

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 20-8002A

IN RE MICHAEL A. STEINBERG, MEMBER OF THE BAR

Before GREENBERG, MEREDITH, and FALVEY, *Judges*.

ORDER

The respondent, Michael A. Steinberg, a member of the Court's bar, is the subject of a grievance by the Clerk of the Court (Clerk). The grievance alleged that Mr. Steinberg repeatedly failed to respond to Court orders and failed to comply with the Court's Rules of Practice and Procedure. After the Chief Judge made a finding of prima facie validity pursuant to Rule 6(a) of this Court's Rules of Admission and Practice, the Court ordered the matter to be referred to the Court's Standing Panel on Admission and Discipline.

On April 28, 2020, the Court ordered the respondent to show cause why the grievance should not be referred to the Court's Committee on Admission and Practice for action pursuant to Rule 2 of the Court's Rules of Admission and Practice. Mr. Steinberg did not file a response. Pursuant to Rule 6(b)(2)(B) of the Court's Rules of Admission and Practice, on July 16, 2020, the Court then ordered the respondent to show cause why the Court should not impose a suspension of 90 days and a requirement to complete at least 6 hours of ethics-focused continuing legal education within 6 months before applying for readmission to the Court's bar.

Mr. Steinberg responded on August 14, 2020. In his response, Mr. Steinberg "admits the violations" and offers a "mitigat[ing]" statement. Response at 1. He asserts that he has a long history of representing veterans, mostly at the administrative level, and that he had been representing one of the veterans, whose case is the subject matter of this grievance, for over 10 years. *Id.* He also generally describes the events that transpired in docket number 19-0617, including that he did not see at least two orders directing him to comply with the Court's Rules of Practice and Procedure and that, when he was ordered to show cause why he should not be referred to the Court's Committee on Admission and Practice, he "was not able to provide such a statement, because in fact, he could not show good cause." *Id.* at 3; *see id.* at 1-3. Last, he contends that he is currently handling several appeals and states that it would be unfair to his clients to require them to seek representation from another attorney. *Id.* at 3. He thus proposes an alternative discipline: "[A] fine, forfeiture of any attorneys fees, . . . [6] hours of ethics[-]focused continuing legal education within [6] months, and a period of probation whereby, if [he] fails to comply with the sanctions, the period of suspension be imposed." *Id.* at 4. In the alternative, he asks the Court to delay the period of suspension until after his pending cases are resolved. *Id.*

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I. PROFESSIONAL MISCONDUCT

Pursuant to Rule 4(a) of the Court's Rules of Admission and Practice, the Court applies the *Model Rules of Professional Conduct* (Model Rules) adopted by the American Bar Association (ABA). A practitioner is subject to the Court's disciplinary authority for professional misconduct, which is defined in part as "an act or omission that violates the Court's disciplinary standard or any other disciplinary rules applicable to the practitioner" and may include "a failure to comply with any rule of the Court." U.S. VET. APP. R. ADM. & PRAC. 4(b)(1)(A), (2). Here, the respondent does not dispute the Clerk's grievance and, as discussed below, the Court concludes that he violated Model Rules 1.1 (Competence) and 1.3 (Diligence) and committed professional misconduct as defined by Rule 4(b) of the Court's Rules of Admission and Practice.

Two cases in which Mr. Steinberg appeared are the subject of the Clerk's grievance—docket numbers 18-6557 and 19-0617. The Court will briefly discuss the history of each case.

A. Docket No. 18-6557

In docket number 18-6557, the Court issued four orders from December 2018 to January 2020 concerning failures by the respondent to timely respond to Court orders and failures to comply with the Court's Rules of Practice and Procedure. First, on December 14, 2018, the Court ordered Mr. Steinberg to comply with Rule 46(b) of the Court's Rules of Practice and Procedure by submitting a copy of a fee or retainer agreement. The Court warned that failure to comply may result in dismissal of the appeal. Mr. Steinberg did not respond to the Court's order.

