restitution agreement specifying the terms upon which respondent shall pay

restitution to his former clients as ordered by this opinion. Respondent shall receive credit for any documented refunds he has had made to these individuals.

Prior to seeking reinstatement, respondent shall complete the Legal Ethics and Practice Program Ethics School pursuant to Rule 32, RLDE. Within one year of the date of this order, respondent shall complete the Legal Ethics and Practice Program Trust Account School and Advertising School and submit proof of completion of these programs to the Commission on Lawyer Conduct (the Commission).

Within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission.

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur. JAMES, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

LeAndra Lewis, Petitioner,

v.

L.B. Dynasty, Inc., d/b/a Boom Boom Room Studio 54 and S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the Respondent.

Appellate Case No. 2015-002397

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From The Workers' Compensation Commission

Opinion No. 27711
Heard December 15, 2016 – Filed April 19, 2017

REVERSED

Charles B. Burnette, III, of Burnette & Payne, PA, of Rock Hill, and John S. Nichols and Blake A. Hewitt, both of Bluestein Nichols Thompson & Delgado, LLC, of Columbia, for Petitioner.

Lisa C. Glover, of South Carolina Uninsured Employers' Fund, of Columbia, for Respondent.

JUSTICE HEARN: In this case we review the decision of the court of appeals affirming the Workers' Compensation Commission's award of benefits to a dancer who was shot while performing at a nightclub. We find the commission's decision to award $75 per week is not supported by substantial evidence and therefore reverse and remand.

FACTUAL BACKGROUND

Petitioner LeAndra Lewis sought workers' compensation benefits for injuries she suffered following a shooting in a night club operated by L.B. Dynasty. In a previous opinion, this Court held Lewis was an employee—not an independent contractor—of L.B. Dynasty, entitling her to workers' compensation benefits. *Lewis v. L.B. Dynasty*, 411 S.C. 637, 770 S.E.2d 393 (2015). We remanded the matter to the court of appeals to review the commission's order awarding benefits to Lewis. Ultimately, the court of appeals affirmed the commission's award of $75 per week.

In the order, which first delved into a lengthy analysis of Lewis's status as an independent contractor and precluded her from collecting workers' compensation benefits, the commission found that even if she had established herself as an employee, her compensation rate would be $75.00 per week. Specifically, the commission found, "There is no evidence whatsoever as to the amount of money [Lewis] earned, hours worked, etc. The only evidence is [Lewis's] testimony, which is self-serving. [Lewis] is bound by the wages earned from [L.B. Dynasty] only." The commission then went on to state Lewis was required by Regulation 67-1603(H)[1] to submit a Form 20 to the claims department and her purported employer outlining her wages earned from other employers before any additional wages could be considered.

On remand, the court of appeals affirmed the commission's award,[2] holding "[Lewis's] average weekly wage was a factual determination supported by the

[1] 8 S.C. Code Ann. Regs. 67-1603(H) (2012).

[2] In affirming Lewis's award, the court of appeals was limited to reviewing the original order issued by the commission which primarily analyzed whether Lewis was an employee or an independent contractor. The majority of both Lewis's hearing

evidence, and the single commissioner made no legal errors in its determination that she failed to meet her burden to prove her wages earned from other employers." *Lewis v. L.B. Dynasty*, Op. No. 2015-UP-339 (S.C. Ct. App. July 8, 2015). This Court granted Lewis a writ of certiorari to review the award.

STANDARD OF REVIEW

An appellate court may reverse or modify a decision by the Workers' Compensation Commission if the decision is not supported by substantial evidence or is affected by an error of law. S.C. Code Ann. § 1-23-380(5) (Supp. 2016); *Jones v. Ga.-Pac. Corp.*, 355 S.C. 413, 416, 586 S.E.2d 111, 113 (2003). Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached" to support its orders. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

ANALYSIS

Lewis argues the court of appeals erred in holding the commission's findings were supported by substantial evidence. We agree.

We defer to the commission as the finder of fact and do not engage in weighing the evidence before it. *See, e.g., Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Accordingly, we make no comment on the sufficiency of the evidence presented by Lewis. However, the commission's order was devoid of any specific and detailed findings of fact to substantiate the award. *See* S.C. Code Ann. § 42-9-5 (2015) ("Any award made pursuant to this title must be based upon specific and written detailed findings of fact substantiating the award."). The commission summarily concluded Lewis was entitled to an award of $75 per week, without indicating what total it assigned to her average weekly wages, or how it reached that figure. Moreover, the commission's finding that Lewis presented "no evidence whatsoever" as to the amount of money she earned is plainly wrong. Therefore, we find the commission's order was not supported by substantial

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and the commission's order was devoted to determining her employment status and the issue of her compensation was addressed only summarily.

evidence and remand the matter of Lewis's award to the commission for a de novo hearing.[3]

CONCLUSION

Based on the foregoing, we find the court of appeals erred in upholding the commission's order. In light of this case's procedural history and in fairness to both parties, we remand to the commission for a de novo hearing to determine the amount of benefits to which Lewis is entitled. The court of appeals' opinion is

REVERSED.

