

SUPREME COURT OF SOUTH CAROLINA

In the Matter of H. Ray Ham

387 S.C. 297, 692 S.E.2d 532 (2010) · No. No. 26800 · Decided April 12, 2010

SUMMARY

The Supreme Court of South Carolina accepted an Agreement for Discipline by Consent and indefinitely suspended H. Ray Ham from practicing law. The suspension was made retroactive to October 4, 2004, and Ham was ordered to reimburse the Lawyers' Fund for Client Protection and comply with related reinstatement and filing requirements.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Per Curiam
JURISDICTION	South Carolina
DECIDED	April 12, 2010
DOCKET	No. 26800
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the Supreme Court of South Carolina on an Agreement for Discipline by Consent under Rule 21, RLDE, Rule 413, SCACR.
PRECEDENTIAL VALUE	Published opinion; disciplinary order accepting consent discipline.

TOPICS

administrative law

civil procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

administrative law

QUESTIONS PRESENTED

1. Whether the Supreme Court should accept the Agreement for Discipline by Consent.
2. What disciplinary sanction should be imposed for respondent's admitted violations of the Rules of Professional Conduct, the Rules for Lawyer Disciplinary Enforcement, and the financial recordkeeping rules.

3. Whether the indefinite suspension should be made retroactive to the date of respondent's interim suspension.
4. Whether respondent should be required to reimburse the Lawyers' Fund for Client Protection and satisfy conditions before seeking reinstatement.

HOLDINGS

1. The court accepted the Agreement for Discipline by Consent after respondent admitted the specified misconduct and consented to discipline.
2. Respondent was indefinitely suspended from the practice of law in South Carolina.
3. The indefinite suspension was made retroactive to October 4, 2004, the date of respondent's interim suspension.
4. Respondent was ordered to reimburse the Lawyers' Fund for Client Protection for all claims paid on his behalf and could not file a reinstatement petition until that reimbursement was made.

KEY QUOTATIONS

“We accept the agreement and indefinitely suspend respondent from the practice of law in this state, retroactive to October 4, 2004, the date of respondent's interim suspension.” (at 298)

“Under no circumstances shall respondent file a petition for reinstatement until he has reimbursed the Lawyers' Fund for all claims paid on his behalf.” (at 301)

FACTUAL BACKGROUND

H. Ray Ham represented members of the Doe family and served as personal representative of an estate while also managing the finances of the estate's sole heir. In related guardianship and conservatorship proceedings, he failed to attend scheduled hearings and failed to produce requested financial records and an accounting. He admitted making unauthorized withdrawals from his trust account for his own benefit, failing to maintain required records, and depositing \$45,000 of personal funds to cover a resulting shortage. In another representation, he failed to ensure service of process, lost or misplaced the file, and delayed responding to disciplinary inquiries and the notice of full investigation.

PROCEDURAL HISTORY

The respondent and the Office of Disciplinary Counsel entered into an Agreement for Discipline by Consent. Respondent admitted misconduct and consented to an indefinite suspension, requesting that it be made retroactive to the date of his interim suspension. The Supreme Court accepted the agreement, imposed the indefinite suspension retroactive to October 4, 2004, and ordered reimbursement to the Lawyers' Fund for Client Protection.

DISPOSITION

other

CASES CITED

- In the Matter of Ham, 361 S.C. 116, 603 S.E.2d 905 (2004)
- In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982)

OPINION

PER CURIAM.

387 S.C. 297 (2010) 692 S.E.2d 532 In the Matter of H. Ray HAM, Respondent. No. 26800. Supreme Court of South Carolina. Submitted March 9, 2010. Decided April 12, 2010. Lesley M. Coggiola, Disciplinary Counsel, and C. Tex Davis, Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel. H. Ray Ham, of West Columbia, pro se.

PER CURIAM. In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent *298 admits misconduct and consents to the imposition of an indefinite suspension.[1] Respondent requests that, if the Court accepts the agreement and imposes an indefinite suspension, that the suspension be made retroactive to the date of his interim suspension.

In the Matter of Ham, 361 S.C. 116, 603 S.E.2d 905 (2004). In addition, respondent agrees to reimburse the Lawyers' Fund for Client Protection (Lawyers' Fund) for claims paid on his behalf. We accept the agreement and indefinitely suspend respondent from the practice of law in this state, retroactive to October 4, 2004, the date of respondent's interim suspension.

