

**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)

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