BEATTY, C.J., KITTREDGE, J. and Acting Justice James E. Moore, concur. Acting Justice Costa M. Pleicones, concurring in result only.

[3] In her brief, Lewis further argued the commission erred by considering her failure to file a Form 20 documenting her wages to be fatal to her case. We note that while the commission is entitled to consider the presence or absence of the form while weighing the evidence presented, the unique nature of Lewis's employment makes a Form 20 effectively useless in determining her average weekly wage. L.B. Dynasty never paid Lewis any wages—her earnings were solely dependent on tips given to her directly by patrons. Lewis testified that the other clubs where she performed operated in a similar manner. Accordingly, even if Lewis were to have obtained a Form 20 from L.B. Dynasty, the club had no knowledge of her earnings while she worked there, and the form would be of little use in aiding the commission to determine average weekly wages. Thus, an alternative method of wage calculation, such as the short-term employee provision of Section 42-1-40 of the South Carolina Code (2015), would have been necessary even if Lewis produced the form. Therefore, because the statutory scheme is designed to allow for alternative wage calculation methods when fairness requires, we hold the determination of Lewis's wages does not demand rigid adherence to the Form 20.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Melanie Anne Emery, Respondent.

Appellate Case No. 2017-000608

Opinion No. 27712
Submitted April 4, 2017 – Filed April 19, 2017

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

J. Steedley Bogan, Esquire, of Bogan Law Firm, of Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand. She further agrees: 1) to pay the costs incurred in the investigation and prosecution of this matter within thirty (30) days of the imposition of discipline; 2) to complete the Legal Ethics and Practice Program Trust Account School within one (1) year of the imposition of discipline; and 3) to refund $2,995.00 to Client B, $2,995.00 to Client C, and $3,000.00 to Client E within ninety (90) days of the imposition of discipline. We accept the Agreement and issue a public reprimand with conditions as specified in the conclusion of this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Respondent is licensed to practice law in South Carolina, New York, Maryland, and the District of Columbia. Prior to her admission in South Carolina in 2013, respondent was employed by three firms in other states, primarily conducting real estate closings. Since 2013, respondent has operated a solo practice, Emery Law, from an office in Myrtle Beach. Respondent also maintained office space for Emery Law in New York, but she performed little work there. Emery Law had no non-lawyer employees, but was, instead, staffed by contract paralegals employed by Precision Paralegal, a non-lawyer-owned company. Emery Law also used the support services of First Legal Net, a non-lawyer-owned company contracted through Precision Paralegals. During the times relevant to this Agreement, respondent had no partners or associates at Emery Law. Her practice in South Carolina has consisted of residential and commercial real estate closings and mortgage loan modification matters.

Matter I

During the time relevant to these complaints, respondent operated a website for Emery Law. Respondent admits that she retained a website professional to prepare the content of her website without discussing the Rules of Professional Conduct with him or reviewing the website before it was disseminated. The website professional developed the website content by cutting and pasting from other law firm websites which resulted in a number of inaccurate representations and improper statements.

Respondent acknowledges the following errors on her law firm website:

1. the website referred to "attorneys" and "lawyers" when in fact respondent was the only attorney at Emery Law;

2. the website claimed "over 12 years of experience" and "fifteen years combined experience" in reference to respondent. Although respondent had been admitted to practice for twelve years, she had only practiced law for about eight years prior to becoming admitted in South Carolina;

3. the website included a form of the word "expert," although respondent was not a certified specialist; and

4. the website advertised for "wrongful foreclosure lawsuits" when respondent had no experience in, or intention to accept, cases related to litigation.

Matter II

Respondent maintained a law firm profile on www.facebook.com. Both respondent and a paralegal employed through Precision Paralegal created content for the Facebook page. Respondent did not adequately monitor the posts made by the contract paralegal. Respondent acknowledges the following errors on her Facebook page:

1. the paralegal created Facebook posts congratulating respondent's clients after each real estate closing. Respondent did not have her clients' permission to post their names and other information about their legal matters on Facebook.

2. the paralegal included unsubstantiated comparative descriptions of respondent and her legal services such as "best;" and

3. the paralegal advertised special discounted rates for respondent's legal fees without disclosing whether or not those rates included anticipated costs.

Matter III

In 2013, respondent signed a contract with Friedman Law, a New York law firm, to accept referrals of mortgage loan modification cases. In connection with her association with Friedman Law, respondent received client referrals from an internet marketing company. Respondent paid for this service based on the number of potential clients referred to her, not based on the number of referred clients who ultimately hired her. Respondent charged her clients a "flat" fee for loan modification cases.

In this marketing campaign, advertisements were placed on the internet with a link to respondent's website. A potential client would access the website and complete an online questionnaire. Regardless of the residence of the potential client or the

location of the property, the case would be assigned to Emery Law as part of the Friedman Law network. A non-lawyer employee of the internet marketing company or Friedman Law would review the completed questionnaire, send a solicitation or introduction email to the potential client, and conduct an initial telephone consultation with the potential client. That contact would include discussing the scope of the representation and fees, and providing the client with the fee agreement and electronic payment authorization forms on Emery Law letterhead. Once the forms were signed and initial payment received, the client's information would be sent to non-lawyers working on behalf of Emery Law employed by Friedman Law, Precision Paralegal, or First Legal Net.

