In re Sheldon Lee Banks
Attorney-Respondent

Commission No. 2020PR00068

Synopsis of Hearing Board Report and Recommendation
(December 2021)

The Administrator filed a two-count Complaint against Respondent, alleging he accepted payment of $9,000 to handle a criminal appeal but failed to do any work on the appeal, spent the funds, and failed to promptly return unearned funds. The Hearing Panel found the Administrator met its burden of proof for all of the charges of misconduct, which included failing to hold property of clients or third persons that was in Respondent's possession in connection with a representation separate from his own property, failing to promptly comply with reasonable requests for information, failing to act with reasonable diligence and promptness, charging and collecting an unreasonable fee, failing to promptly deliver funds in his possession that a third person was entitled to receive, and failing to respond to the Administrator's subpoena requiring production of documents.

Respondent's misconduct was significantly aggravated by his three prior instances of discipline for similar misconduct and his failure to make full restitution. Based on the proven misconduct and substantial aggravation, coupled with an absence of evidence in mitigation, the Hearing Panel recommended that Respondent be suspended for two years and until further order of the Court. The Hearing Panel further recommended that, prior to making any application for reinstatement, Respondent be required to make restitution to Tonya Oldham in the amount of $7,000 plus statutory interest, compounded from the date of the Supreme Court's order imposing discipline in this matter.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

FILED
December 07, 2021
ARDC CLERK

In the Matter of:

SHELDON LEE BANKS,

Attorney-Respondent,

No. 107263.

Commission No. 2020PR00068

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator proved by clear and convincing evidence that Respondent neglected a criminal appeal, failed to respond to reasonable requests for information, collected unreasonable fees, failed to promptly return unearned fees, and failed to respond to the Administrator's requests for information. In light of the proven misconduct, the substantial factors in aggravation, and the absence of any factors in mitigation, the Hearing Panel recommends that Respondent be suspended for two years and until further order of the court.

INTRODUCTION

The hearing in this matter was held remotely by video conference on September 30, 2021, before a Panel of the Hearing Board consisting of Sonni Choi Williams, Alexander L. Groden, and Justine Witkowski. Scott Renfroe represented the Administrator. Respondent was present and was represented by Sheldon M. Sorosky.

PLEADINGS AND MISCONDUCT ALLEGED

On November 5, 2020, the Administrator filed a two-count Complaint against Respondent, arising from his representation of Undra Ingram. The Complaint alleged Respondent failed to hold

property of clients or third persons that was in his possession in connection with a representation separate from his own property, failed to promptly comply with reasonable requests for information, failed to act with reasonable diligence and promptness, charged and collected an unreasonable fee, failed to promptly deliver funds in his possession that a third person was entitled to receive, and failed to respond to the Administrator's subpoena requiring production of documents, in violation of Illinois Rules of Professional Conduct 1.3, 1.4(a)(4), 1.5(a), 1.15(a), 1.15(d), and 8.1(b).

In his Answer, Respondent admitted many of the factual allegations, denied others, and denied engaging in misconduct.

PRE-HEARING PROCEEDINGS

On the morning of the hearing, Respondent made an oral motion to continue the hearing so he could have more time to consider the Administrator's proposal for discipline on consent. The Chair denied Respondent's request, noting that the parties had been discussing discipline on consent for at least two weeks prior to the hearing date. The Chair granted the Administrator's motion seeking to bar Respondent from testifying at hearing as a sanction for his failure to comply with the Administrator's request to produce documents.

EVIDENCE

The Administrator called Karen Root, Christopher G. Evers, and Tonya Oldham as witnesses. The Administrator's Exhibits 1-10 were admitted into evidence. (Tr. 22). Respondent presented no evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence

constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

I. In Count I, the Administrator charged Respondent with failing to hold funds intended as costs and a security retainer in his client trust account and using those funds for his own purposes without authorization, failing to respond to reasonable requests for information, and failing to act with reasonable diligence and promptness by doing no work on a criminal appeal.

A. Summary

Respondent received $9,000 from Tonya Oldham as a security retainer and costs for the representation of her brother, Undra Ingram, in a criminal appeal. Respondent failed to hold the funds in his client trust account and spent them without earning them. He took no action to pursue Ingram's appeal and failed to respond to requests for information about Ingram's case.

