

816 S.E.2d 1
Supreme Court of Georgia.

In the MATTER OF Gary Lanier COULTER.

S18Y0993

|
Decided: June 18, 2018

Synopsis

Background: Attorney petitioned for voluntary discipline of up to a two-year suspension for his misconduct in transferring client's funds in improper accounts, paying himself fees from funds, and holding property as security for payment client allegedly owed. The Supreme Court, 301 Ga. 895, 804 S.E.2d 345, rejected the special master's petition, which recommended accepting attorney's petition. The special master recommended a four-year suspension.

[Holding:] The Supreme Court held that disbarment of attorney, rather than the four-years suspension recommended by the special master, was warranted.

Disbarment ordered.

State Bar of Georgia

Attorneys and Law Firms

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Gary Lanier Coulter, Coulter & Associates, P.O. Box 834, Bogart, Georgia 30622, Gary Lanier Coulter, 807 Pond View Lane, Sugar Hill, Georgia 30518, for Appellee.

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Atlanta, Georgia 30303, Sandra S. Cho, Drew Eckl & Farnham, LLP, 880 West Peachtree Street, PO Box 7600, Atlanta, Georgia 30357-0600, for Other Party.

Opinion

PER CURIAM.

This is the second appearance of this disciplinary matter before this Court, as this Court previously rejected the special master's first report, which recommended accepting the petition for voluntary discipline *2 filed by Respondent Gary Lanier Coulter (State Bar No. 190100). See In the Matter of Coulter, 301 Ga. 895, 804 S.E.2d 345 (2017). Coulter sought by his earlier petition to receive a two-year suspension for his admitted violations of Rules 1.5, 1.7, 1.8 (a), 1.15 (I), and 1.15 (II) of the Georgia Rules of Professional Conduct, see Bar Rule 4-102 (d), based on his conduct in connection with his representation, beginning in 2003, of a client and the various organizations his client created related to his professional endeavors as an art promoter (collectively, "the client"). This Court determined that a voluntary two-year suspension was insufficient given that Coulter, who has been a member of the Bar since 1971, was subject to two prior instances of professional discipline, the serious nature of the admitted rule violations, and the record facts in this case. See Coulter, 301 Ga. at 897, 804 S.E.2d 345.

This matter is now before the Court on the report and recommendation of Special Master Sandra S. Cho, who recommends that Coulter receive a four-year suspension with no conditions for reinstatement for his admitted violations of Rules 1.5, 1.7, 1.8 (a), 1.15 (I), and 1.15 (II). The maximum sanction for a violation of Rules 1.5 and 1.8 (a) is a public reprimand, while the maximum sanction for a violation of Rules 1.7, 1.15 (I), and 1.15 (II) (a) and (b) is disbarment. The allegations regarding Coulter's conduct remain the same:

Although Coulter's work for the complaining client began as representation on personal tax matters and a landlord-tenant dispute, it expanded over the years to include a number of matters including personal and business issues. In 2010, Coulter assumed more responsibility over the client's affairs, becoming involved in the receipt, depositing, transfer, and disbursement of the client's funds collected in the course of the client's businesses [and in doing so opened up a number of bank accounts on behalf of the client]. It appears that the client knew of some of the accounts Coulter had opened on behalf of the client but did not know of others, and in some of the accounts Coulter was the sole authorized signer. Coulter concedes these accounts were not approved lawyer-trust accounts and that they held only

funds related to the client and his businesses, yet Coulter transferred funds from or through the client's accounts to his operating account as payment of attorney fees. It also appears that in just the final ten months of Coulter's representation of this client, he administered more than \$1 million through the client's accounts. In those final months, Coulter paid himself \$400,000 in fees from the client's bank accounts. ... Coulter did not provide any billing invoices to the client after 2008, but two of the complainants are lawyers who were formerly associates in Coulter's law firm, and they printed a set of invoices from the firm's billing system in 2011 and provided them to the client. The invoices contained substantial discrepancies that Coulter could not explain. Coulter concedes he did not keep and maintain complete and accurate records of this client's funds and did not promptly notify the client of Coulter's receipt of funds in which the client possessed an interest.

