

SUPREME COURT OF SOUTH CAROLINA

In the Matter of Wallace A. Mullinax, Jr.

396 S.C. 504, 722 S.E.2d 524 (2012) · No. No. 27091 · Decided February 1, 2012

SUMMARY

The Supreme Court of South Carolina accepted an Agreement for Discipline by Consent concerning an attorney who engaged in sexual relations with a domestic-law client during the representation. The court publicly reprimanded the attorney and ordered him to complete the Legal Ethics and Practice Program Ethics School within one year.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Pleicones; Justice Beatty; Justice Kittredge; Justice Hearn
JURISDICTION	South Carolina
DECIDED	February 1, 2012
DOCKET	No. 27091
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding based on an Agreement for Discipline by Consent submitted by the Office of Disciplinary Counsel and respondent.
PRECEDENTIAL VALUE	Published disciplinary opinion

TOPICS

family law

family law procedure

PRACTICE AREAS

attorney discipline

professional responsibility

family law

QUESTIONS PRESENTED

1. Whether respondent's admitted sexual relations with a client during representation violated the South Carolina Rules of Professional Conduct.
2. What discipline was warranted under the Agreement for Discipline by Consent.

HOLDINGS

1. Respondent's admitted sexual relations with the complainant during his representation violated Rule 1.8(m) and constituted conduct prejudicial to the administration of justice under Rule 8.4(e).
2. The misconduct warranted a public reprimand, together with completion of the Legal Ethics and Practice Program Ethics School within one year of the order.

KEY QUOTATIONS

"We accept the agreement, issue a public reprimand, and order respondent to complete the Legal Ethics and Practice Program Ethics School within one (1) year of the date of this order." (505)

"Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct." (507)

FACTUAL BACKGROUND

Respondent represented a complainant in a domestic matter involving separate maintenance, possession of the residence, alimony, custody, child support, and related relief. During the representation, respondent admitted having sexual relations with the complainant on two occasions. After opposing counsel advised respondent of an investigator's report, respondent advised the complainant to obtain new counsel, prepared a substitution-of-counsel order, and reimbursed her legal fees.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel and respondent entered into an Agreement for Discipline by Consent under Rule 21, RLDE. The South Carolina Supreme Court accepted the agreement, publicly reprimanded respondent, and ordered him to complete the Legal Ethics and Practice Program Ethics School within one year.

DISPOSITION

other

OPINION

PER CURIAM.

396 S.C. 504 (2012) 722 S.E.2d 524 In the Matter of Wallace A. MULLINAX, Jr., Respondent. No. 27091. Supreme Court of South Carolina. Submitted December 30, 2011. Decided February 1, 2012. *505 Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel. Keith M. Babcock, of Lewis Babcock & Griffin, LLP, of Columbia, for respondent.

PER CURIAM. The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which

respondent admits misconduct and agrees to the imposition of either an admonition or public reprimand.

In addition, respondent agrees to complete the Legal Ethics and Practice Program Ethics School within one (1) year of the date of the order imposing discipline. We accept the agreement, issue a public reprimand, and order respondent to complete the Legal Ethics and Practice Program Ethics School within one (1) year of the date of this order.

The facts, as set forth in the agreement, are as follows. FACTS In January 2011, Complainant retained respondent to handle a domestic matter. At the Complainant's direction, respondent filed a separate maintenance action seeking, among other things, possession of the residence, alimony, joint custody of the children, child support, and ancillary relief.

After unsuccessful early settlement negotiations, respondent filed an Amended and Supplemental Summons and Notice and an Amended and Supplemental Complaint on February 25, 2011. In the complaint, a request was made for divorce on the statutory ground of habitual use of intoxicants by the Complainant's husband. Respondent admits that he and the Complainant had sexual relations during the course of his representation of Complainant in the domestic matter.

Specifically, respondent admits to having sexual relations with Complainant at his office on April 17, 2011, and at his residence on April 20, 2011. *506 On or about May 4, 2011, respondent received a telephone call from opposing counsel advising that opposing counsel had a report from a private investigator which indicated "inclination" and "opportunity" on the part of Complainant with respondent and also with another individual.

On May 4, 2011, after the conversation with opposing counsel, respondent contacted Complainant, told her of the conversation, and advised she would need to obtain new counsel. After receiving the investigator's report, respondent again advised Complainant to obtain a new lawyer and prepared an Order of Substitution of Counsel for Complainant.

On or about May 11, 2011, Complainant picked up her file from respondent's office. Complainant was provided with the order substituting counsel, along with a check from his law firm reimbursing Complainant for all the fees paid to respondent's office. LAW Respondent admits that, by his misconduct, he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 1.8(m) (lawyer shall not have sexual relations with a client when the client is in a vulnerable condition or is otherwise subject to the control or undue influence of the lawyer, when such relations could have a harmful or prejudicial effect upon the interests of the client, or when sexual relations might adversely affect the lawyer's representation of the client) and Rule 8.4(e) (it is misconduct for lawyer to engage in conduct prejudicial to the administration of justice).

Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be

ground for discipline for lawyer to violate Rules of Professional Conduct) and Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline *507 by Consent and publicly reprimand respondent for his misconduct. Respondent shall complete the Legal Ethics and Practice Program Ethics School within one (1) year of the date of this order. PUBLIC REPRIMAND. TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.