

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 126,105

In the Matter of MARK GREGORY AYESH,
Respondent.

ORIGINAL PROCEEDING IN DISCIPLINE

Original proceeding in discipline. Opinion filed June 16, 2023. Indefinite suspension.

Matthew J. Vogelsberg, Chief Deputy Disciplinary Administrator, argued the cause and was on the formal complaint for the petitioner.

Gregory Alan Andersen, of Law Offices of Gregory Alan Andersen, of Wichita, argued the cause, and *Mark G. Ayesh*, respondent, argued the cause pro se.

PER CURIAM: This is an attorney discipline proceeding against Mark Gregory Ayesh, of Wichita, who was admitted to practice law in Kansas in April 1979.

This court suspended Ayesh's license to practice law on May 7, 2021. See *In re Ayesh*, 313 Kan. 441, 485 P.3d 1155 (2021). About six months later, the Disciplinary Administrator's office filed another formal complaint against Ayesh alleging violations of the Kansas Rules of Professional Conduct. This complaint stemmed from Ayesh's unauthorized practice of law after this court had suspended his license.

The parties entered into a summary submission agreement under Supreme Court Rule 223 (2023 Kan. S. Ct. R. at 277). Ayesh admitted that he violated the Kansas Rules of Professional Conduct (KRPC)—specifically KRPC 5.5(a) (2023 Kan. S. Ct. R. at 411) (unauthorized practice of law) and KRPC 8.4(c) (2023 Kan. S. Ct. R. at 433) (engaging in

conduct involving dishonesty)—and Kansas Supreme Court Rule 231(b) (2023 Kan. S. Ct. R. at 292) (unauthorized practice of law). The parties also stipulated to the content of the record, the findings of fact, the conclusions of law, and the applicable aggravating and mitigating circumstances. They additionally agreed to waive a formal hearing and to recommend the sanction of indefinite suspension. See Rule 223(b) (detailing requirements for summary submission agreements).

The chair of the Board for Discipline of Attorneys approved the summary submission and cancelled a hearing on the formal complaint. See Supreme Court Rule 223(e) (2023 Kan. S. Ct. R. at 278). The summary submission was filed with this court for hearing.

Before us, the parties recommend a finding of misconduct and the imposition of a sanction of indefinite suspension.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant portions of the summary submission agreement follow.

"Findings of Fact

. . . .

"6. On April 6, 2021, K.E.B. consulted with respondent about preparing a prenuptial agreement. K.E.B. was planning on marrying R.G. on October 9, 2021.

"7. At the time of the consultation, respondent had a disciplinary case pending before the Supreme Court. Respondent did not inform K.E.B. of his pending disciplinary case. Ultimately, respondent agreed to prepare a prenuptial agreement for K.E.B.

"8. On April 8, 2021, respondent mailed a cover letter and a draft of a Cohabitation and Antenuptial Agreement to K.E.B. In the cover letter, respondent informed K.E.B. that she and R.G. would need to exchange financial statements with one another. Respondent also informed K.E.B. that R.G. needed to retain his own attorney to review the agreement for him. Respondent also noted that '[t]he attorneys would also sign Certificates to the Agreement. Of course, I'll be signing for you.'

"9. The certificate respondent said he would be signing stated in relevant part:

'[K.E.B.] has consulted with me in connection with her entering into the foregoing premarital agreement with [R.G.] and I have advised her as to her rights under such agreement and her legal rights in the absence of such agreement. During such consultation, I reviewed with her the financial statement of [R.G.], which is attached as Exhibit A to such agreement.'

"10. Finally, respondent stated in the cover letter: 'I understand the wedding date is October 9, 2021. It is not recommended that you wait until the last moment to have this Agreement reviewed and signed.'

"11. The language of the cover letter and the certificate respondent was to sign contemplated that respondent would be providing additional legal work and advice to K.E.B. prior to her signing the agreement.

"12. On May 7, 2021, the Supreme Court issued its opinion in respondent's disciplinary case, suspending respondent for three years but allowing the suspension to be stayed after six months if respondent entered into a probation plan approved by the ODA. See *Matter of Ayesb*, 313 Kan. 441, 471, 485 P.3d 1155 (2021).

"13. In the opinion, the Supreme Court ordered respondent to comply with Supreme Court Rule 231(a)(1) (2022 Kan. S. Ct. R. at 292), which required him, among other things, 'to notify in writing each client that the client should obtain new counsel because the attorney is suspended or disbarred and is no longer authorized to practice law

in Kansas.'

"14. Supreme Court Rule 231(a)(2) states: 'No later than 30 days after the Supreme Court issues an order suspending an attorney's license to practice law . . . the attorney must provide an affidavit to the Supreme Court certifying that the attorney complied with subsection (a)(1).'

"15. On June 25, 2021, respondent filed his Rule 231 affidavit with the Supreme Court. The affidavit stated in relevant part that respondent 'has read Rule 231 and has complied with all aspects including notice to clients, opposing counsel and courts concerning his suspension.'

"16. Prior to filing the affidavit, respondent never informed K.E.B. of his suspension. At the time of filing his affidavit, respondent had not received any communications from K.E.B. regarding the cohabitation and antenuptial agreement he had sent to her. Accordingly, respondent 'assumed that the wedding was a nonevent.'

"17. Rule 231(b) provides that it is 'the unauthorized practice of law and a violation of Kansas Rules of Professional Conduct 5.5 for an attorney to continue to practice law in Kansas after the Supreme Court issues an order suspending or disbarring the attorney.'

"18. The Supreme Court has stated that the practice of law includes giving "'legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in court." [Citation omitted.] *State ex rel. Stephan v. Williams*, 246 Kan. 681, 689, 793 P.2d 681 (1990).

