

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

In re Tate

147 A.D.3d 35 (N.Y. App. Div. 2016) · Decided December 23, 2016

SUMMARY

The court found an attorney in default and deemed admitted charges involving neglect of client matters, failure to communicate, mishandling client funds, and failure to cooperate with the disciplinary investigation. It suspended the attorney for three years, ordered restitution of \$260, and imposed conditions on any application for reinstatement.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Per Curiam; Smith, J.P.; Carni, J.; DeJoseph, J.; NeMoyer, J.; Troutman, J.
JURISDICTION	New York
DECIDED	December 23, 2016
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding on the Grievance Committee's motion for an order finding respondent in default, deeming the petition's material allegations admitted, and imposing discipline.
PRECEDENTIAL VALUE	published
PARTIES	Fifth Judicial District Grievance Committee v. Jonathan O. Tate

TOPICS

[appellate procedure](#) [remedies](#) [restitution](#)

PRACTICE AREAS

[attorney discipline](#) [professional responsibility](#) [appellate procedure](#) [remedies](#)

QUESTIONS PRESENTED

1. Whether respondent's failure to answer the disciplinary petition and respond to the Committee's motion warranted a default determination and admission of the material allegations.

2. Whether respondent's admitted conduct violated the specified New York Rules of Professional Conduct.
3. What disciplinary sanction and restitution were appropriate.
4. Whether restitution should be ordered for funds paid for anticipated legal fees when the record did not establish wilful misappropriation or misapplication under Judiciary Law § 90 (6-a).

HOLDINGS

1. Respondent's failure to answer the petition, respond to the disciplinary motion, or appear on the return date warranted finding him in default and deeming the material allegations and misconduct charges admitted.
2. Respondent violated Rules 1.3(a), 1.3(b), 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(c)(4), 8.4(d), and 8.4(h) of the New York Rules of Professional Conduct.
3. A three-year suspension from the practice of law, continuing until further order of the court, was an appropriate sanction.
4. Respondent was required to make restitution of \$260 to the client who paid that amount for anticipated costs.
5. The court denied the request for restitution concerning funds paid for anticipated legal fees because the record did not establish wilful misappropriation or misapplication within the meaning of Judiciary Law § 90 (6-a).
6. If respondent seeks reinstatement, he must explain the circumstances of his default, establish that he satisfied the Small Claims Court judgment, and establish that he paid all other funds owed to clients.

KEY QUOTATIONS

“Accordingly, we conclude that respondent should be suspended from the practice of law for a period of three years and until further order of this Court.” (at 37)

“In addition, we direct respondent to make restitution in the amount of \$260 to the client who paid respondent for anticipated costs.” (at 37)

FACTUAL BACKGROUND

Respondent, an attorney admitted in New York, neglected two domestic-relations matters from June 2014 through August 2016, failed to respond to client inquiries, and failed to cooperate with the Grievance Committee. He also received \$260 from a client for anticipated costs but neither placed the funds in an attorney trust account nor disbursed them for the client's benefit. Respondent had prior admonition and caution letters, failed to participate in the disciplinary proceeding, and had not satisfied a Small Claims Court judgment for \$2,510 in unearned legal fees.

PROCEDURAL HISTORY

The Grievance Committee filed a four-charge misconduct petition and personally served respondent. Respondent failed to answer or seek additional time, then failed to respond to the Committee's disciplinary motion or appear

on the return date. The Appellate Division granted the motion, deemed the misconduct charges admitted, and imposed a three-year suspension, restitution, and reinstatement conditions.

DISPOSITION

other

CASES CITED

- Matter of Rothschild, 127 A.D.3d 178, 180 (N.Y. App. Div. 2015)

OPINION

PER CURIAM.

OPINION OF THE COURT Per Curiam. Respondent was admitted to the practice of law by the Appellate Division, Second Department, on February 26, 1986, and he maintains an office in Liverpool. In September 2016, the Grievance Committee filed a petition containing four charges of misconduct against respondent, including neglecting client matters, failing to communicate with clients, and failing to cooperate in the investigation of the Grievance Committee.

Although respondent was personally served with the petition on September 21, 2016, he thereafter failed to file an answer thereto or to request from this Court more time to do so. The Grievance Committee subsequently moved this Court for an order, pursuant to 22 NYCRR 1020.8 (c), finding respondent in default, deeming admitted the material allegations of the petition, and imposing discipline upon respondent.

Although respondent was personally served with the motion on October 25, 2016, and his personal appearance was required on the return date thereof pursuant to section 1020.8 (c), he failed to file a response to the motion or to appear on the return date. Consequently, we grant the motion of the Grievance Committee, find respondent in default, and deem admitted the charges of misconduct.

Respondent admits that, from June 2014 through August 2016, he neglected two domestic relations matters, failed to respond to inquiries from the affected clients, and failed to cooperate with the Grievance Committee. Respondent also admits that he received from one client funds for anticipated costs in the amount of \$260, which he neither deposited in an attorney trust account nor disbursed for the benefit of the client.

Although one of the clients obtained a judgment against respondent in Small Claims Court for unearned legal fees in *37the amount, of \$2,510, respondent admits that he has failed to satisfy the judgment. We conclude that respondent has violated the following Rules of Professional Conduct (22 NYCRR 1200.0): rule 1.3 (a) — failing to act with reasonable diligence and promptness in representing a client; rule 1.3 (b) — neglecting a legal matter entrusted to him; rule 1.4 (a) (3) — failing to keep a client reasonably informed about the status of a matter; rule 1.4 (a) (4) — failing

to comply in a prompt manner with a client's reasonable requests for information; rule 1.15 (a) — misappropriating funds or other property belonging to another person that came into his possession incident to his practice of law; rule 1.15 (c) (4) — failing to pay or deliver to a client or third person in a prompt manner as requested by that person the funds, securities, or other properties in his possession that such person is entitled to receive; rule 8.4 (d) — engaging in conduct that is prejudicial to the administration of justice; and rule 8.4 (h) — engaging in conduct that adversely reflects on his fitness as a lawyer.

We have considered, in determining an appropriate sanction, that respondent has previously received from the Grievance Committee a letter of admonition and a letter of caution and that he failed to participate in the instant proceeding, thereby evidencing a disregard for his fate as an attorney (see *Matter of Rothschild*, 127 AD3d 178, 180 [2015]).

Accordingly, we conclude that respondent should be suspended from the practice of law for a period of three years and until further order of this Court. In addition, we direct respondent to make restitution in the amount of \$260 to the client who paid respondent for anticipated costs.

Although the Grievance Committee also requests restitution in relation to funds that were paid to respondent for anticipated legal fees, we deny that request inasmuch as the record does not establish that respondent “wilfully misappropriated or misapplied” those funds within the meaning of Judiciary Law § 90 (6-a).

In the event that respondent applies to this Court for reinstatement to the practice of law, he must in the application sufficiently explain the circumstances of his default herein and establish that he has satisfied the aforementioned Small Claims Court judgment and paid all other funds owed to clients. *38Smith, J.P., Carni, DeJoseph, NeMoyer and Troutman, JJ., concur.

Order of suspension entered.