Second, on February 15, 2019, the Court ordered the appellant represented by Mr. Steinberg to clarify whether he would continue prosecuting the appeal pro se. No response was received; thus, on March 19, 2019, the Court dismissed the case for the appellant's failure to prosecute the appeal and to comply with the Court's Rules of Practice and Procedure. The Court revoked the March 19 order when it granted the appellant's motion to reinstate the appeal.¹

On September 12, 2019, the Court ordered the parties to attend a briefing conference on October 8, 2019. The Secretary filed a motion to reschedule the conference, noting in part that the appellant's position regarding the motion was unknown because Mr. Steinberg had "not responded to several inquiries from the [Secretary's counsel] and the Court staff to determine his amenability to th[e] proposed date and time." Secretary's Oct. 3, 2019, Mot. to Reschedule Briefing Conference. The Court granted the Secretary's motion but subsequently rescheduled the conference for a second time because Mr. Steinberg did not file a certificate of service and submit the statement of issues to be discussed at the briefing conference, as required by the September 12 order. *See* Oct. 25 and Oct. 31, 2019, Court Orders.

¹ In that motion, Mr. Steinberg stated that he was not aware of the Court's orders because he "did not anticipate such an order at this stage in the appeals process and missed the emails with the links to the orders." Appellant's Mar. 26, 2019, Motion (Mot.) to Reinstate. He further noted that he did not have a separate fee agreement for representation before the Court but attached a copy of a 2014 contingency fee agreement, which contains an offset provision regarding fees awarded pursuant to the Equal Access to Justice Act.

Finally, the respondent violated Rule 31 of the Court's Rules of Practice and Procedure when he failed to file a brief within 30 days after a November 8, 2019, Rule 33 staff conference. Accordingly, the Court ordered the appellant to "comply with the [r]ules of the Court by filing the brief and appropriate motion to file the brief late" within 7 days. Dec. 10, 2019, Court Order. Thirteen days later, Mr. Steinberg submitted the brief and a motion to file the brief late.² The Court granted the motion on January 22, 2020, but provided that "no further extensions will be granted in this case" because "[i]t's a basic expectation that lawyers meet deadlines, and the docket thus far presents a failure in this regard." Jan. 22, 2020, Court Order. The Court further cautioned Mr. Steinberg "to heed the Court's rules regarding timeliness," noting that this "is not an isolated case involving this attorney." *Id.* (citing Docket Nos. 13-1929, 09-1487, 08-3572, 08-0729).

B. Docket No. 19-0617

In this case, the Court issued five orders from February 2019 to April 2020, including multiple orders to show cause, regarding Mr. Steinberg's failures to respond to Court orders and failures to comply with the Court's Rules of Practice and Procedure. First, as in the case described above, on February 26, 2019, the Court ordered him to comply with Rule 46(b) of the Court's Rules of Practice and Procedure by submitting a copy of a fee or retainer agreement within 14 days. Again, the Court warned that failure to comply may result in dismissal of the appeal. Mr. Steinberg did not respond to the Court's order in a timely manner; instead, he filed the fee agreement one month later, on March 26, 2019.

Second, the respondent violated Rule 31 of the Court's Rules of Practice and Procedure when he failed to file a brief within 30 days after an August 19, 2019, Rule 33 staff conference. Accordingly, the Court issued an order on September 19, 2019, directing him to "comply with the [r]ules of the Court by filing the brief and appropriate motion to file the brief late," within 7 days. Sept. 19, 2019, Court Order.

Mr. Steinberg did not respond to the Court's order. Court personnel then contacted the respondent on October 24, 2019, to discuss his failure to comply with the Court's September 19 order, at which time he indicated that he would file something that day. He submitted a brief 4 days later, on October 28, 2019. The brief, however, did not conform to the Court's Rules of Practice and Procedure; the Court issued a notice of nonconforming documents on October 31, 2019, and stayed proceedings for 7 days to allow the appellant to file a conforming brief.