Upon receipt of client information, a non-lawyer employee of Friedman Law, Precision Paralegal, or First Legal Net would contact the client by telephone for a "quality control interview" to ensure that the client qualified for a loan modification. These non-lawyers would then set up the file and contact the client to complete necessary forms, request financial loan documentation, and schedule a telephone conference with a representative of the lender. In their communications with respondent's clients and potential clients, the non-lawyers included Emery Law in their signature blocks and used documents with Emery Law letterhead.

In connection with her association with Friedman Law, respondent accepted cases in states where she is not licensed to practice law. Six of those clients filed disciplinary complaints. Other than some of the Precision Paralegal employees who physically worked in her office, respondent had no direct supervision of the non-lawyers who worked on these clients' cases. Respondent was rarely copied on emails between the non-lawyers and these clients or internal emails among the non-lawyers. Respondent supervised their work by reviewing their notes, documents, and some emails on a shared electronic case management system.

Review of these clients' files reveals that, for the most part, the non-lawyers worked diligently to try to secure modifications of the mortgage loans and adequately communicated with the clients. In each of these cases, however, some issue or complication resulted in the client's dissatisfaction and, ultimately, the disciplinary complaints. Respondent had no personal, direct communication with these clients during their representation except when the cases reached the point at which the clients complained about her services or demanded refunds of their fees.

With regard to the conduct of the non-lawyers working on her behalf in these cases, respondent admits the following misconduct:

1. the non-lawyers presented the fee agreement and discussed the scope of the representation and the fee structure to the clients before respondent reviewed the file and accepted the cases. The written fee agreement was confusing and self-contradictory; it also contradicted statements made to the clients by some of the non-lawyers and subsequent emails and documents sent to the clients, particularly with regard to available legal services, fee refunds, and termination of the representation;

2. when issues arose about how the clients' cases were progressing, the non-lawyers discussed those issues and made decisions amongst themselves then advised the clients without respondent's input;

3. the non-lawyers negotiated the terms of loan modifications with lender representatives, sought continuances or stays of sales of properties from lenders' counsel and courts, and otherwise provided legal services to the clients without review or additional effort by respondent. In one case, a non-lawyer (referred to as a "bankruptcy specialist") assisted a client in preparing a *pro se* bankruptcy petition and advised her about filing procedures. The petition filed by the client was deficient and did not meet the requirements of the Bankruptcy Court. In another case, a non-lawyer advised the client to stop making mortgage payments during the modification negotiations (in spite of the client's ability to do so and the risk of foreclosure), contrary to respondent's customary advice to similarly situated clients; and

4. in email messages and telephone calls, the non-lawyers held themselves out as employees of Emery Law when, in fact, none of them were Emery Law employees, only a few physically worked in respondent's office, and most did not even work in South Carolina. At any given time, the clients did not know if they were communicating with an employee of Emery Law, Friedman Law, Precision Paralegal, First Legal Net, or an associated firm in the Friedman Law network.

Matter IV

Respondent relied on representations from Friedman Law that assisting a client in negotiating a mortgage loan modification was not the practice of law and that Friedman Law's network of attorneys in other states satisfied the requirements for multijurisdictional practice. Respondent admits the following with regard to her arrangements with Friedman Law:

1. assisting clients in loan modification matters is the practice of law in South Carolina when performed by a lawyer;

2. simply associating with a licensed attorney in another state might not be sufficient to avoid the unauthorized practice of law, depending on the rules and laws in place in that state;

3. she did not research the law in the states from which she accepted cases to determine the appropriateness of representing residents of those states; and

4. regardless of whether or not a particular state has adopted a rule permitting multijurisdictional practice and regardless of whether or not a particular state has determined that loan modification assistance is the practice of law, respondent's fee agreement specifically and repeatedly refers to her firm's services as "legal services" and to herself as "Attorney." Respondent admits that her clients reasonably believed that they were retaining an attorney at a law firm to provide them with legal services and that they would be afforded the protections of an ethical code specific to the legal profession.

Matter V

Client A is a resident of the State of Washington. Client A hired respondent to represent her in an attempt to modify the terms of a mortgage loan on residential property located in Washington. Client A agreed to a flat fee of $2,995.00, and made a payment of $1,500.00 towards that fee. Respondent was not licensed to practice law in Washington and did not disclose to Client A that she was not licensed to practice law in that state. Client A terminated respondent's services

prior to modification of the loan and sought the assistance of an attorney licensed in Washington. Respondent ultimately refunded fees paid by Client A and signed an agreement with Washington authorities that she will no longer perform services in that state.

