BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JESSE THOMAS ANDERSON,** **Bar No. 023072** Respondent.	**PDJ 2021-9021** **FINAL JUDGMENT AND ORDER OF RECIPROCAL DISCIPLINE** [State Bar No. 21-0832-RC] **FILED October 4, 2021**

On April 8, 2021, Jesse Thomas Anderson ("Respondent") provided the Disciplinary Clerk with a copy of a Suspension Order filed on September 30, 2020 by the Supreme Court of Washington.[1] The Supreme Court of Washington suspended Respondent for two years, effective October 7, 2020, and ordered him to pay restitution to former client Mary Dillard in the sum of $4,628.00.

On August 26, 2021, the Office of the Presiding Disciplinary Judge (PDJ) issued a Notice and Order re: Reciprocal Discipline, directing the parties to advise the PDJ within 30 days "of any claim that imposition of identical or substantially similar discipline is unwarranted for one or more of the reasons set forth in Rule 57(b)(3)." Both parties submitted timely responses.

[1] Rule 57(b)(1) states: "Upon being disciplined in another jurisdiction, a lawyer admitted to practice in the State of Arizona, whether active, inactive, retired, or suspended, shall, within thirty (30) days of service of the notice of imposition of discipline from the other jurisdiction, inform the disciplinary clerk of such action, and identify every court in which the lawyer is or has been admitted to practice." Respondent did not timely notify the disciplinary clerk of his suspension in Washington.

Rule 57(b)(3), provides, in pertinent part:

> [T]he presiding disciplinary judge shall impose the identical or substantially similar discipline, unless bar counsel or respondent establishes by a preponderance of the evidence, through affidavits or documentary evidence, or as a matter of law by reference to applicable legal authority, or the presiding disciplinary judge finds on the face of the record from which the discipline is predicated, it clearly appears that:
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> A. the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> B. there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the presiding disciplinary judge could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or
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> C. the imposition of the same discipline would result in grave injustice; or
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> D. the misconduct established warrants substantially different discipline in this state.

Unless one of the grounds set forth in Rule 57(b)(3)(A)–(D) is established by a preponderance of the evidence, "a final adjudication in another jurisdiction that a lawyer has been found guilty of misconduct shall establish conclusively the misconduct for purposes of a discipline proceeding in this state." Rule 57(b)(5).

Respondent urges two grounds for not imposing identical or substantially similar discipline. He argues:

> First, imposing reciprocal discipline here would result in a grave injustice – a two-year suspension against Mr. Anderson where his underlying conduct was at most, negligent. And Mr. Anderson's disciplinary action in the underlying case is arguably based on an infirmity of proof.

The PDJ finds that neither ground has been established by a preponderance of the evidence or as a matter of law. Therefore, the final adjudication by the Supreme Court of

Washington conclusively establishes the misconduct for which reciprocal discipline is appropriate.

In issuing an order of suspension and restitution, the Washington disciplinary authorities made numerous findings of misconduct by Respondent, including the following:

- Respondent "acted knowingly in failing to diligently represent Ms. Dillard and failing to expedite her dissolution," resulting in actual injury to his client.
- Respondent "acted knowingly in failing to communicate with Ms. Dillard about the status of her case. There was injury to Ms. Dillard resulting from Respondent's failure to communicate as she was unaware of what was going on in her dissolution and deprived of the opportunity to participate and make decisions about the case."
- "Respondent acted knowingly in repeatedly lying to Ms. Dillard about the temporary orders, telling Ms. Dillard he had filed temporary orders when he had not done so. Respondent repeated[ly] engaged in conduct involving dishonest, deceit, and misrepresentation. There was injury to Ms. Dillard as she was misled by Respondent's false statements to her about the temporary orders. She relied on his lies and as a result faced contempt charges."
- "Respondent acted knowingly in charging Ms. Dillard an unreasonable fee. There was injury to Ms. Dillard."

Respondent's contention that the Washington discipline "is arguably based on an infirmity of proof" is unpersuasive. As would also be the case in Arizona, when

Respondent failed to file an answer to the formal complaint filed against him in Washington and served on him personally, the allegations of that complaint were deemed admitted. Respondent had ample notice and opportunity to be heard in Washington. He made the conscious decision *not* to defend against the formal complaint, even after being notified that his failure to do so "**WILL RESULT IN THE ALLEGATIONS AND VIOLATIONS IN THE FORMAL COMPLAINT BEING ADMITTED AND ESTABLISHED.**" (Emphasis in original).

Respondent also chose not to defend against the formal complaint with knowledge that both his former client and disciplinary counsel were alleging he had acted dishonestly. In the underlying bar charge, Ms. Dillard claimed Respondent lied to her about having filed for temporary orders, calling it "a blatant, inaccurate and dishonest representation regarding paperwork that was critical to my case." Yet when Respondent filed his response to the bar charge, he never asserted that the failure to file for temporary orders was due to negligence rather than dishonesty.