The respondent did not comply in the allotted time. Thus, on November 12, 2019, the Court issued another order to show cause. *See* Nov. 12, 2019, Court Order. Again, Mr. Steinberg did not

² Mr. Steinberg stated that he was unable to complete the brief because he "received multiple orders requiring briefing in other cases, all within the similar window of time to complete." Appellant's Dec. 23, 2019, Mot. to File Brief Out of Time.

respond. Approximately 4 months later, on March 19, 2020, the Court received the amended brief and a motion for leave to file the brief.³

The Court did not act on the motion at that time; instead, on March 20, 2020, the Court issued an order detailing the respondent's repeated failures to respond to the Court's orders in this case. Mar. 20, 2020, Court Order. The Court described the respondent's conduct as a "fundamentally disturbing issue" that "raises serious questions about [his] competence to appear before this Court," and which shows "a disrespect for the Court's rules and an abdication of his responsibilities to [his] client." *Id.* at 1-2. The Court thus ordered that, within 21 days, Mr. Steinberg file "an amended motion for leave to file appellant's brief out of time that provides a detailed justification for his actions" and a separate statement "showing cause why the Court should not refer him to the Court's Committee on Admission and Practice, or otherwise sanction him, based on his conduct in this matter." *Id.* at 3.

For the fourth time, Mr. Steinberg did not respond to an order in this case. Accordingly, on April 13, 2020, the Court ordered the respondent to "show[] cause why the Court should not hold him in contempt of court pursuant to 38 U.S.C. § 7265(a)(3)." Apr. 13, 2020, Court Order. The Court received no response; thus, on April 21, 2020, the Court held Mr. Steinberg in civil contempt. *See* Apr. 21, 2020, Court Order at 3-4 (citing 38 U.S.C. § 7265(a)(3) and *Pousson v. Shinseki*, 22 Vet.App. 432, 437 (2009) (per curiam order)). By a separate order on the same date, the Court stayed proceedings for 60 days "to allow appellant time to confer with his attorney and consider how he wishes to proceed before the Court." Apr. 21, 2020, Stay Order.⁴

C. Discussion

Model Rule 1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The commentary to this rule indicates that competent handling of a case includes "adequate preparation" and "inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." Model Rule 1.1, Comment 5.

Model Rule 1.3 further provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The commentary to this rule explains that "[a] lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Model Rule 1.3, Comment 1. The commentary also reflects that "[a] client's interests often can be adversely affected by the passage of time." Model Rule 1.3,

³ In his motion, the respondent stated that the "amended brief was filed untimely due to a mistaken belief that it had already been filed." Appellant's Mar. 19, 2020, Mot. To File Brief Out of Time.

⁴ The Court received no response from the appellant or the respondent. Exercising its discretion, the Court did not hold counsel's behavior against the appellant but instead granted the appellant's March 19, 2020, motion for leave to file a brief out of time and directed the Clerk to file the brief received on March 19, 2020. *See* June 25, 2020, Court Order.

Comment 3. But, "[e]ven when the client's interests are not affected in substance," unreasonable delay from a lawyer's lack of diligence "can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." *Id.*

In this case, the respondent does not dispute the alleged violations and the Court concludes that he violated Model Rules 1.1 and 1.3. As demonstrated above, in docket numbers 18-6557 and 19-0617, Mr. Steinberg failed to respond to nine Court orders over a 15-month period, including an order to show cause why he should not be held in contempt for his behavior in docket number 19-0617. A competent and diligent lawyer would be expected to meet the Court's filing deadlines and respond in a timely manner to Court orders. By missing multiple filing deadlines, repeatedly ignoring Court orders, and submitting nonconforming documents, Mr. Steinberg has demonstrated an inability or unwillingness to adequately prepare his cases and to follow this Court's procedures in violation of Model Rule 1.1. *See In re Gluck*, 114 F. Supp. 3d 57, 59 (E.D.N.Y. 2015) (finding that, by repeatedly failing to comply with deadlines and appear at pretrial conferences, the respondent displayed incompetence and a disrespect for the court and judicial process).

