

SUPREME COURT OF SOUTH CAROLINA

In re Trexler

350 S.C. 483 (2002) · Decided July 22, 2002

SUMMARY

The South Carolina Supreme Court disbarred an attorney based on two additional client matters that were omitted from earlier disciplinary charges. The court held that the respondent could be disciplined for misconduct committed before his prior disbarment and ordered the new disbarment to run concurrently with the earlier one, with restitution required.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	July 22, 2002
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the South Carolina Commission on Lawyer Conduct recommended disbarment after respondent defaulted on formal charges involving two additional client matters.
PRECEDENTIAL VALUE	Published opinion; precedential South Carolina Supreme Court decision

TOPICS

- administrative law
- agency adjudication
- remedies
- restitution

PRACTICE AREAS

- attorney discipline
- professional responsibility
- legal ethics

QUESTIONS PRESENTED

- Whether a lawyer may be disciplined for misconduct committed before disbarment when the formal charges are brought after the lawyer has already been disbarred.

2. Whether the allegations in formal disciplinary charges are deemed admitted when the respondent fails to answer and defaults.
3. Whether the admitted misconduct, considered together with respondent's earlier misconduct, warrants disbarment and restitution.

HOLDINGS

1. A lawyer may be disciplined for additional acts of misconduct committed before disbarment, even when the disciplinary proceeding concerning those acts occurs after the lawyer has already been disbarred.
2. When a respondent fails to answer and is in default, the factual allegations contained in the formal charges are deemed admitted.
3. Disbarment is warranted where the additional admitted misconduct is considered together with the misconduct underlying the respondent's earlier disbarment; the new disbarment runs concurrently with the earlier disbarment and includes restitution under the existing restitution plan.

KEY QUOTATIONS

“Because the acts of misconduct alleged in the formal charges currently before this Court were committed prior to disbarment, we find respondent can be disciplined for the additional acts of misconduct despite the fact that he has already been disbarred.” (at 485)

“When a respondent fails to answer and is in default, the factual allegations contained in the formal charges are deemed admitted.” (at 486)

FACTUAL BACKGROUND

Respondent represented two clients but failed to provide competent and diligent representation, failed to appear or adequately prepare in court matters, mishandled client funds, failed to refund fees, failed to communicate with clients, failed to disclose his interim suspension, and failed to respond to disciplinary inquiries. One client was falsely told that neither she nor respondent needed to appear in court; another was held in contempt after respondent's insufficient-funds check failed to pay opposing counsel. These allegations were deemed admitted after respondent defaulted.

PROCEDURAL HISTORY

Respondent had previously been disbarred for misconduct in 24 client matters. After two additional matters were discovered, new formal charges were served and filed; respondent failed to answer, and the Office of Disciplinary Counsel filed an Affidavit of Default. The hearing officer deemed the allegations admitted and recommended disbarment concurrent with the prior disbarment, with restitution. The full panel adopted the recommendation, neither party filed exceptions, and the Supreme Court of South Carolina adopted the recommendation.

DISPOSITION

other

CASES CITED

- In the Matter of Trexler, 343 S.C. 608, 541 S.E.2d 822 (2001)
- In the Matter of Kitchel, 347 S.C. 291, 554 S.E.2d 868 (2001)
- In the Matter of Thornton, 327 S.C. 193, 489 S.E.2d 198 (1997)
- In the Matter of Craig, 344 S.C. 646, 545 S.E.2d 823 (2001)
- In the Matter of Driggers, 334 S.C. 40, 512 S.E.2d 112 (1999)

OPINION

PER CURIAM.

PER CURIAM. In this attorney disciplinary matter, a full panel of the Commission on Lawyer Conduct recommended respondent be disbarred. We agree and disbar respondent. Factual/Procedural Background On January 29, 2001, respondent was disbarred for misconduct in 24 client matters.

In the Matter of Trexler, 343 S.C. 608, 541 S.E.2d 822 (2001). Following service of the formal *485 charges alleging misconduct in those matters, it was discovered that charges alleging misconduct in two additional client matters had been omitted.

Accordingly, formal charges alleging misconduct in the two additional matters were served and filed. After respondent failed to respond to the charges, the Office of Disciplinary Counsel filed an Affidavit of Default. At a hearing on the charges, the Office of Disciplinary Counsel asked that the hearing officer find respondent in default and issue an order imposing a sanction to run concurrent with respondent's disbarment and include the same provisions regarding restitution and payment of the costs of the proceeding.