Furthermore, before the formal complaint was filed, disciplinary counsel wrote to Respondent, advising him that the bar's screening investigation suggested Ms. Dillard's charge should be referred for formal proceedings and offering Respondent an opportunity to provide information to the Review Committee of the Washington Supreme Court's Disciplinary Board. In her lengthy communication (which appears to be the functional equivalent of the Report of Investigation submitted to Arizona's Attorney Discipline Probable Cause Committee), disciplinary counsel outlined the ethical

violations at issue and repeatedly cited dishonest conduct by Respondent, including the following statements:

> Mr. Anderson's statement that the temporary orders had been filed was false.
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> On August 29, 2017, Ms. Dillard send [sic] Mr. Anderson an email asking if the temporary orders had been filed and whether they had a date for the status conference. Mr. Anderson replied that the temporary orders had been filed but no date for the status conference had been set. This statement was false. The temporary orders had not been filed.
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> On October 25, 2017, [Ms. Dillard] followed up with an email to Mr. Anderson asking again if the temporary orders had been filed. Mr. Anderson confirmed they had been filed. In fact, they had not been filed. Mr. Anderson's statement to Ms. Dillard was false.
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> On October 30, 2017, Ms. Dillard sent Mr. Anderson an email asking for a copy of the temporary orders that had been filed. He responded by attaching copies of the "filed pleadings." And he told her that a hearing was set for the 13th. The temporary orders had not been filed and no hearing date had been set. Mr. Anderson's statements to Ms. Dillard were false.
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> * * * * *
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> It appears that Mr. Anderson acted knowingly in deceiving Ms. Dillard about the filing of the temporary orders and charging her an unreasonable fee. There was injury to Ms. Dillard as she paid Mr. Anderson an unreasonable amount of money for preparation of the temporary orders that resulted in no benefit to her. She was also misled by Mr. Anderson's false statement to her about the temporary orders. The presumptive sanction thus appears to be suspension.

Consistent with the pre-complaint communications, when Washington disciplinary authorities filed their formal complaint against Respondent, they alleged, *inter alia*:

- "Respondent's statement that the motion for temporary orders had been filed and noted on the court's calendar was false and Respondent knew that his statement was false."
- "Respondent's statement was false and Respondent knew it was false."
- "Respondent's statement to Ms. Dillard was false and he knew it was false."
- "Respondent's statements to Ms. Dillard were false and he knew they were false."

Respondent may not – for the first time – mount a new defense to the Washington disciplinary charges in these reciprocal discipline proceedings. *See, e.g., In re Fuchs*, 905 A.2d 160, 164 (D.C. App. 2006) ("reciprocal disciplinary proceedings are not a forum to reargue the foreign discipline."); *In re Sibley*, 61 A.D.3d 85, 86-87 (N.Y. App. 2009) (imposing reciprocal discipline after default proceedings, holding: "Respondent, in this proceeding for the imposition of reciprocal discipline, may not relitigate the issues raised and determined in the courts of a sister state.").

Respondent's reliance on *In re Pearson*, 628 A.2d 94 (D.C. App. 1993), does not compel a contrary conclusion. In *Pearson*, the respondent lawyer was denied an evidentiary hearing due to discovery violations. In declining to impose reciprocal disbarment, the District of Columbia court concluded the lawyer had been deprived of due process. No such due process violation exists here. Moreover, the District of Columbia Court of Appeals has more recently confirmed that a lawyer's waiver of process to which he or she would otherwise be entitled supports the imposition of reciprocal discipline:

> [Respondent] ignores the fact that if there was no hearing and formal adjudication in Florida it is because she voluntarily chose to forego that opportunity. As [Respondent] knowingly and voluntarily waived her right to any further process in the Florida proceedings, she consequently waived her right to a hearing there – and here – on the underlying charge of misconduct.

In re Day, 717 A.2d 883, 887 (D.C. App. 1998). *Day* also stands for the proposition that "[a]n attorney is held responsible for knowing the rules of the jurisdiction in which she is admitted to practice." *Id.* at 890.

The misconduct found by the Washington authorities would warrant imposition of a suspension (plus restitution) in Arizona for violations of ERs 1.3, 3.2, 1.4, 8.4(c), and 1.5(a). *See ABA Standards for Imposing Lawyer Sanctions*, Standards 4.62 and 4.42.

IT IS THEREFORE ORDERED that Respondent **JESSE THOMAS ANDERSON, Bar No. 023072,** is suspended from the practice of law in Arizona for a period of two years, effective 30 days from the date of this order.[2]

IT IS FURTHER ORDERED that Respondent shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct., including notifying clients, counsel and courts of his suspension.

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[2] Making Respondent's suspension retroactive to October 7, 2020 is not appropriate, as nothing in the record establishes that he has refrained from practicing law in Arizona since that date. *Cf. In re Goldberg*, 460 A.2d 982, 985 (D.C. App. 1983) (holding that suspension could be imposed retroactively "if the attorney voluntarily refrain[ed] from practicing law in the District of Columbia during the period of suspension in the original jurisdiction"); *see also In re Lifshitz*, 154 A.3d 599, 601 (D.C. App. 2017) (for a suspension imposed by another jurisdiction to be retroactive in reciprocal discipline proceedings, respondent must have refrained from practicing law in the reciprocal state as well).

IT IS FURTHER ORDERED that Respondent shall pay restitution to Mary Dillard (or the client protection fund) in the sum of $4,628.00 before applying for reinstatement in Arizona.

IT IS FURTHER ORDERED that Respondent shall pay the State Bar's costs and expenses in the sum of $1,200.00.

DATED this 4th day of October, 2021.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 4th day of October, 2021 to:

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