B. Admitted Facts and Evidence Considered

Undra Ingram was convicted on April 20, 2018 of several criminal charges, including predatory criminal sexual assault of a child, criminal sexual assault, and aggravated criminal abuse of a child. (Ans. at par. 1). Attorney Karen Root represented Ingram through his jury trial and post-conviction motion. Respondent had no involvement in either the trial or the post-trial proceedings. (Tr. 26).

Tonya Oldham, Ingram's sister, retained Respondent to handle Ingram's appeal. Respondent had represented Oldham's grandmother in prior matters, and she recommended Respondent to Oldham. Respondent told Oldham he would charge $10,000 to handle the appeal. (Tr. 40-41).

On May 7, 2018, Oldham and her sister drove from Decatur to Deerfield to meet Respondent. At their meeting, Oldham paid Respondent $6,400 by cashier's check. (Adm. Ex. 1). The payment represented a $5,000 retainer fee and $1,400 to pay for trial transcripts. Oldham obtained these funds by taking out a $5,000 loan and selling dinners that she and her sister prepared. (Tr. 52-53).

Respondent did not provide Oldham with a written fee agreement, nor did he advise Oldham that his fee was non-refundable or belonged to him upon payment. (Ans. at par. 3; Tr. 54-55). Oldham did not authorize Respondent to use the funds she paid him for anything other than ordering the transcripts and paying legal fees. (Tr. 40-46). It was her understanding that the fees did not belong to Respondent until he earned them. (Tr. 55).

Respondent told Oldham and her sister to call him any time with questions, and gave them his business card. (Tr. 43). He advised Oldham that he could not file an appeal until after Ingram was sentenced, but he would obtain the trial transcripts and start reviewing them. (Tr. 42). When Oldham called Respondent after their initial meeting, Respondent said he obtained some of the transcripts and was reviewing them. He further stated that Ingram "was fighting a good case." (Tr. 47). Respondent visited Ingram once in the county jail, on July 5, 2018. (Tr. 66; Adm. Ex. 6).

After attorney Root learned that Respondent had been retained for the appeal, she sent him a copy of the post-trial motion she prepared and asked if he had any input. She received no response. On one occasion, Root arranged to meet Respondent at the jail where Ingram was being held but Respondent did not show up. (Tr. 26-27).

Around July 18, 2018, Respondent called Oldham and said he needed an additional $2,600 by the following week "to get some other paperwork." Oldham's husband withdrew funds from

his 401(k) account to pay Respondent. Oldham sent Respondent a cashier's check in the amount of $2,600 on July 26, 2018. (Tr. 47-48; Adm. Ex. 2).

Respondent admits he deposited both cashier's checks from Oldham into his business checking account, which was not an IOLTA account. (Ans, at pars. 5, 12). He used the funds in his checking account to pay personal expenses. Less than one month after depositing the $6,400 check, Respondent's account was overdrawn by $4,297.64. Three days after depositing the $2,600 check, his account was overdrawn by $1,357.67. (Adm. Exs. 3, 4).

After Oldham made the second payment, Respondent became "unreachable." He stopped returning her calls or would return them only after she left four or five messages. (Tr. 48, 51, 58). Respondent told Oldham he would attend Ingram's sentencing hearing on September 24, 2018 and "file the paperwork he needed to file right then." Respondent did not appear at the sentencing hearing, however. At that hearing, Oldham learned from the court reporter that Respondent had not ordered the trial transcripts. (Tr. 49).

Attorney Christopher G. Evers of the Office of the State Appellate Defender was assigned in December 2019 to represent Ingram in his appeal. Evers had no communication with Respondent about Ingram's case. (Tr. 32-34).

Respondent admits he did not obtain or review Ingram's trial transcripts, file an appearance, file any motion or brief, or present oral argument on Ingram's behalf. (Ans. at par. 16). In his closing argument, Respondent's Counsel acknowledged that Respondent "dropped the ball" and did not do the work he was supposed to do. (Tr. 75, 78).

C. Analysis and Conclusions

Initially, we note that Respondent chose not to contest the charges against him. He did not cross-examine the Administrator's witnesses, nor did he present any evidence. Accordingly, the Administrator's evidence was undisputed.

Diligence

A lawyer must act with reasonable diligence and promptness in representing a client. Ill. R. Prof'l Conduct 1.3. Unreasonable delay not only causes clients needless anxiety but may adversely affect their substantive interests. See Comment [3] to Rule 1.3.