Respondent admits the following misconduct with regard to her representation of Client A:

1. the loan modification services provided by her in Washington in connection with her law practice was subject to the Washington Rules of Professional Conduct;

2. her representation of Client A was part of a systematic and continuous presence in Washington and constituted the unauthorized practice of law in violation of Washington's Rules of Professional Conduct Rule 5.5(b);

3. funds were drawn on Client A's bank account through an authorized electronic transfer and paid directly into respondent's operating account prior to Client A signing the fee agreement and before those funds were earned. Washington Rules of Professional Conduct Rule 1.15A(c)(2) requires that fees paid in advance be held in trust until earned unless certain disclosures are made in a written fee contract. Respondent did not include those disclosures in Client A's fee contract and, therefore, she was not entitled to deposit the funds directly into her operating account; and

4. respondent's failure to adequately supervise the work of non-lawyers on Client A's case violated Washington Rules of Professional Conduct Rule 5.3(a).

Matter VI

Mr. and Mrs. B (Client B) are residents of the State of Wisconsin. Client B hired respondent to attempt to modify the terms of a mortgage loan on residential property located in Wisconsin. Client B paid respondent a flat fee of $2,995.00 through a series of electronic funds transfers. Ultimately, Client B terminated respondent's services before obtaining a loan modification.

Respondent was not licensed to practice law in Wisconsin. She did not disclose to Client B that she was not licensed to practice law in Wisconsin.

Respondent admits the following misconduct with regard to her representation of Client B:

1. her representation of Client B was part of a systematic and continuous presence in Wisconsin and, as such, was the unauthorized practice of law in violation of Wisconsin Supreme Court Rule 20.5.5(b)(1); and
2. funds were drawn on Client B's bank account through an authorized electronic transfer and paid directly into respondent's operating account before the funds were earned. Wisconsin Supreme Court Rule 20.1.15 requires that fees paid in advance are to be held in trust until earned unless certain disclosures are made in a written fee contract. Respondent did not include those disclosures in Client B's fee contract and, therefore, she was not entitled to deposit the funds directly into her trust account.

Matter VII

Client C is a resident of the State of Pennsylvania. Client C hired respondent to represent her in an attempt to modify the terms of a mortgage loan on residential property located in Pennsylvania. Client C paid a flat fee of $2,995.00 through a series of electronic funds transfers. Respondent was not licensed to practice law in Pennsylvania. Respondent terminated the representation prior to modification of the loan because Client C filed a disciplinary complaint.

Respondent admits the following misconduct with regard to her representation of Client C:

1. the loan modification services provided by respondent in Pennsylvania in connection with her law practice was subject to the Pennsylvania Rules of Professional Conduct, 204 Pa. Code § 81.4 pursuant to Rule 5.7;

2. her representation of Client C was part of a systematic and continuous presence in Pennsylvania and, as such, was the unauthorized practice of law in violation of Rule 5.5(b) of the Pennsylvania Rules of Professional Conduct;

3. funds were drawn on Client C's bank account through an authorized electronic transfer and paid directly into respondent's operating account before those funds were earned. Rule 1.15(i) of the Pennsylvania Rules of Professional Conduct requires that fees paid in advance be held in trust until earned unless the client gives informed consent, confirmed in writing, to the handling of fees in a different manner. Respondent did not obtain Client C's informed consent, confirmed in writing. Therefore, respondent was not entitled to deposit the funds directly into her operating account; and

4. her failure to adequately supervise the work of non-lawyers on Client C's case violated Rule 5.3(a) of the Pennsylvania Rules of Professional Conduct.

Matter VIII

Client D is a resident of the State of Texas. Client D hired respondent to represent him in an attempt to modify the terms of a mortgage loan on residential property located in Texas. Client D agreed to a flat fee of $2,995.00 and paid a total of $2,250.00 by cashier's checks. Respondent was not licensed to practice law in Texas, and she did not disclose to Client D that she was not licensed to practice law in that state. Client D terminated the representation prior to modification of the loan because of his concerns over the progress of the case. Respondent has refunded his fees.

Respondent admits the following misconduct with regard to her representation of Client D:

1. based on representations made in her written fee contract, the loan modification services provided by respondent in Texas in connection with her law practice were legal services subject to the Texas Disciplinary Rules of Professional Conduct.

2. respondent's representation of Client D was the unauthorized practice of law in violation of Rule 5.05(a) of the Texas Disciplinary Rules of Professional Conduct;

3. the cashier's checks submitted by Client D were deposited into respondent's operating account before the funds were earned. Rule 1.14(c) of the Texas Rules of Professional Conduct requires that fees paid in advance be held in trust until earned,[1] therefore, respondent was not entitled to deposit the funds directly into her operating account; and

4. respondent's failure to adequately supervise the work of non-lawyers on Client D's case violated Rule 5.03(a) of the Texas Disciplinary Rules of Professional Conduct.

Matter IX

Mr. and Mrs. E (Client E) are residents of the State of Utah. Client E hired respondent to modify the terms of a mortgage loan on residential property located in Utah. Client E agreed to a flat fee of $3,000.00 which was paid through a series of electronic funds transfers. Respondent was not licensed to practice law in Utah. Respondent did not disclose to Client E that she was not licensed to practice law in Utah. Client E terminated the representation prior to modification of the loan because of concerns over the progress of the case.

