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STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. WILLIAM P. BOUDA II, RESPONDENT.

806 N.W.2d 879

Filed December 16, 2011. No. S-11-005.

1. **Disciplinary Proceedings.** A proceeding to discipline an attorney is a trial de novo on the record.
2. ____. Failure to answer formal charges subjects a respondent to judgment on the formal charges filed.
3. ____. The Nebraska Supreme Court evaluates each attorney discipline case in light of its particular facts and circumstances, and considers the attorney's acts underlying the events of the case and throughout the proceedings.
4. ____. The Nebraska Supreme Court considers six factors in determining whether and to what extent discipline should be imposed: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law.
5. ____. Because cumulative acts of attorney misconduct are distinguishable from isolated incidents, they justify more serious sanctions.
6. ____. Misappropriation of client funds is one of the most serious violations of duty an attorney owes to clients, the public, and the courts, and typically warrants disbarment.

Original action. Judgment of disbarment.

Kent L. Frobish, Assistant Counsel for Discipline, for relator.

No appearance for respondent.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

NATURE OF CASE

The Counsel for Discipline of the Nebraska Supreme Court filed formal charges against William P. Bouda II, a suspended member of the Nebraska State Bar Association, alleging Bouda violated his oath of office as an attorney and Neb. Ct. R. of Prof. Cond. § 3-508.4(a), (b), and (c). Generally, the charges alleged that Bouda neglected a client's case, and then lied to his client and stole from his employer in a failed attempt to cover up the neglect. Bouda did not respond to the charges.

The Counsel for Discipline moved for judgment on the pleadings; we granted the motion and directed the parties to brief the question of appropriate discipline. For the reasons that follow, we disbar Bouda.

FACTS

Bouda was admitted to the practice of law in Nebraska in 1999.[1] This is not his first disciplinary proceeding. Formal charges were brought against him in a separate proceeding in 2008.[2] In that case, the referee found that Bouda had falsely represented to both opposing counsel and the district court that he had the authority to settle a civil case. In fact, Bouda had no such authority; instead, the truth was that the trial date for the case had arrived but Bouda was unprepared for trial. Bouda also misstated the status of the case in communicating with his client.[3] But the referee also found several mitigating factors, such as a lack of a prior record of misconduct, marital difficulties, and cooperation with the Counsel for Discipline. We suspended Bouda from the practice of law for 3 months.[4]

The present case involves comparable, but substantially more severe, allegations of neglect and misrepresentation. Jeff Finochiaro hired Bouda in January 2007 to defend him in a lawsuit between LaFarge North America, Inc., and Maverick Concrete and Piping Company, LLC (Maverick Concrete). Finochiaro was a guarantor of Maverick Concrete and a defendant in the suit. The court granted LaFarge North America's summary judgment motion around March 13, 2008, resulting in a judgment of $179,757.21 against Maverick Concrete and Finochiaro. Bouda was granted leave to file a third-party complaint against two other entities, Double D Excavating, LLC, and MCL, Inc., but never filed a complaint against either company. Neither company can now be sued on the claim because the statute of limitations has run.

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[1] See *State ex rel. Counsel for Dis. v. Bouda*, 278 Neb. 380, 770 N.W.2d 648 (2009).

[2] See *id.*

[3] See *id.*

[4] *Id.*

After the summary judgment, Bouda made multiple misrepresentations to Finochiaro about the status of the lawsuit and efforts to collect the judgment. Bouda told Finochiaro a third-party complaint against Double D Excavating had been filed, when it had not. He falsely said that he made a claim against Double D Excavating's bonding company and that the claim was ready for payment. Bouda falsely represented that the bonding company was in bankruptcy, but that the claim of Finochiaro and Maverick Concrete was a priority claim that was about to be paid. Then, he falsely told Finochiaro that the bonding company was in liquidation in the State of New York rather than bankruptcy, with Maverick Concrete as a preferred claimant due $160,000.

Bouda used multiple documents to mislead Finochiaro. He provided documents to back up his claim that the bonding company was in liquidation and that Maverick Concrete was a preferred claimant. He provided a document indicating that an insurance company had made a $100,000 wire transfer to LaFarge North America to partially pay Finochiaro's liability, when such payment was never made. In June 2010, Bouda gave Finochiaro a copy of a $160,000 check purporting to be a payment to LaFarge North America; that payment was never made. He gave Finochiaro a copy of a letter from someone supposedly connected with LaFarge North America stating that payment had been received and that liens were being released on Omaha, Nebraska, properties. No one at LaFarge North America wrote such a letter. He gave Finochiaro a "'Lien Release — Satisfaction of Judgment,'" which supposedly had been, but never was, filed with the Douglas County register of deeds. Bouda also gave Finochiaro a false document supposedly from LaFarge North America's attorney saying that the judgment against Finochiaro had been satisfied. And Bouda provided a copy of a "'Satisfaction of Judgment'" that had supposedly been filed in district court when no such document had been filed.