Further, we order respondent to reimburse the Lawyers' Fund for all claims paid on his behalf. The facts, as set forth in the agreement, are as follows. FACTS Matter I Over a number of years, respondent represented several members of the Doe family in a variety of legal matters. Respondent was named as the personal representative of Ms. Doe's estate. Respondent represents that all money he received from Ms. Doe's estate was properly authorized, although he acknowledges that he cannot properly document the funds.

The sole heir to Ms. Doe's estate was her brother, Mr. Doe. Respondent had represented Mr. Doe over a period of years and had effectively managed Mr. Doe's financial affairs. In 2004, guardianship and conservatorship actions were filed in Richland County Probate Court concerning Mr. Doe. Respondent was notified of the two scheduled hearings, but he failed to attend either hearing.

The probate court issued two orders directing respondent to produce financial records and an accurate accounting for the time period in which he managed *299 Mr. Doe's finances. Respondent failed to produce the requested documentation. Respondent acknowledges he is

unable to properly document the monies which he disbursed on Mr. Doe's behalf. During this time period, respondent was admitted to an Upstate hospital and diagnosed with severe depression.

Respondent acknowledges that he withdrew substantial money from his trust account for his own use and benefit. He further acknowledges that he did not comply with the recordkeeping provisions of Rule 417, SCACR. Respondent admits that, on September 27, 2004, he deposited \$45,000 from his personal proceeds into his trust account in order to cover a shortage caused by his unauthorized withdrawals.

Matter II Respondent represented Complainant in several matters related to her business. Respondent asserts that, in one of these cases in early 2004, he instructed his staff to effect service on the opposing party. Respondent mistakenly believed that service had been accomplished when he informed Complainant of the status of the case.

In fact, service was never completed. Respondent admits that the file in the case was either lost or misplaced and he did not realize until several months later that service had not been accomplished. Respondent acknowledges that it was his responsibility to ensure that the case was handled in a competent and diligent manner. By letter from ODC dated October 4, 2004, respondent was notified of the complaint in this matter; the letter requested a written response within fifteen (15) days.

Respondent failed to respond or otherwise communicate with ODC. On November 3, 2004, ODC sent respondent a letter pursuant to In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982), again requesting a response. Respondent failed to respond or otherwise communicate with ODC within the timeframe requested in the November 3, 2004 letter. ODC received a letter from respondent dated December 6, 2004, which stated "I have recovered to the point when I can now prepare a reply to their complaint.

I will have it filed within a week." As of February 18, 2005, respondent failed to *300 submit any substantive response to the allegations in the complaint. On that date, full investigation was authorized by the Commission on Lawyer Conduct. Respondent accepted service of the Notice of Full Investigation on February 28, 2005.

The notice required respondent submit a written response within thirty (30) days of service. Respondent failed to submit his response until May 2, 2005. LAW Respondent admits that by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter); Rule 1.15 (lawyer shall keep client funds separate from lawyer's personal funds); Rule 8.1 (lawyer shall not fail to respond to lawful demand for information from disciplinary authority); Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice).

In addition, respondent admits he has violated the financial recordkeeping provisions of Rule 417, SCACR. Respondent agrees that his misconduct constitutes a violation of Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(5) (lawyer shall not 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 accept the Agreement for Discipline by Consent and indefinitely suspend respondent from the practice of law, retroactive to October 4, 2004, the date of his interim suspension. See *In the Matter of Ham*, supra. Pursuant to the terms of the agreement, respondent shall enter into a restitution agreement with the Office of Commission Counsel.

Under no circumstances shall respondent file a petition for reinstatement until he has reimbursed the Lawyers' Fund for *301 all claims paid on his behalf.[2] Within fifteen days of the date of this opinion, respondent shall surrender his certificate of admission to practice law in this state to the Clerk of Court and shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

INDEFINITE SUSPENSION. NOTES [1] Since formal charges were not filed prior to January 1, 2010, an indefinite suspension remains a possible sanction under prior Rule 7(b)(2), RLDE. See Amendments to the South Carolina Rules for Lawyer Disciplinary Enforcement, Order dated October 16, 2009 (previous disciplinary rules apply, including possible sanction of indefinite suspension, if disciplinary complaint is pending on January 1, 2010, and formal charges have not been filed).

[2] As of the date of the agreement, the Lawyers' Fund for Client Protection had paid \$43,474.73 in claims against respondent.