Respondent admits the following misconduct with regard to her representation of Client E:

1. the loan modification services provided by respondent in Utah in connection with her law practice was subject to the Utah Rules of Professional Conduct pursuant to Rule 5.7(b) of those rules;

2. her representation of Client E was part of a systematic and continuous presence in Utah and, as such, was the unauthorized practice of law in violation of Rule 5.5(b) of the Utah Rules of Professional Conduct;

3. funds were drawn on Client E's bank account through authorized electronic transfers and paid directly into respondent's operating account before those fees were earned. Rule 1.15(c) of the Utah Rules of Professional Conduct requires that fees paid in advance be held in trust

[1] *See* Comment 2 to Rule 1.14(c) of the Texas Rules of Professional Conduct.

until earned, therefore, respondent was not entitled to deposit the funds directly into her operating account; and

4. her failure to adequately supervise the work of non-lawyers on Client E's case violated Rule 5.3(a) of the Utah Rules of Professional Conduct.

Matter X

Client F is a resident of the State of Illinois. Client F hired respondent to represent her in an attempt to modify the terms of a mortgage loan on residential property located in Illinois. Client F agreed to a flat fee of $2,995.00 which was paid with a series of electronic funds transfers. Respondent was not licensed to practice law in Illinois. Respondent did not disclose to Client F that she was not licensed to practice law in Illinois. Client F terminated the representation prior to modification of the loan. Respondent entered into a settlement agreement to refund $1,300.00 of the fees paid. Client F filed a disciplinary complaint with the disciplinary authority in Illinois which then referred the matter to the Commission on Lawyer Conduct (the Commission). Ultimately, respondent refunded Client F the full amount of the fees paid.

Respondent admits the following misconduct with regard to her representation of Client F:

1. based on representations set forth in her fee agreement, the loan modification services provided by respondent in Illinois in connection with her law practice were legal services subject to the Illinois Rules of Professional Conduct;

2. her representation of Client F was part of a systematic and continuous presence in Illinois and, as such, was the unauthorized practice of law in violation of Rule 5.5(b) of the Illinois Rules of Professional Conduct;

3. funds were drawn on Client F's bank account through an authorized electronic transfer and paid directly into respondent's operating account before the fees were earned. Rule 1.15(c) of the Illinois Rules of Professional Conduct requires fees paid in advance be held in trust until earned unless certain disclosures are made in a written fee contract. Respondent did not include those disclosures in Client F's fee contract

and, therefore, was not entitled to deposit the funds directly into her operating account;

4. her failure to adequately supervise the work of non-lawyers on Client F's case violated Rule 5.3(a) of the Illinois Rules of Professional Conduct; and

5. in entering into a settlement agreement with Client F, respondent prospectively limited her liability to Client F without the involvement of, or the advice to seek the advice of independent counsel, in violation of Rule 1.8(h) of the Illinois Rules of Professional Conduct.

Matter XI

Respondent represented Apex Homes and its sole shareholder (LW) in real estate matters. In August 2015, LW retained respondent to file a collection action in South Carolina on behalf of Apex against US Development Company, LLC (US Development) on a promissory note guaranteed by three individuals (DB, TP, and JP) (referred to as the Collection Action).

Respondent attempted service on US Development and the three guarantors, all named as defendants in the Collection Action. Robert Lewis, Esquire, contacted respondent and advised her he would be representing US Development, TP, and JP in the Collection Action. Mr. Lewis also advised respondent that he would not be representing DB nor would he accept service on his behalf.

Respondent was unable to perfect service on DB. On January 27, 2016, respondent filed a Motion for Order of Publication which was granted. DB did not file an answer. In June 2016, respondent filed a Motion for Default against DB. A hearing was held in which DB (through counsel) argued that DB should be permitted to file a late answer because respondent did not serve Mr. Lewis (as counsel for the other three defendants) with the Motion for Order of Publication.

Following the hearing on the Motion for Default, Mr. Lewis and DB's counsel requested respondent provide proof of service of the Motion for Order of Publication and proposed order on Mr. Lewis. Respondent produced a copy of a cover letter to the clerk of court showing a carbon copy ("cc") to Mr. Lewis. An examination of the clerk of court's file showed that the copy of the cover letter was

not the same as the one actually sent to the clerk of court. The letter in the clerk's file did not show a "cc" to Mr. Lewis and differed in a number of other significant ways from the copy. Respondent also produced a copy of an affidavit of her paralegal attesting that she had served Mr. Lewis with the Motion and proposed order. The affidavit of service was not filed with the clerk of court.

Respondent informed the court that it was the practice of her paralegal to add a "cc:" reference to a copy of a cover letter, then to serve the amended copy along with an affidavit of service on the parties listed in the "cc:" reference. Respondent further asserts that, in the case of the Motion for Order by Publication and proposed order in the Collection Action, her paralegal misplaced the copy and, therefore, recreated the cover letter and added the "cc:" reference, thus accounting for the inconsistencies between the original in the clerk's file and the copy.
Mr. Lewis reviewed the clerk of court's file and found respondent's cover letters for the Order of Publication, Affidavit of Publication, affidavits of service and of nonservice, a Motion for Summary Judgment and a Motion for Protective Order. The original cover letters for these documents do not have "cc:" references indicating that Mr. Lewis was served.