Further, his neglectful conduct has caused undue delay in his cases and demonstrates a lack of "commitment and dedication to the interests of [his] client[s]," in violation of Model Rule 1.3, Comment 1. In addition to the anxiety that he likely caused his clients, Mr. Steinberg's behavior also placed unnecessary burdens on this Court. In this regard, the Court notes that Mr. Steinberg did not request an extension of time to comply in either case discussed above. Instead, his delinquent conduct has required the Court to repeatedly issue orders directing his compliance, often warning that failure to comply may result in dismissal of the appeal. Indeed, the Court initially dismissed the appeal in docket number 18-6557 after he failed to comply with Rule 46(b) of the Court's Rules of Practice and Procedure and failed to respond to two Court orders.

As a member of this Court's bar since July 20, 1999, Mr. Steinberg should be aware of this Court's Rules of Practice and Procedure. His behavior shows an apparent lack of respect and blatant disregard for this Court's rules and constitutes professional misconduct.

II. DISCIPLINE

Pursuant to Rule 4(a) of the Court's Rules of Admission and Practice, the Court relies on the ABA's *Standards for Imposing Lawyer Sanctions* (ABA Standards). These standards provide that "[t]he purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession." ABA Standard 1.1.

When imposing discipline, the Court should assess whether public or private discipline is appropriate. In this regard, ABA Standard 1.2 provides that "[o]nly in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed." ABA Standard 1.2. "[L]awyer discipline should be public . . . in cases of disbarment, suspension, and reprimand." *Id.* Additionally, ABA Standard 3.0 provides that, "[i]n imposing a sanction after a finding of lawyer misconduct, a court should consider" four factors: (1) the duty violated; (2) the

lawyer's mental state; (3) the potential or actual injury caused by the misconduct; and (4) any aggravating or mitigating factors. ABA Standard 3.0. For the reasons discussed below, the Court concludes that private discipline is not appropriate and that the respondent fails to present mitigating factors to warrant reducing the sanction proposed in the Court's July 16, 2020, order to show cause.

With regard to the first factor considered under ABA Standard 3.0, the record overwhelmingly demonstrates that the respondent violated duties to his clients by failing to provide competent representation and by failing to act with reasonable diligence and promptness. *See* ABA Standards, Theoretical Framework (providing that "the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients").

As to the second factor, the Court has no evidence that Mr. Steinberg acted intentionally. However, given his pattern of misconduct and the Court's repeated warnings, the record strongly suggests that he acted with knowledge of wrongdoing. *See* ABA Standards, Theoretical Framework (defining "knowledge" as "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result").

Turning to the third factor, the Court concludes that Mr. Steinberg's conduct caused, or had the potential to cause, injury or serious injury. For instance, the respondent's misconduct had the potential to lead to the involuntary dismissal of his clients' appeals, a serious injury. *See In re Brady*, 387 P.3d 1, 5 (Alaska 2016) (imposing a 6-month suspension for an attorney's failure to comply with deadlines, resulting in the dismissal of his client's case). Additional injuries include unnecessary hurdles to the administration of justice, burdens on the Court's resources, and the potential anxiety to clients from uncertainty and delays in their cases. For example, in docket number 19-0617, the Court stayed the case for 60 days after the respondent was found in contempt and, in docket number 18-6557, the Court initially dismissed the case for failure to prosecute.

Finally, under the fourth factor, the Court is required to consider the existence of any aggravating or mitigating factors. ABA Standard 9.22 delineates several potential aggravating factors. We find three applicable here: A pattern of misconduct, multiple offenses, and substantial experience in the practice of law. As set forth above, Mr. Steinberg's history establishes a clear pattern of misconduct in which he has engaged in multiple offenses that constitute violations of Model Rules 1.1 and 1.3. *See Lawyer Disciplinary Bd. v. Scott*, 579 S.E.2d 550, 558 (W. Va. 2003) (considering a pattern of misconduct and multiple offenses aggravating factors). Further, he has been a member of this Court's bar since 1999. In those 21 years, he has appeared in approximately 28 cases. Therefore, Mr. Steinberg has had substantial experience before this Court, and he should be familiar with the Court's rules and the duty he owes to his clients and the Court. Moreover, having been admitted to the Florida bar in 1982, Mr. Steinberg presumably has 38 years of experience as a lawyer.

