

SUPREME COURT OF SOUTH CAROLINA

In re Brian Dequincey Newman, 426 S.C. 241

821 S.E.2d 689 (2018) · Decided November 14, 2018

SUMMARY

The South Carolina Supreme Court accepted an Agreement for Discipline by Consent concerning Brian Dequincey Newman. The court found violations arising from his failure to file tax returns and pay taxes, inadequate advance-fee disclosures, and deficient financial recordkeeping, and imposed a six-month definite suspension retroactive to his interim suspension. The court also ordered payment of disciplinary costs and compliance with reinstatement requirements.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Per Curiam; Chief Justice Beatty; Justice Kittredge; Justice Hearn; Justice Few; Justice James
JURISDICTION	South Carolina
DECIDED	November 14, 2018
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the Supreme Court of South Carolina under an Agreement for Discipline by Consent pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement.
PRECEDENTIAL VALUE	published opinion

TOPICS

income tax tax tax penalties

PRACTICE AREAS

legal ethics and attorney discipline professional responsibility state income tax compliance

QUESTIONS PRESENTED

1. Whether the Agreement for Discipline by Consent should be accepted.
2. Whether respondent's admitted violations warranted a definite six-month suspension from the practice of law, retroactive to his interim suspension.

HOLDINGS

1. The court accepted the Agreement for Discipline by Consent after respondent admitted misconduct and consented to discipline.
2. Respondent's failure to file state income tax returns and pay state taxes, failure to provide required advance-fee disclosures, and failure to maintain required financial records violated Rules 1.5(f)(4)-(5), 8.4(b)-(d), and 417, SCACR, and constituted grounds for discipline.
3. A six-month definite suspension from the practice of law was warranted and was imposed retroactively to January 8, 2016, the date of respondent's interim suspension.

KEY QUOTATIONS

"We find respondent's misconduct warrants a definite suspension from the practice of law in this state for six months retroactive to January 8, 2016, the date of respondent's interim suspension." (243)

FACTUAL BACKGROUND

Respondent failed to file South Carolina income tax returns and pay state taxes for 2012 and 2013, and in 2016 pleaded guilty to two counts arising from that conduct. He received a sentence of one year suspended to probation, later reduced after he made full restitution. Respondent also treated a client payment as an advance fee without providing required written disclosures concerning termination rights and possible refunds, and failed to maintain required financial records.

PROCEDURAL HISTORY

Respondent and the Office of Disciplinary Counsel entered into an Agreement for Discipline by Consent in which respondent admitted misconduct and consented to a six-month definite suspension retroactive to his interim suspension. The Supreme Court accepted the Agreement, imposed the six-month suspension retroactive to January 8, 2016, ordered respondent to pay disciplinary costs, and required compliance with reinstatement requirements before seeking reinstatement.

DISPOSITION

other

CASES CITED

- In re Newman, 415 S.C. 239, 781 S.E.2d 355 (2016)

OPINION

PER CURIAM.

PER CURIAM: **241In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (the

Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR).

In the Agreement, respondent admits misconduct and consents to the imposition of a definite suspension for six months, retroactive to respondent's **242interim suspension.¹ We accept the Agreement and suspend respondent from the practice of law in this state for six months, retroactive to respondent's interim suspension.

The facts, as set forth in the Agreement, are as follows. Facts Respondent failed to file state income tax returns and pay state taxes for the years 2012 and 2013. In 2016, respondent pled guilty to two counts of failing to file income tax returns and failing to pay state income taxes. Respondent was sentenced to one year, suspended to two years' probation, which was reduced to six months' probation based upon respondent having made full restitution.

Respondent has completed his probation. Respondent received a fee and deposited it into his operating account. Respondent treated the money as an advance fee pursuant to a written fee agreement with his client. Respondent acknowledges his written fee agreement neither informed the client of their right to terminate the lawyer-client relationship and discharge respondent nor informed the client they may be entitled to a refund of all or a portion of the fee if the agreed-upon legal services were not provided.

Finally, respondent acknowledges he failed to adequately maintain his financial records as required by the financial recordkeeping requirements of Rule 417, SCACR. Law Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct contained in Rule 407, SCACR: Rule 1.5(f)(4), (5) (a lawyer may charge an advance fee and treat the fee as immediately earned if the lawyer and client agree in advance in a written fee agreement that notifies the client he or she has the right to terminate the lawyer-client relationship and discharge the lawyer, and notifies the client he or she may be entitled to a refund of all or a portion of the fee if the agreed-upon legal **243services are not provided); Rule 8.4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other aspects); Rule 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving moral turpitude); and Rule 8.4(d) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent further admits violating Rule 417, SCACR (financial recorded keeping). *691Finally, respondent admits the allegations contained in the Agreement constitute grounds for discipline under Rule 7(a)(1), RLDE, Rule 413, SCACR ("It shall be a ground for discipline for a lawyer to: (1) violate or attempt to violate the Rules of Professional Conduct, Rule 407, SCACR, or any other rules of this jurisdiction regarding professional conduct of lawyers....").

Conclusion We find respondent's misconduct warrants a definite suspension from the practice of law in this state for six months retroactive to January 8, 2016, the date of respondent's interim suspension. Accordingly, we accept the Agreement and suspend respondent for a period of six months, retroactive to his earlier interim suspension. Within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission.

Additionally, prior to seeking reinstatement, respondent must demonstrate his compliance with Rule 32, RLDE, Rule 413, SCACR, including completion of Legal Ethics and Practice Program Ethics School within the preceding year. DEFINITE SUSPENSION. BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur. Respondent was placed on interim suspension by the Court on January 8, 2016.

In re Newman, 415 S.C. 239, 781 S.E.2d 355 (2016).