In her order denying the Motion for Default Judgment, the judge found that respondent "did not serve Robert Lewis - who represented the other Defendants in the suit - with the Motion for Order of Publication. The failure to serve the co-defendants seems to be a result of a break down in office procedures, and was not the result of willful actions on behalf of [respondent]. However, the [clerk of court's] file corroborates Lewis's contention that he was not served with the motion and other pertinent documents."

Respondent asserts her paralegal followed the practice set forth above with the other documents as well. That is, she made copies of the cover letters and added the "cc:" references to them before she served them on Mr. Lewis. Respondent acknowledges that this practice makes it difficult for her to establish that she actually served Mr. Lewis with the documents. She also acknowledges that showing a copy to opposing counsel on a motion allows the judge to ensure compliance with Canon 3(B)(7) of the Code of Judicial Conduct, Rule 501, SCACR. Respondent has now put in place a better procedure in her office to ensure that service of motions and other papers is properly documented.

Matter XII

In March 2016, respondent filed a defamation action in South Carolina on behalf of LW and Apex against US Development, TP, JP, Mr. Lewis, and Mr. Lewis's law firm (referred to as the Defamation Action). The alleged defamatory statements were made in connection with a Department of Labor, Licensing, and Regulation complaint defendants filed against an appraiser involved in the transaction underlying the Collection Action.

After she filed the Defamation Action Summons and Complaint, but before she attempted service, respondent issued third party subpoenas for documents she believed would support her clients' defamation claims. She did not serve Mr. Lewis or any of the other Defamation Action defendants with copies of the subpoenas. Ultimately, respondent was unable to obtain documents to support those claims so she dismissed the Defamation Action with prejudice. Respondent mistakenly believed that she did not have to serve the defendants with copies of the subpoenas as they had not yet been served with the Defamation Action Summons and Complaint. Respondent now recognizes that Rule 45(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP) requires that she serve notice and a copy of a third-party subpoena to all parties to an action. She further acknowledges that it was improper to issue subpoenas prior to service of the Defamation Action Summons and Complaint and that the proper procedure for obtaining the information she sought would have been to file a petition pursuant to Rule 27(a), SCRCP.

Law

Respondent admits that by her conduct she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.6 (lawyer shall not reveal information relating to representation of client unless client gives informed consent); Rule 5.3(a) (with respect to non-lawyer employed by lawyer, lawyer shall make reasonable efforts to ensure that firm has in effect measures giving reasonable assurance that person’s conduct is compatible with professional obligations of lawyer); Rule 5.5(a) (lawyer shall not practice law in jurisdiction in violation of regulation of law in that jurisdiction)**;** Rule 5.7 (lawyer shall be subject to Rules of Professional Conduct with respect to provision of law related services); Rule 7.1(a) (lawyer shall not make false, misleading, or deceptive communications about

lawyer or lawyer's services; communication violates rule if it contains material misrepresentation of fact or omits fact necessary to make statement considered as whole not materially misleading); Rule 7.1(c) (lawyer shall not make false, misleading, or deceptive communications about lawyer or lawyer's services; communication violates rule if it compares lawyer's services with other lawyers' services, unless comparison can be factually substantiated); Rule 7.2(g) (lawyer who advertises specific fee or range of fees for particular service shall honor advertised fee or fee range for at least ninety (90) days following dissemination of advertisement, unless advertisement specifies shorter period; provided fee advertised in publication issued not more than annually, shall be honored for one (1) year following publication); Rule 7.4(b) (lawyer who is not certified specialist may not use word or form of words "certified," "specialist," "expert," or "authority" in advertisement); Rule 7.5(d) (lawyer may state or imply lawyer practices in partnership or other organization only when that is fact); Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct prejudicial to administration of justice); and Rule 8.5(c) (lawyer giving advice or providing services that would be considered practice of law if provided while lawyer affiliated with law firm is subject to Rules of Professional Conduct with respect to giving of such advice or providing of such services whether or not lawyer actively engaged in practice of law or affiliated with law firm; in giving such advice and in providing such services, lawyer shall be considered to be representing client for purposes of Rules of Professional Conduct.).

Respondent also admits she has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand respondent for her misconduct. In addition, respondent shall: 1) pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission no later than thirty (30) days from the date of this opinion and 2) provide proof of completion of the Legal Ethics and Practice Program Trust Account School to the Commission no later than one (1) year from the date of this opinion. Further, within ninety (90) days of

the date of this opinion, respondent shall refund $2,995.00 to Client B, $2,995.00 to Client C, and $3,000 to Client E.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of John Michael Bosnak, Respondent.