Although there was some question as to whether service of the formal charges was proper, counsel for respondent informed the hearing officer that respondent did not want to contest the affidavit of default because he was not interested in pursuing a long, drawn out dispute as to the charges.

The hearing officer found respondent in default and the allegations contained in the seventh set of formal charges were deemed admitted. He recommended respondent be disbarred, the sanction to run concurrent with his earlier disbarment, and that restitution be made in both matters. He recommended respondent not be required to pay the costs of the proceedings since the charges should have been disposed of at the earlier hearing.

The full panel voted to adopt the report of the hearing officer. Neither respondent nor the Office of Disciplinary Counsel filed exceptions. Law/Analysis Rule 2(p), RLDE, Rule 413, SCACR, defines a lawyer, in pertinent part, as "anyone admitted to practice law in this state, including any formerly admitted lawyer with respect to acts committed prior to resignation or disbarment." Because the acts of misconduct alleged in the formal charges currently before this Court were committed prior

to disbarment, we find respondent can be disciplined for the additional acts of misconduct despite the fact that he has already been disbarred.

Although we have reservations about whether the formal charges at issue were properly served on respondent, see Rule 14(c), RLDE (service of formal charges by mail must be made *486by registered or certified mail to the lawyer's last known address), respondent stated at the hearing before the hearing officer and at the hearing before this Court that he was not putting up a defense to the entry of default.¹ In addition, respondent did not file any exceptions to the hearing officer's finding of default.

When a respondent fails to answer and is in default, the factual allegations contained in the formal charges are deemed admitted. Rule 24, RLDE, Rule 413, SCACR. Because respondent has essentially conceded he was in default, the allegations contained in the formal charges currently before this Court are deemed admitted.

We must simply determine the appropriate sanction. In the Matter of Kitchel, 347 S.C. 291, 554 S.E.2d 868 (2001); In the Matter of Thornton, 327 S.C. 193, 489 S.E.2d 198 (1997). The following allegations were made in the formal charges and deemed admitted by the hearing officer.

In the first matter, respondent was retained to represent a client. The client paid respondent \$350 in legal fees. When the client received a summons from magistrate's court advising her that her case was scheduled to be heard on December 13, 1995, respondent falsely advised her she did not need to be present. Respondent also told the client that he did not need to be present at the hearing as her counsel.

Despite respondent's advice, the client appeared in court and prevailed in her action. Respondent made no appearance on the client's behalf. He also failed to refund the fee paid by the client. In a second matter, respondent was retained to represent a client in a divorce action.

The client paid respondent \$1,000 in legal fees. However, respondent failed to adequately prepare for an emergency/temporary hearing and, as a result, the client was required to make monthly payments on an automobile or return the automobile.

The client was also ordered to pay approximately \$540 to opposing counsel. The client gave respondent \$540 to pay opposing counsel; however, when respondent issued a check for the payment, it was returned for insufficient funds.

As a result, the client was held in contempt of court. Respondent failed to respond to the *487client's inquiries and failed to refund any portion of the \$1,000 fee. He also failed to advise the client that he had been suspended from the practice of law after he was placed on interim suspension. Respondent failed to respond to inquiries from Disciplinary Counsel regarding both of these matters.

The hearing officer found respondent violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (a lawyer shall provide competent representation to a client); Rule 1.2 (a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); Rule 1.5 (a lawyer's fee shall be reasonable); Rule 1.15 (a lawyer shall safeguard funds of a client); Rule 8.1 (a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority) and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct).

We find these allegations, when considered in the context of the allegations that led to respondent's earlier disbarment, as they should have been, warrant disbarment. In the Matter of Craig, 344 S.C. 646, 545 S.E.2d 823 (2001)(disbarment is the appropriate sanction for multiple acts of misconduct, including misappropriation of client funds); See also In the Matter of Driggers, 334 S.C.

40, 512 S.E.2d 112 (1999) (attorney consented to disbarment for misappropriating funds, failure to appear in court on clients' behalf, and other misconduct similar to that shown in this case). Conclusion For the foregoing reasons, we adopt the full panel's recommendation for disbarment. This disbarment shall run concurrent with respondent's earlier disbarment.

Respondent shall make restitution to the clients addressed in this opinion according to the terms of the restitution plan entered into *488between the parties as a result of our earlier opinion disbarring respondent. DISBARRED. TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.. Indeed, at the hearing before this Court, respondent stated he hoped the Court would concur in the Commission's recommendation.