

SUPREME COURT OF GEORGIA

In re Branan

300 Ga. 779 (Ga. 2017) · Decided March 20, 2017

SUMMARY

The Supreme Court of Georgia accepted Jon Gary Branan's petition for voluntary discipline arising from his misrepresentation of the source of a client's debt in litigation. The Court imposed a one-month suspension and a Review Panel reprimand for violating Georgia Rule of Professional Conduct 3.3.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per curiam
JURISDICTION	Georgia
DECIDED	March 20, 2017
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter on the attorney's petition for voluntary discipline filed before issuance of a formal complaint.
STANDARD OF REVIEW	The Court reviewed the disciplinary record to determine whether acceptance of the petition and imposition of the requested sanction were appropriate.
PRECEDENTIAL VALUE	published
PARTIES	State Bar of Georgia

TOPICS

evidence

PRACTICE AREAS

legal ethics

professional responsibility

attorney discipline

evidence

QUESTIONS PRESENTED

1. Whether the Court should accept Branan's petition for voluntary discipline for knowingly making false statements to a tribunal and knowingly offering false evidence.

2. Whether a one-month suspension and Review Panel reprimand were appropriate sanctions for Branan's violations of Georgia Rule of Professional Conduct 3.3.

HOLDINGS

1. Branan's admitted conduct violated Rule 3.3(a)(1) and (a)(4), which prohibit knowingly making a false statement of material fact or law to a tribunal and knowingly offering evidence the lawyer knows to be false.
2. The Court accepted Branan's petition for voluntary discipline and imposed a one-month suspension from the practice of law and a Review Panel reprimand.

KEY QUOTATIONS

“Therefore, we accept Branan’s petition for voluntary discipline and order that he be suspended from the practice of law in this State for one month and that he receive a Review Panel reprimand” (781)

“Together Rule 3.3 (a) (1) and (a) (4) provide that a lawyer shall not knowingly make false statement of a material fact or law to a tribunal and shall not knowingly offer evidence that a lawyer knows to be false.” (781)

FACTUAL BACKGROUND

Branan represented a client in a personal-injury action and personally guaranteed a \$10,000 bank loan arranged for the client, with repayment to come from the eventual settlement proceeds. After the case settled but before the proceeds were distributed, Branan sued the client and submitted a sworn statement falsely characterizing the debt as a personal loan from Branan. He obtained a writ of attachment against \$10,500 of the settlement funds, received the funds through an interpleader proceeding, and used them to pay the bank loan balance.

PROCEDURAL HISTORY

Jon Gary Branan petitioned for voluntary discipline, requesting a one-month suspension and a Review Panel reprimand for misrepresenting facts to a court. The State Bar recommended acceptance of the petition and the requested sanctions. The Supreme Court of Georgia accepted the petition and imposed the recommended discipline.

DISPOSITION

other

CASES CITED

- In the Matter of Wilkinson, 284 Ga. 548, 668 S.E.2d 707 (2008)
- In the Matter of Johnson, 281 Ga. 674, 641 S.E.2d 535 (2007)

OPINION

PER CURIAM.

Per curiam. This disciplinary matter is before the Court on the petition for voluntary discipline filed by Jon Gary Branan (State Bar No. 075850) before the issuance of a formal complaint. See Bar Rule 4-227. Branan, who was admitted to the Bar in 1980, seeks the imposition of a one-month suspension and a Review Panel reprimand for his conduct in misrepresenting facts to a court, in violation of Rule 3.3 (a) (1) and (a) (4),¹ of the Georgia Rules of Professional Conduct found in Bar Rule 4-102 (d).

The maximum sanction for a violation of Rule 3.3 is disbarment. Branan admits that in May 2007, he was retained to represent a client in a personal injury action. In September 2007, Branan arranged for a \$10,000 loan for the client from a local bank and personally guaranteed the loan. Branan agreed with the client that the loan was to be repaid out of proceeds from the settlement of the personal injury case.⁷⁸⁰

After the personal injury case settled in March 2014 and before the settlement proceeds were paid out in December 2014, Branan sued the client to recover the amount of the loan plus interest. As evidence in the suit to recover the loan amount, Branan submitted a sworn statement stating that the source of the debt was a personal loan he had made to the client.

Branan ultimately obtained a writ of attachment to \$10,500 of the settlement funds. An interpleader action was filed, and the funds were deposited into the registry of the court. In September 2015, the court entered an order, directing that the funds subject to the writ of attachment be disbursed to Branan. Branan, who had made payments on the loan, used the disbursed funds to pay off the balance of the bank loan.

In mitigation, Branan offers that he is deeply remorseful and that at the relevant time he was experiencing personal and professional challenges. See ABA Standards for Imposing Lawyer Sanctions (1992), § 9.32 (a) and (1).

The Bar recommends that the Court accept the petition and impose a one-month suspension and a Review Panel reprimand. The Bar agrees with the mitigating factors Branan presents and also considers that Branan's cooperative attitude in the disciplinary process is an additional mitigating factor. No aggravating factors have been presented, and we note that Branan has no public disciplinary record.

Having reviewed the record, we agree that acceptance of the petition and imposition of the requested sanction is the appropriate resolution of this matter. See, e.g., *In the Matter of Wilkinson*, 284 Ga. 548 (668 SE2d 707) (2008) (Review Panel reprimand and one-month suspension for violations of Rules 3.3 (a) (4) and 8.4 (a) (4) where lawyer made, or allowed to be made, false statements to the trial court and Court of Appeals and failed to correct those false statements); *In the Matter of Johnson*, 281 Ga. 674 (641 SE2d 535) (2007) (public reprimand and one-month suspension for violations of Rules 3.3 (a) (4) and 8.4 (a) (4) where lawyer working as

an assistant public defender represented two clients in separate matters and accepted fee payments from them, failed to inform the judges that he was appearing in a private capacity, and in regard to another matter, failed to take remedial measures upon learning that a client had testified falsely).

Therefore, we accept Branan's petition for voluntary discipline and order that he be suspended from the practice of law in this State for one month and that he receive a Review Panel reprimand in accordance with Bar Rules 4-102 (b) (4) and 4-220 (b) for his admitted violation of Rule 3.3.

Because there are no conditions on his reinstatement other than the passage of time, there is no need for him to take any action either through the State Bar or through this Court to *781effectuate his return to the practice of law. Instead, the suspension based on this opinion will take effect as of the date this opinion is issued and will expire by its own terms one month later.

Branan is reminded of his duties pursuant to Bar Rule 4-219 (c). Decided March 20, 2017. Paula J. Frederick, General Counsel State Bar, Andreea N. Morrison, Assistant General Counsel State Bar, for State Bar of Georgia. Petition for voluntary discipline accepted. One-month suspension and Review Panel reprimand. All the Justices concur, except Blackwell, J., who dissents.

Together Rule 3.3 (a) (1) and (a) (4) provide that a lawyer shall not knowingly make false statement of a material fact or law to a tribunal and shall not knowingly offer evidence that a lawyer knows to be false.