Appellate Case No. 2017-000606

Opinion No. 27713
Submitted April 4, 2017 – Filed April 19, 2017

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

John Michael Bosnak, of Columbia, *pro se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand or definite suspension not to exceed one (1) year. Respondent requests that any period of suspension be imposed retroactively to February 2, 2016, the date of his interim suspension from the practice of law. *In the Matter of Bosnak*, 415 S.C. 332, 782 S.E.2d 123 (2016). Respondent further agrees to pay the costs incurred in the investigation and prosecution of this matter within thirty (30) days of the imposition of discipline and to complete the Legal Ethics and Practice Program Ethics School and Trust Account School within one (1) year of the imposition of discipline. We accept the Agreement and suspend respondent from the practice of law in this state for one (1) year, retroactive to the date of his interim suspension. In addition, we order respondent to pay the costs

incurred in the investigation and prosecution of this matter and to complete the Legal Ethics and Practice Program Ethics School and Trust Account School as specified in the conclusion of this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Matter I

Respondent represented a client in a probate matter following the death of the client's son. The client was appointed as Personal Representative of the estate.

On November 26, 2008, respondent brought a wrongful death suit on behalf of the estate against a police department and other named parties in federal court. On April 23, 2010, the defendants in the lawsuit moved to dismiss the case for failure to prosecute. In July of 2010, the federal court dismissed the lawsuit for failure to prosecute stating that respondent did not respond to the motion to dismiss on behalf of the estate.

Respondent filed a motion to reconsider. In the order denying the motion, the federal court stated: "The case has been marked by numerous delays on the part of plaintiff's counsel, who failed to file documents in a timely fashion, failed to respond to any discovery requests except for providing the defendants with one document, failed to respond to the defendants' motion to compel discovery responses, failed to respond to the Court's order regarding that discovery, and failed to respond to the defendants' motion to dismiss."

The client hired an attorney (Complainant) to gather information about the dismissal of the case. The Complainant contacted the probate court and scheduled a status conference in the case for February 4, 2011. Respondent was served with notice of the status conference but failed to attend.

On February 8, 2011, the client, as Personal Representative, issued a subpoena to respondent for documents on February 16, 2011, and for his testimony on February 23, 2011. Respondent failed to comply with the subpoenaed requests for documents. On the morning of the scheduled deposition, respondent left a message at Complainant's office stating that he would not be attending the deposition because he was in trial in General Sessions Court.

Respondent was sent another subpoena for March 18, 2011. One minute prior to the deposition, respondent faxed a motion to quash the deposition as the client had not waived attorney-client privilege.[1]

In response to the motion to quash, the Personal Representative filed a motion to compel, sanction and hold respondent in contempt. The hearing was scheduled for June 1, 2011. Respondent failed to appear for the hearing.

On June 7, 2011, the court issued an order compelling respondent to attend his deposition. Respondent was given his choice of dates for the deposition. He was also ordered to contact Complainant and advise Complainant of his choice for deposition dates. Respondent failed to comply with the June 7, 2011 order.

On June 30, 2011, respondent faxed the probate court and advised the court that he could not comply with the court's June 7, 2011, order because he was scheduled for another trial in General Sessions Court. The court responded, giving respondent one last opportunity to comply with its order. The court directed respondent to contact Complainant immediately; respondent did not contact Complainant.

The probate court issued an order holding respondent in civil contempt. Respondent was given the opportunity to purge himself of contempt by paying the Personal Representative $5,651.48 in costs, providing the documents requested by the estate, and by appearing for his deposition.

Respondent hired counsel to represent him before the probate court. Eventually, respondent appeared for the deposition and the probate matter was settled.

On August 30, 2011, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen (15) days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982), on October 4, 2011, again requesting respondent's response. Respondent failed to respond to the Notice of Investigation. Respondent did appear and give testimony before ODC on December 1, 2011.

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[1] Respondent subsequently received the requested waiver on or about March 25, 2011.

Matter II

ODC received an April 8, 2015, notice from Wells Fargo Bank indicating an overdrawn check on respondent's trust account. The check represented payment to a client and resulted in respondent's trust account being overdrawn by $43.09. Respondent deposited $80 in personal funds to cover the overdrawn check. Respondent represents the non-sufficient funds notice resulted from bank error drafting fees for a check re-order from his IOLTA trust account.

On April 15, 2015, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen (15) days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, *id.*, on May 14, 2015, again requesting his response. Respondent failed to respond to the Notice of Investigation in spite of the *Treacy* letter.

On August 26, 2015, respondent was served with a Notice to Appear before ODC to answer questions on the record. Respondent was also served with a subpoena that required him to bring trust account records maintained pursuant to Rule 417, SCACR, to the August 26, 2015 appearance. Respondent appeared before ODC and gave testimony on the record, but he failed to produce the trust account records. Respondent was provided an additional ten (10) days to submit the trust account records, but he failed to do so.

Matter III

ODC received a December 15, 2015, notice from Wells Fargo Bank indicating an overdrawn item on respondent's trust account. The bank had processed a transaction for check reorders in the amount of $189.15 when respondent's trust account had a balance of only $100.00. The transaction resulted in respondent's account being overdrawn in the amount of $89.15. According to the bank, the charge was a drafted payment that was not initiated by respondent and was promptly refunded the following day.

In connection with the investigation by ODC, respondent was asked to provide a complete copy of his trust account reconciliation. Respondent failed to provide the requested reconciliation.