Coulter, 301 Ga. at 895-896, 804 S.E.2d 345.¹

In determining the appropriate level of discipline, the special master notes that this Court views trust account violations as exceptionally serious, see In the Matter of Howard, 292 Ga. 413, 414, 738 S.E.2d 89 (2013), and finds that in violation of Rules 1.15 (I) and 1.15 (II), Coulter: administered very large sums of client-money for years, over \$1 million in 2011 alone, using 12 different bank accounts, none of which were trust accounts; failed to keep complete records of the funds; failed to keep and maintain records reflecting at all times the exact balance held for each client and third person; failed accurately to account for all funds transferred to his firm's operating accounts as attorney fees before making transfers; and failed to accurately debit attorney fees transferred *3 to his firm's operating account against an appropriate account of the client and to record the same as such. In addition, the special master finds that every transaction Coulter executed or directed involving the 12 accounts violated Rule 1.15 (II) (a) because they were not deposited and administered from a trust account; and that he also violated Rule 1.15 (II) (b) in connection with the holding of the client's property in his office. Thus, the special master finds that Coulter's violations of the trust account rules alone demanded substantial discipline given that they were vast in scope, consisted of numerous violations involving seven-figure sums in the aggregate, and continued unabated over an extended period of time. The special master states that her conclusion is bolstered by this Court's forceful and definitive treatment of improper acquisitions of financial interests adverse to clients. See In the Matter of Oellerich, 278 Ga. 22, 22-23, 596 S.E.2d 156 (2004) (disbarment of attorney who, during his legal representation of the executor of an estate, received a loan from the estate for a corporation in which he was the sole shareholder and then defaulted on the loan); In the Matter of Henley, 267 Ga.

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366, 369, 478 S.E.2d 134 (1996) (“A lawyer’s representation of a client where the lawyer has a financial or personal interest which will or reasonably may affect the lawyer’s professional judgment illustrates one of the most blatant appearances of impropriety.”).

In addition, the special master points to the American Bar Association’s Standards for Imposing Lawyer Sanctions, which are instructive in these types of cases, see In the Matter of Morse, 266 Ga. 652, 653, 470 S.E.2d 232 (1996), and finds that, at most, there are three mitigating factors, as asserted in Coulter’s petition for voluntary discipline, that are supported by the record: his remorse, see ABA Standard 9.32 (l); his good reputation, as indicated by his Martindale-Hubbell AV rating, see ABA Standard 9.32 (g); and, to some extent, his prophylactic changes in his office practices, see ABA Standard 9.32 (d), although the changes did not have any rectifying consequences for the client here.

The special master rejects most of Coulter’s other suggested mitigating factors, and concludes that: (1) Coulter’s substantial experience in the practice of law is an aggravating factor, see ABA Standard 9.22 (i); (2) his alleged absence of intent to violate the rules of professional conduct is not demonstrated on the record and, even so, is not an aggravating or mitigating factor, although it can be taken into account when considering the level of discipline to impose, see In the Matter of Dansby, 274 Ga. 393, 394, 553 S.E.2d 157 (2001) (holding that disbarment is generally appropriate in cases involving trust account violations where respondent’s conduct was intentional); and (3) the loss of this particular client’s business (which made up approximately half of his law practice) is not considered a mitigating factor. In addition, the special master rejects Coulter’s claim that he did not have a dishonest motive, given that: he was not forthcoming with the client about the financial burden he was incurring through the continued representation; there were substantial gaps in documentation of fees and expenses charged (including that Coulter could not even determine the exact amount of fees he received from the client in 2011); he gave no billing invoices or other documentation to his client for years; he took more than half of the client’s revenue in 2011 to pay his attorney fees; he administered millions of dollars of client funds from numerous non-trust accounts; and he took possession of art that he knew would increase in value and that exceeded the total amount he claimed was owed to him.

In aggravation, the special master finds: that Coulter has received prior discipline in the form of a formal letter of admonition in 2003 and a public reprimand in 2017, see ABA Standard 9.22 (a); In the Matter of Coulter, 300 Ga. 654, 797 S.E.2d 492 (2017); that he had a dishonest or selfish motive, see ABA Standard 9.22 (b); that the facts demonstrated a pattern of misconduct, see ABA Standard 9.22 (c); that Coulter’s misconduct encompassed

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multiple offenses, see ABA Standard 9.22 (d); and that Coulter had substantial experience in the practice of law, see ABA Standard 9.22 (i).