In addition to failing to file the third-party complaint, Bouda told Finochiaro he would take care of an order for examination of debtor issued to Finochiaro. Bouda failed to do so, and as a result, a capias was issued for Finochiaro's arrest. Bouda also,

after he was suspended in 2009, told Finochiaro that he was authorized to practice law in Nebraska.

In September 2010, while working as a claims recovery specialist for an insurance company, Bouda caused the company to issue a settlement check to a law firm for $160,000 in payment of Finochiaro's debt to LaFarge North America. Bouda was fired as soon as he admitted to the insurance company that he had fraudulently issued the check to satisfy Finochiaro's judgment.

The Counsel for Discipline alleged these actions violated Bouda's oath of office and § 3-508.4(a), (b), and (c). Bouda failed to respond to the charges, and the Counsel for Discipline moved for judgment on the pleadings. The motion was sustained, and the parties were ordered to brief the issue of discipline. Bouda neither filed a brief nor appeared at oral argument.

ANALYSIS

[1,2] A proceeding to discipline an attorney is a trial de novo on the record.[5] Failure to answer the formal charges subjects a respondent to judgment on the formal charges filed.[6] Because the motion for judgment on the pleadings was granted, the only issue before us is the appropriate discipline.[7] In attorney discipline cases, the basic issues are whether discipline should be imposed and, if so, the type of discipline under the circumstances.[8]

[3,4] This court evaluates each attorney discipline case in light of its particular facts and circumstances,[9] and considers the attorney's acts underlying the events of the case and throughout the proceedings.[10] We consider six factors in

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[5] *State ex rel. Counsel for Dis. v. Thew*, 281 Neb. 171, 794 N.W.2d 412 (2011).

[6] *State ex rel. Counsel for Dis. v. Lechner*, 266 Neb. 948, 670 N.W.2d 457 (2003).

[7] *State ex rel. Counsel for Dis. v. Samuelson*, 280 Neb. 125, 783 N.W.2d 779 (2010).

[8] *Thew, supra* note 5.

[9] *Id.*

[10] *Samuelson, supra* note 7.

determining whether and to what extent discipline should be imposed: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law.[11]

[5] We have, in comparable cases, entered judgments of disbarment.[12] Bouda's conduct also warrants disbarment. Bouda severely neglected legal matters entrusted to him, made multiple misrepresentations, and then falsified documents to cover his misdeeds. And we have often said that because cumulative acts of attorney misconduct are distinguishable from isolated incidents, they justify more serious sanctions.[13] Bouda has previously been disciplined for making dishonest statements and misleading a client, but continued his misconduct. We note that several of the misdeeds underlying the present case took place during and after Bouda's previous disciplinary proceedings.

[6] In addition, Bouda's actions cost Finochiaro a potential claim against a third party and put Finochiaro at risk of arrest. And Bouda also stole from his employer to try to prevent discovery of his neglect and deception. We have often said that misappropriation of client funds is one of the most serious violations of duty an attorney owes to clients, the public, and the courts, and typically warrants disbarment.[14] While Bouda's employer may not have technically been his "client" when he stole from it, there is no ethical distinction to be made.[15]

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[11] See *Thew, supra* note 5.

[12] See, e.g., *Thew, supra* note 5; *State ex rel. Counsel for Dis. v. Coe*, 271 Neb. 319, 710 N.W.2d 863 (2006); *State ex rel. Counsel for Dis. v. Hart*, 270 Neb. 768, 708 N.W.2d 606 (2005).

[13] See *State ex rel. Counsel for Dis. v. Switzer*, 280 Neb. 815, 790 N.W.2d 433 (2010).

[14] *State ex rel. Counsel for Dis. v. Jones*, 270 Neb. 471, 704 N.W.2d 216 (2005).

[15] See, e.g., *State ex rel. NSBA v. Rosno*, 245 Neb. 365, 513 N.W.2d 302 (1994); *State ex rel. Nebraska State Bar Assn. v. McConnell*, 210 Neb. 98, 313 N.W.2d 241 (1981).

Finally, we note that because Bouda neither responded to the Counsel for Discipline nor filed a pleading, we have no basis for considering any factors that mitigate in his favor.[16] Instead, his failure to cooperate with the Counsel for Discipline and respond to the charges at any point during this disciplinary process indicates disrespect for this court's disciplinary jurisdiction.[17] Simply put, Bouda's pattern of neglect and deception, his theft from his employer, his recalcitrance and recidivism in response to previous discipline, and his complete failure to respond to the charges against him, demonstrate beyond any reasonable dispute that he is unfit to practice law.

CONCLUSION

We find that Bouda should be and hereby is disbarred from the practice of law in Nebraska, effective immediately. Bouda is hereby ordered to comply with all terms of Neb. Ct. R. § 3-316 forthwith and shall be subject to punishment for contempt of this court upon failure to do so. He is also directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323 within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF DISBARMENT.

WRIGHT, J., not participating in the decision.

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[16] See *Samuelson, supra* note 7.

[17] See *id.*