

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

Matter of Nagel

2018 NY Slip Op 02583 (App. Div. 2018) · No. M-6424 · Decided April 17, 2018

SUMMARY

The Appellate Division, First Department granted the Attorney Grievance Committee's motion to immediately suspend Marcus K. Nagel from practicing law based on evidence that he was incapacitated by mental illness. The court stayed the pending disciplinary investigation until further order pursuant to 22 NYCRR 1240.14.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Rosalyn H. Richter; Angela M. Mazzarelli; Troy K. Webber; Cynthia S. Kern; Jeffery K. Oing
JURISDICTION	New York
DECIDED	April 17, 2018
DOCKET	M-6424
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Attorney Grievance Committee moved for an immediate suspension based on respondent's alleged incapacity from practicing law due to mental illness.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Attorney Grievance Committee for the First Judicial Department v. Marcus K. Nagel

TOPICS

[guardianship procedure](#) [guardianships](#) [civil procedure](#)

PRACTICE AREAS

[attorney discipline](#) [professional responsibility](#) [mental incapacity](#) [guardianship](#)

QUESTIONS PRESENTED

1. Whether the Attorney Grievance Committee presented sufficient evidence under 22 NYCRR 1240.14 to establish that respondent was incapacitated from practicing law because of a mental disability or condition.
2. Whether respondent should be immediately suspended from the practice of law and the pending disciplinary investigation stayed.

HOLDINGS

1. The Committee presented sufficient evidence that respondent was incapacitated from continuing to practice law due to a mental disability or condition.
2. Respondent was suspended from practicing law in New York effective immediately, and the pending investigation was stayed until further order of the court.

KEY QUOTATIONS

“When the Court finds that a respondent is incapacitated from practicing law, the Court shall enter an order immediately suspending the respondent from the practice of law and may stay the pending proceeding or investigation.” ([*2])

“Here, the Committee has presented sufficient evidence that respondent is incapacitated from continuing to practice law and that his immediate suspension is warranted pursuant to 1240.14” ([*2])

FACTUAL BACKGROUND

Respondent was a New York attorney who resided and maintained an office within the First Department during the relevant period, but later moved to California. In a New York County housing proceeding, he defaulted after his cooperative apartment sought possession based on allegedly dangerous and objectionable conduct, and Justice Kathryn E. Freed questioned his fitness and capacity after observing him in the proceeding. A psychiatrist who evaluated respondent at his apartment reported that respondent had developed a paranoid delusion concerning the cooperative, exhibited confusion and contradictory thinking, lacked insight into his condition, and could not represent himself in court. The psychiatrist recommended appointment of a guardian ad litem.

PROCEDURAL HISTORY

The Attorney Grievance Committee initiated a disciplinary investigation and moved in the Appellate Division under 22 NYCRR 1240.14 for an immediate incapacity suspension. The motion was supported by a psychiatrist's affirmation describing respondent's delusional and psychotic condition and inability to represent himself in court. Respondent was served in California but filed no response. The court granted the motion, immediately suspended respondent, and stayed the pending investigation until further order.

DISPOSITION

other

CASES CITED

- Matter of Falls, 121 AD3d 83 [1st Dept 2014]
- Matter of Serpe, 106 AD3d 112 [1st Dept 2013]

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