The evidence established that, other than meeting with Ingram once, Respondent did nothing to pursue his appeal. Even though Respondent could not have filed a notice of appeal until Ingram was sentenced, there was work he could have and should have been doing to prepare for the appeal, including obtaining and reviewing the trial transcripts. He admits he did not do so, contrary to the representations he made to Oldham. There is no evidence in the record of any substantive work he performed on Ingram's behalf. Accordingly, we find the Administrator proved by clear and convincing evidence that Respondent did not diligently represent Ingram.

Responding to Reasonable Requests for Information

Rule 1.4(a)(4) provides that a lawyer shall promptly comply with reasonable requests for information. Ill. R. Prf'l. Conduct 1.4(a)(4). "A lawyer should promptly respond to or acknowledge client communications." Comment [4] to Rule 1.4.

Although Oldham was not technically Respondent's client, it is clear from the circumstances that she was acting on Ingram's behalf in attempting to obtain information from Respondent about Ingram's appeal. Because Ingram was incarcerated, we can reasonably surmise that it was easier for Oldham to call Respondent than it was for Ingram. In addition, Respondent accepted payment from Oldham, gave her his business card, told her to call him any time with questions, and discussed some aspects of the case with her before he stopped returning her calls. Under these circumstances, we conclude that Respondent had an ethical obligation to respond to Oldham in a timely manner and to provide her with accurate information. See In re Banks, 2011PR00008, M.R. 25136 (March 19, 2012) (Hearing Bd. at 19).

It was reasonable for Oldham to ask Respondent for updates on his progress. Her testimony is undisputed that, after she made the second payment to Respondent, she called him numerous times, but he did not return her calls in a timely manner. Based on this undisputed testimony, we find the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.4(a)(4).

Holding Client or Third Party Funds Separate From Respondent's Own Property

Rule 1.15(a) provides that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own property, in a client trust account. Ill. R. Prf'l. Conduct 1.15(a). The Administrator alleges that Respondent violated Rule 1.15(a) by failing to hold the funds he received from Oldham in a client trust account and using them before he earned fees or incurred expenses.

We find credible Oldham's testimony that she provided $1,400 to Respondent with the understanding that he would use it to to pay for trial transcripts. Rule 1.15(c) clearly provides that funds received to secure payment of expenses must be held in a client trust account. Respondent not only failed to hold the funds for transcript expenses in a client trust account, he spent them on personal expenses without authorization and never obtained the transcripts. Respondent's failure to safeguard Oldham's security retainer funds was a clear violation of Rule 1.15(a).

With respect to the funds intended to go toward Respondent's fees, we must determine whether they were a security retainer that was required to be held in a client trust account or a fixed fee that belonged to Respondent when paid. For the following reasons, we find the funds were a security retainer that remained Oldham's property until Respondent earned them. See Ill. R. Prof'l. 1.15(c).

If the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer. Comment [3B] to Rule 1.15. "The guiding principle in the choice

of the type of retainer is protection of the client's interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, pursuant to this Rule." Comment [3D] to Rule 1.15. Here, there is no written fee agreement to help us ascertain the parties' intent. The only evidence before us pertaining to the fee agreement came from Oldham's testimony. We find credible her testimony that Respondent did not inform her that the fees belonged to him when paid or were not refundable. She believed Respondent would draw from the fee payment only as he earned the funds. Although Oldham also testified that Respondent said he would charge her a "flat fee" of $10,000, it was apparent from her testimony as a whole that she did not intend for the funds to belong to Respondent upon payment. Thus, the nature of the retainer was unclear at best. Under these circumstances, Respondent was required to treat the funds as a security retainer and hold them in his client trust account until he earned them. See, e.g., In re Salus, 2016PR00127, M.R. 029366 (Sept. 20, 2018) (Hearing Bd. at 9-11). Respondent not only failed to hold the funds in his client trust account but spent them without earning them. This was a clear violation of Rule 1.15(a)

II. The Administrator alleged in Count II that Respondent charged and collected an unreasonable fee in the Ingram matter, failed to promptly return unearned fees to Oldham, and failed to comply with the Administrator's subpoena seeking information about Respondent's representation of Ingram.