The Court is aware of only two relevant factors described in ABA Standard 9.32 that are potentially mitigating: the absence of a prior disciplinary record and a presumed absence of selfish or dishonest motive. In this regard, the Court notes that, in his response to our July 16, 2020, order

to show cause why we should not impose specific discipline, the respondent does not introduce any recognized mitigating factors. Instead, he states that he did not respond to the order to show cause why he should not be referred to the Court's Committee on Admission and Practice because "he could not show good cause." Response at 3. He also acknowledges that he "should have" found an alternative way to file a timely brief after he could not access the Court's electronic filing system but offers no reason for his failure to do so and similarly fails to explain why he "missed" the Court's orders to comply with the Court's rules. *Id.* at 1-3.

Having considered all the factors, the final step is for the Court to decide the appropriate sanction. As discussed in ABA Standard 4.42(b), "[s]uspension is generally appropriate when . . . a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." *See* ABA Standard 6.22 ("Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding."). The respondent's continued failure to respond to Court orders in the above cases clearly demonstrates a pattern of neglect and the potential adverse consequences to his clients were great, including involuntary dismissal of their appeals. *See In re Obert*, 282 P.3d 825, 828-29 (Or. 2012) (per curiam) (concluding that the lawyer's repeated filing of untimely motions and notices and failure to follow explicit instructions from the court reflected "a pattern of ignorance of the most basic of applicable rules").

Under these circumstances, the Court concludes that suspension is an appropriate penalty here. *See In re Urban*, 574 N.W.2d 651, 651-56 (Wis. 1998) (per curiam) (holding that an attorney's misconduct in handling four estates, including failing to act with reasonable promptness and diligence, making misrepresentations to the probate court, failing to cooperate with the discipline board, and a prior discipline record, warranted a 6-month suspension of his license to practice law); *see also In re Brady*, 387 P.3d at 5, 7. However, unlike the circumstances in *In re Brady* and *In re Urban*, there is no evidence that the respondent misled the Court or that he has a prior discipline record and, despite his neglect in both cases, his failures did not ultimately lead to a dismissal in either case. The Court thus concludes that an appropriate sanction under these circumstances is a suspension from the Court's bar for 90 days. Considering the aggravating factors in this case, the Court will condition reinstatement to the Court's bar upon completion of at least 6 hours of ethics-focused continuing legal education pursuant to Rule 5(a)(1) of the Court's Rules of Admission and Practice.

Finally, the Court notes that, on September 17, 2020, the Court provided Mr. Steinberg with a preliminary, non-public version of this order, wherein he was informed of his right to file a motion for reconsideration pursuant to Rule 5(d) of the Court's Rules of Admission and Practice. Because Mr. Steinberg did not file a motion for reconsideration and his time to file such a motion has expired, the Court will impose the public discipline described herein.

III. CONCLUSION

Upon consideration of the foregoing, it is

ORDERED that Michael A. Steinberg is suspended from this Court's bar for 90 days from the date of this order. It is further

ORDERED that Michael A. Steinberg shall complete at least 6 hours of ethics-focused continuing legal education before seeking reinstatement as a member of the Court's bar. It is further

ORDERED that, should Michael A. Steinberg desire to seek reinstatement to this Court's bar, he must file a motion for reinstatement pursuant to Rule 11(a) of the Court's Rules of Admission and Practice. And such motion must also demonstrate his qualifications pursuant to Rule 46(a) of the Court's Rules of Practice and Procedure.

DATED: October 21, 2020

PER CURIAM.