*4 Having reviewed the record and given the serious nature of the violations at issue here, the number of aggravating factors, including Coulter's prior disciplinary history, and that the record facts demonstrate that Coulter did intend to violate the trust account rules, see Dansby, 274 Ga. at 394, 553 S.E.2d 157, we disagree with the Special Master's recommended four-year suspension and conclude that disbarment is an appropriate level of discipline in this matter. See, e.g., In the Matter of Anderson, 286 Ga. 137, 140-141, 685 S.E.2d 711 (2009) (disbarment was warranted for real estate closing attorney who violated Rules 1.15 (I) and (II) and had prior disciplinary history); In the Matter of Harris, 301 Ga. 378, 378-380, 801 S.E.2d 39 (2017) (disbarment was warranted for attorney who violated Rules 1.15 (I) and (II) by misappropriating trust funds and commingling those funds with his own). See also ABA Standard 2.3 (suspension not to be longer than three years). Accordingly, it is hereby ordered that the name of Gary Lanier Coulter be removed from the rolls of persons authorized to practice law in the State of Georgia. Coulter is reminded of his duties pursuant to Bar Rule 4-219 (c).

Disbarred.

All the Justices concur, except Melton, P. J., Hunstein, Blackwell, and Boggs, JJ., who dissent.

All Citations

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Footnotes

- 1 In addition, Coulter obtained from the client over 100 pieces of art, with an estimated value of over \$850,000, as security for the substantial sums (often as much as \$200,000 to \$300,000) that Coulter claimed the client owed to him for professional services, and kept the art in an unsecure location in his personal office at his law firm.

301 Ga. 895
Supreme Court of Georgia.

In the MATTER OF Gary Lanier COULTER.

S17Y1431

|
Decided: August 28, 2017

Synopsis

Background: Attorney petitioned for voluntary discipline of up to a two-year suspension for his misconduct in transferring client's funds in improper accounts, paying himself fees from funds, and holding property as security for payment client allegedly owed.

[Holding:] The Supreme Court held that two-year suspension was insufficient discipline.

Petition rejected.

Attorneys and Law Firms

Paula J. Frederick, General Counsel State Bar, William J. Cobb, Assistant General Counsel State Bar, for State Bar of Georgia.

Opinion

Per Curiam.

895** In late 2011 and early 2012, three different grievances were filed against attorney Gary Lanier Coulter (State Bar No. 190100) with the State Bar of Georgia. Although the record reflects the grievances were supported with affidavits and documentation, it is not apparent from the record why there was a delay until February 24, 2014, before the State Bar filed a formal complaint. The complaint, as amended, charges Coulter with violations of various Rules of the Georgia Rules of Professional Conduct arising out of his representation and professional relationship with one of his long-time clients. This client *346** was and is

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an artist representative, and he represented a renowned artist, now deceased, whose work possesses considerable value.

Although Coulter's work for the complaining client began as representation on personal tax matters and a landlord-tenant dispute, it expanded over the years to include a number of matters including personal and business issues. In 2010, Coulter assumed more responsibility over the client's affairs, becoming involved in the receipt, depositing, transfer, and disbursement of the client's funds collected in the course of the client's businesses. It appears that the client knew of some of the accounts Coulter had opened on behalf of the client but did not know of others, and in some of the accounts Coulter was the sole authorized signer. Coulter concedes these accounts were not approved lawyer-trust accounts and that they held only funds related to the client and his businesses, yet Coulter transferred funds from or through the client's accounts to his operating account *896 as payment of attorney fees. It also appears that in just the final ten months of Coulter's representation of this client, he administered more than \$1 million through the client's accounts. In those final months, Coulter paid himself \$400,000 in fees from the client's bank accounts. Apparently, these are the only months of financial records made available to the special master who was appointed to conduct proceedings in this case. Coulter did not provide any billing invoices to the client after 2008, but two of the complainants are lawyers who were formerly associates in Coulter's law firm, and they printed a set of invoices from the firm's billing system in 2011 and provided them to the client. The invoices contained substantial discrepancies that Coulter could not explain. Coulter concedes he did not keep and maintain complete and accurate records of this client's funds and did not promptly notify the client of Coulter's receipt of funds in which the client possessed an interest.