A. Summary

The Administrator proved that Respondent improperly retained the fees he received in the Ingram matter, failed to promptly return unearned fees to Oldham, and failed to comply with the Administrator's subpoena for documents.

B. Admitted Facts and Evidence Presented

We consider the admissions and evidence set forth in Section I, in addition to the following admissions and evidence.

After Ingram was sentenced, Oldham's husband called Respondent to ask about Ingram's appeal. Respondent became "irate" and said he was tired of people telling him he was not doing his job. Oldham's husband told Respondent to return their money so they could find someone else to handle the case. (Tr. 51). Oldham reported Respondent to the ARDC on October 4, 2018, and again requested that her money be returned. Respondent eventually said he would return $3,000, in monthly installments of $1,000. However, he made only two payments, totaling $2,000. He made the first payment on August 6, 2019. (Adm. Ex. 9). The record does not indicate when he made the second payment. Oldham believes she is owed the remaining $7,000. (Tr. 61-63). Respondent admits that the services he provided in the Ingram matter do not justify his continued retention of the remaining $7,000. (Ans. at par. 31).

Respondent further admits that he never responded to the Administrator's subpoena *duces tecum*, which was served on October 31, 2019 and required him to produce all documents related to services he provided or costs he paid in the Ingram matter. (Ans. at pars. 28, 29, 30).

C. Analysis and Conclusions

Charging and Collecting Unreasonable Fee

Rule 1.5(a) provides that a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. Ill. R. Prof'l. Conduct 1.5(a). The issue here is not whether it was reasonable for Respondent to charge $10,000 to handle Ingram's appeal. The Administrator does not make such an assertion, and we do not find that a $10,000 fee was unreasonable on its face. However, it was unreasonable for Respondent to charge and collect $2,600 from Oldham in July 2018, knowing he had not performed any work or incurred any costs since he received Oldham's initial $6,400 payment. Respondent told Oldham he needed the funds to "get some other paperwork," but that was not true. Respondent immediately spent the money on personal expenses. Given the speed with which Respondent spent the $2,600, it appears he was

using Oldham as a source of cash with no regard for whether he had done sufficient work to justify the payment. Respondent's request for additional fees was based on a false premise and was therefore unreasonable. Accordingly, we find the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.5(a).

Prompt Delivery of Funds Belonging to a Client or Third Party

Rule 1.15(d) provides that a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Ill. R. Prof'l. Conduct 1.15(d).

After Oldham terminated Respondent's representation, Respondent was required to promptly refund unearned fees and advances for costs that he did not incur. It took him ten months to return a portion of the unearned fees, and even then he returned less than the $3,000 he promised and significantly less than the $9,000 he was paid. This does not constitute prompt delivery. Accordingly, the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.15(d).

Complying with Administrator's Request for Information

Attorneys may not knowingly fail to respond to the Administrator's lawful requests for information. Ill. R. Prof'l. Conduct 8.1(b). Respondent admits he did not comply with the Administrator's subpoena for documents related to the Ingram representation. We further note that this is not Respondent's first disciplinary proceeding, so he was well aware of his obligation. We find the Administrator proved a violation of Rule 8.1(b) by clear and convincing evidence.

EVIDENCE IN AGGRAVATION

Aggravation

Tonya Oldham testified that it was "heart wrenching" and a financial hardship to have lost the funds they paid to Respondent. (Tr. 60).

Prior Discipline

Respondent has three prior disciplinary sanctions. In 2000, he was reprimanded for failing to promptly refund unearned fees of $3,000 in a criminal matter. In re Banks, 99 CH 17 (June 8, 2000). In 2009, he was censured for failing to promptly refund $7,500 in unearned fees in a criminal matter. In re Banks, 2008PR00087, M.R. 23084 (May 20, 2009). In 2012, he was suspended for 30 days and until he made restitution and completed the ARDC Professionalism Seminar for failing to respond to a client's reasonable requests for information and failing to promptly refund $1,500 in unearned fees in a criminal matter. In re Banks, 2011PR00008, M.R. 25136 (March 21, 2012).

RECOMMENDATION

A. Summary

In light of the proven misconduct, the serious aggravating factors, and the absence of mitigating factors, we recommend a suspension of two years and until further order of the Court.

B. Analysis and Conclusions

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014IL117696, ¶ 90. In arriving at our recommendation, we consider these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61 (2003). We seek to recommend similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014IL117696, ¶ 90.