Matter IV

On February 2, 2016, the Court placed respondent on interim suspension and appointed Peyre T. Lumpkin, Esquire, as Receiver to protect the interests of respondent's clients. The Receiver discovered that respondent withdrew $6,000 from his IOLTA account at Wells Fargo Bank on February 3, 2016, in spite of notice of the Court's order placing him on interim suspension. Respondent admits that he received a telephone call from the Supreme Court's Clerk of Court's office regarding the interim suspension on February 2, 2016. He represented he did not recall being told that he could not access his trust account as he was in shock at the notice he was being suspended.[2] Respondent provided verification that the funds withdrawn from the account represented his earned fees that had not been withdrawn prior to his interim suspension.

As of February 2, 2016, the balance in respondent's trust account was $25,524.85 which represented settlement funds for one client and $100 that belonged to respondent. The $6,000 respondent removed from the trust account on February 3, 2016 represented a portion of respondent's fees from the settlement.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall promptly inform client of any decision or circumstance with respect to which client's informed consent is required, reasonably consult with client about means by which client's objectives are to be accomplished, keep client reasonably informed about

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[2] The records of this Court reflect that, during a telephone conversation with respondent on February 2, 2016, a member of the Clerk's staff read the entire interim suspension order to respondent, including the language in the order stating the order "serve[s] as an injunction to prevent respondent from making any withdrawals from" his trust accounts, escrow accounts, operating accounts and any other law office accounts that he may maintain.

status of matter, and promptly comply with reasonable requests for information); Rule 1.15(a) (lawyer shall hold property of client in connection with representation separate from lawyer's own property; lawyer shall comply with Rule 417, SCACR); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with interests of client); Rule 3.4(c) (lawyer shall not knowingly disobey obligation under rules of tribunal); Rule 8.1(b) (in connection with disciplinary matter, lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority); Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct prejudicial to administration of justice). In addition, respondent admits that he has violated Rule 417, SCACR.

Respondent further admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rules 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a definite suspension from the practice of law in this state for one (1) year, retroactively to the date of his interim suspension.[3] Within thirty (30) days, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission). In addition, respondent shall complete the Legal Ethics and Practice Program Ethics School and Trust Account School within one (1) year of the date of this opinion and provide proof of completion to the Commission no later than ten (10) days after the conclusion of each program.

[3] Respondent's disciplinary history includes letters of caution issued in 2005 and 2008 and an admonition issued in 2011. *See* Rule 2(r), RLDE; Rule 7(b)(4), RLDE.

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include Aiken County. Effective April 25, 2017, all filings in all common pleas cases commenced or pending in Aiken County must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Allendale	Anderson	Beaufort	Cherokee
Clarendon	Colleton	Greenville	Hampton
Jasper	Lee	Oconee	Pickens
Spartanburg	Sumter	Williamsburg	
Horry	Georgetown	**Aiken—Effective April 25, 2017**	

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available at http://www.sccourts.org/efiling/ to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
April 11, 2017

The Supreme Court of South Carolina

Re: Amendments to Appendix H to Part IV, South Carolina Appellate Court Rules

Appellate Case No. 2016-002489

ORDER

The South Carolina Board of Paralegal Certification (the Board) has requested the Court approve several amendments to the regulations that govern the process to certify a person as a South Carolina Certified Paralegal. Those regulations are contained in Appendix H to Part IV, SCACR, and are governed by Rule 429, SCACR.

We grant the Board's request to amend Section IX(A)(2) of Appendix H to add another method for certification by obtaining the Professional Paralegal designation offered by the National Association for Legal Professionals (NALS).

We also grant the Board's request to amend Section XV of Appendix H, with some modifications, to permit sponsors of Continuing Paralegal Education Programs to seek accredited status and permit Certified Paralegals to seek accreditation and teaching credit for Continuing Paralegal Education Programs where sponsors have not sought accreditation.

We deny the Board's request to amend Appendix H to permit a person to be certified by experience.

Appendix H is amended as set forth in the attachment to this Order. These amendments are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
April 19, 2017

Section IX(A), Appendix H to Part IV, SCACR, is amended to provide:

A. To qualify for certification as a paralegal, an applicant must:

(1) Pay an annual fee of $50.00; and

(2) At the time of application, be designated as a Certified Legal Assistant (CLA)/Certified Paralegal (CP), Professional Paralegal (PP), or PACE-Registered Paralegal (RP).

Section XV, Appendix H to Part IV, SCACR, is amended to provide:

XV. FEES

A. Sponsors seeking accreditation for a particular CPE program that has not already been approved or accredited by the South Carolina Commission on Continuing Legal Education and Specialization shall pay a non-refundable fee of $75.00.

B. Sponsors may seek accredited status by submitting a form provided by the Board and an annual fee of $200.00. A sponsor granted accredited status is not required to pay the $75.00 fee for approval of each CPE program or submit an application form; however, the sponsor must submit the program agenda for approval of each program. The status shall be effective from July 1 through June 30.

C. Individuals seeking accreditation of a course for which the sponsor has not sought accreditation may submit the form provided by the Board together with a non-refundable fee of $25.00.

D. Individuals seeking teaching credit for a course for which the sponsor has not sought accreditation may submit the form provided by the Board together with a non-refundable fee of $25.00.