In 2008, Coulter obtained from the client over 100 pieces of art created by the above-mentioned artist with an estimated value at the time the complaint was filed of over \$850,000. They were taken as security for the substantial sums Coulter claims were owed to him for professional services. Coulter claims the client signed a written security agreement permitting him to hold the art as security for amounts owed, but the client disputes this, and Coulter was unable to locate the signed agreement. Coulter admits that, before taking possession of the art pieces, he did not advise the client about the material risks this arrangement could pose to Coulter's ongoing representation of him and his businesses, and did not advise the client to seek the advice of independent counsel. Coulter kept the art in a box in an unsecure location in his personal office at his law firm. Although someone in Coulter's office apparently returned the art to the client when the client terminated his relationship with Coulter, it does not appear that the client has been made whole since significant funds were taken from his

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accounts without adequate documentation of fees and expenses or Coulter's entitlement to them.

In 2014, at the Bar's request, this Court appointed a special master to conduct further proceedings in this case. After over a year of discovery, in December 2015, Coulter filed a petition for voluntary discipline in which he admitted violation of the following rules as they existed at the time of the conduct: Rule 1.15 (I) (relating to holding the property of clients and third parties separately from the lawyer's own property); Rule 1.15 (II) (relating to maintaining a trust account for a client's money or property); Rule 1.7 (relating to conflicts of interest between the lawyer and client); Rule 1.8 (relating to entering into a business transaction with a client); and Rule 1.5 (a) (relating to the *897 reasonableness of attorney fees). Coulter requested a public reprimand with conditions, but stated he was willing to accept a suspension of up to two years. The State Bar answered that it supports the voluntary petition and would accept discipline "at the upper range" that Coulter was willing to accept.

[1] The special master's report recited that she lacked authority to impose discipline in excess of what the petitioner has stated in his petition that he will accept, and, after reciting certain findings, some but not all of which are referenced in this opinion, recommended **347 a two year suspension.¹ The maximum penalty of disbarment may be imposed for violation of each of Rules 1.15 (I), 1.15 (II), and 1.7, and Coulter admits violating these Rules. He also admits violation of other Rules that carry lesser maximum penalties. Despite Coulter's denial, the record supports the conclusion that a dishonest motive and other aggravating circumstances are present in this case.

Coulter has been a member of the Bar since 1971, and has been the subject of two prior instances of professional discipline: first, the special master notes a formal letter of admonition issued in 2003 (which was confidential and does not appear in the record), and second, a Review Panel reprimand approved by this Court earlier this year. See *In the Matter of Gary Lanier Coulter*, 300 Ga. 654, 797 S.E.2d 492 (2017) (for admittedly overcharging a client for services and agreeing to make periodic payments to reimburse the client which he had not honored).² Given the nature of these violations, and Coulter's previous discipline, substantial discipline is necessary to serve not only as a penalty to Coulter but also as a deterrent to others and an indication to the public that this Court will maintain the ethics of the legal profession. See *In the Matter of Hunt*, 301 Ga. 661, 802 S.E.2d 243 (2017) (rejecting the petition for voluntary discipline seeking a suspension of between six and twelve months for admitted violation of Rule 1.15 (II) (b) by a senior member of the Bar for improper withdrawals of funds from his trust account where the lawyer had a lengthy disciplinary history, despite the Bar's lack of objection to the petition); *In the Matter of Harris*, 301 Ga.

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378, 801 S.E.2d 39 (2017) (accepting recommendation of special master of disbarment where lawyer who had no prior disciplinary history misappropriated trust funds and comingled those funds with his own).

***898** Given the serious nature of the admitted rule violations in this case, and the record facts, we reject the recommendation of the special master to impose a voluntary two-year suspension. See *In the Matter of Maccione*, 289 Ga. 17, 710 S.E.2d 745 (2011) (rejecting the special master's recommendation to accept the respondent's petition for voluntary discipline of Review Panel reprimand in light of the serious nature of the admitted rule violations even where, as here, the State Bar indicated it had no objection to the requested discipline). Given the fact that over five years have passed since the written grievances were filed, we direct the State Bar to proceed in this matter expeditiously.

Petition for voluntary discipline rejected.

All the Justices concur.

All Citations

301 Ga. 895, 804 S.E.2d 345

Footnotes

- 1 Rule 4-227 (c) (2) of the Georgia Rules of Professional Conduct states that the special master may either accept or reject a petition for voluntary discipline.
- 2 We note that in this earlier disciplinary matter, Coulter stated in his petition for voluntary discipline, dated December 19, 2016, that due to the decline in his law practice and other personal circumstances, he did not expect to return to the practice of law.

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