The Administrator asks us to recommend a suspension of two years and until further order of the court. Respondent acknowledges that a sanction is warranted, but requests a lesser

suspension of six months and until further order of the court. For the following reasons, we accept the Administrator's sanction request.

Although the misconduct was limited to one client matter, it was serious. Respondent's lack of diligence placed Ingram's interests at risk, which is particularly concerning in a criminal case due to the nature of the interests at stake. See In re Gordon, 2020PR00059, M.R. 030887 (Sept. 23, 2021) (Hearing Bd. at 10). Respondent also caused financial harm to Oldham by keeping fees he did not earn.

There is substantial aggravation in this case. This is Respondent's fourth disciplinary proceeding. The weight we give to his prior discipline depends on the similarity between the misconduct in this proceeding and the prior disciplinary matters, as well as the amount of time that elapsed between disciplinary proceedings. See In re Longwell, 2013PR00055, M.R. 26933 (Nov. 13, 2014). All of Respondent's prior proceedings included a failure to return unearned fees. His third proceeding also included a failure to respond to requests for information, like this case. Lawyers who have been disciplined are expected to have a "heightened awareness of the necessity to conform strictly to all of the requirements of the Rules of Professional Conduct." In re Storment, 203 Ill. 2d 378, 401, 786N.E.2d 963 (2002). Respondent has not demonstrated any such awareness. For these reasons, we give his prior discipline significant weight in aggravation.

Respondent's failure to make full restitution is another aggravating factor. In re Fox, 122 111. 2d 402, 410, 522 N.E.2d 1229 (1988). As of the date of the hearing, Respondent had refunded only $2,000 of the $9,000 he was paid to represent Ingram.

There is no mitigating evidence for us to consider. Respondent presented no witnesses to testify to his character and reputation, nor did he present evidence of charitable or community involvement or *pro bono* work. He participated in this proceeding but did not fully cooperate. He

has never produced his file materials for the Ingram matter, despite the Chair's Order of June 2, 2021 compelling him to do so.

Because Respondent's previous disciplinary sanctions did not compel him to reform his conduct, a lengthy suspension is necessary to impress upon him the importance of complying with ethical rules. We conclude that a two-year suspension is appropriate, as recommended by the Administrator and consistent with the comparable case of In re Gomric, 94 SH 347, M.R. 12906 (Nov. 26, 1996) (attorney with two prior instances of discipline suspended for two years and until further order of the Court after being found to have neglected a criminal appeal and a worker's compensation case).

We further determine that Respondent's suspension should continue until further order of the Court. When an attorney has demonstrated an unwillingness or inability to comply with ethical rules, a suspension until further order is warranted. See In re Houdek, 113 Ill. 2d 323, 497 N.E.2d 1169 (1986). Nothing in the record before us gives us confidence that Respondent understands his ethical obligations or has taken steps to prevent his misconduct from recurring. His failure to reform his conduct after three prior disciplinary proceedings leads us to conclude that he presents a significant risk of committing similar misconduct in the future. If Respondent wishes to return to practice after his suspension ends, he should be required to establish that he is rehabilitated and capable of representing clients in conformance with the Rules of Professional Conduct.

We have considered Respondent's request for a lesser suspension but find no basis for his request, as he has presented no mitigating evidence or supporting case law.

We also recommend that Respondent be required to make restitution to Oldham in the amount of $7,000. There is no basis in the record to justify Respondent's retention of any portion of the funds he received from Oldham. Because Oldham had to take out a loan and her husband

had to withdraw funds from his 401(k) account in order to pay Respondent, we conclude that Respondent should be required to pay statutory interest in order to make Oldham whole. See In re German, 2009PR00006, M.R. 23520 (March 16, 2010) (Hearing Bd. at 25).

Accordingly, we recommend that Respondent, Sheldon Lee Banks, be suspended for two years and until further order of the Court. Prior to making any application for reinstatement under Supreme Court Rule 767, we recommend that he be required to make restitution to Tonya Oldham in the amount of $7,000 plus statutory interest, compounded from the date of the Supreme Court's order imposing discipline in this matter.

Respectfully submitted,

Sonni Choi Williams
Alexander L. Groden
Justine A. Witkowski

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 7, 2021.

Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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