"19. In addition to providing a general definition of the practice of law, the Supreme Court has established guidelines for the type of law-related work a suspended or disbarred attorney may do:

"[A]n attorney who has been disbarred or suspended from the practice of law is permitted to work as a law clerk, investigator, paralegal, or in any

capacity as a lay person for a licensed attorney-employer if the suspended lawyer's functions are limited exclusively to work of a preparatory nature under the supervision of a licensed attorney-employer and does not involve client contact. Any contact with a client is prohibited. Although not an inclusive list, the following restrictions apply: a suspended or disbarred lawyer may not be present during conferences with clients, talk to clients either directly or on the telephone, sign correspondence to them, or contact them either directly or indirectly." *In re Juhnke*, 273 Kan. 162, 166, 41 P.3d 855 (2002) (quoting *In re Wilkinson*, 251 Kan. 546, 553-54, 834 P.2d 1356 [1992]).

See also *In re Jones*, 291 Kan. 405, 420-21, 241 P.3d 90 (2010) (concluding that a suspended attorney that fails to abide by the *Wilkinson* restrictions violates KRPC 5.5[a]).

"20. On August 16, 2021, K.E.B. sent an email to respondent, asking whether R.G.'s attorney, Carolyn Sue Edwards, had contacted him. Respondent replied on August 19, stating 'not yet.'

"21. In September 2021, respondent and Edwards discussed revisions to the agreement.

"22. On September 10, 2021, K.E.B. sent a follow-up email, asking respondent again whether he had heard from Edwards. Respondent replied that same day, stating, 'Yes making some revisions.'

"23. On September 16, 2021, respondent sent a letter to K.E.B., stating that based on conversations he had with Edwards, he had made changes to the agreement and was providing her with a draft of the current version for her review. Notably, the respondent's letterhead identified respondent's business as 'Ayesh Accounting.'

"24. Paragraph 14 of the draft agreement stated:

'Each party has had the opportunity to be represented in negotiations for and in the preparation of this Cohabitation and

Antenuptial Agreement by counsel of his or her choosing.
HUSBAND has been represented by Carolyn Sue Edwards.
WIFE has been represented by Mark G. Ayesh. Each party has
read this agreement and is fully aware of the contents hereof and
of its legal effect.'

"25. On September 27, 2021, respondent, based on further discussions he had with K.E.B., made changes to the agreement. That same day, he faxed a cover letter and a current version of the agreement to Edwards as well as emailed and mailed a cover letter and copy of the agreement to K.E.B.

"26. In a cover letter to K.E.B. regarding the agreement, respondent advised her to 'execute four originals of the Agreement so that each party has an original and *each counsel* has an original. I am sending by regular mail four copies of the Agreement. If you prefer, you can come by the office and sign. We have several notaries available.'

"27. Like the September 16 version of the agreement, the September 27 version of the agreement again identified respondent as K.E.B.'s counsel, who represented her 'in negotiations for and in the preparation of this Cohabitation and Antenuptial Agreement.'

"28. Upon receiving respondent's fax and seeing that his letterhead indicated he was doing business as an accountant rather than a lawyer, Edwards checked on the status of respondent's law license and discovered that he had been suspended in May 2021.

"29. The next day, September 28, Edwards informed R.G. and K.E.B. of respondent's suspension and advised K.E.B. that she needed a licensed attorney to review the agreement for her.

"30. That same day, R.G. and K.E.B. went to respondent's office and confronted him about the suspension. Respondent admitted to being suspended and offered to have a lawyer in his office represent K.E.B. so the document could be executed. Ultimately, K.E.B. and R.G. left the office without signing the agreement.

"31. On October 4, 2021, ODA received Edwards' complaint regarding respondent's conduct. The ODA docketed the matter for investigation as DA13,759. Respondent cooperated in the subsequent investigation of the complaint.

"Conclusions of Law

"32. Under Supreme Court Rule 223(b)(1), the respondent admits that he engaged in misconduct. Under Rule 223(b)(2)(C), the ODA and the respondent stipulate that the findings of fact stated above constitute clear and convincing evidence of violations of the following rules:

"KRPC 5.5(a) (unauthorized practice of law) and Kansas Supreme Court Rule 231(b)

"33. KRPC 5.5(a) states that a 'lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.' Furthermore, Rule 231(b) states that '[i]t is the unauthorized practice of law and a violation of Kansas Rule of Professional Conduct 5.5 for an attorney to continue to practice law in Kansas after the Supreme Court issues an order suspending or disbaring the attorney.' The respondent violated KRPC 5.5(a) and Rule 231(b) by practicing law after the Supreme Court suspended him on May 7, 2021. After that date, respondent performed legal work for K.E.B. by communicating with attorney Edwards on K.E.B.'s behalf regarding the cohabitation and antenuptial agreement and revising the agreement based on those communications. He also provided legal advice to K.E.B. regarding the changes made to the agreement.

"KRPC 8.4(c) (engaging in conduct involving dishonesty)

"34. KRPC 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty. The respondent violated KRPC 8.4(c) by continuing to conduct himself as a lawyer after his law license was suspended by the Supreme Court. Instead of informing K.E.B. of his suspension in August 2021 when she reached out to him regarding the pending cohabitation and antenuptial agreement, respondent proceeded to perform legal work for K.E.B. by engaging in communications

with Edwards about the agreement, making subsequent changes to the agreement, and advising K.E.B. on those changes. Finally, in the drafts of the agreement and in the cover letters respondent sent to K.E.B. and Edwards in September 2021, he identified himself as 'counsel' for K.E.B. even though he was not authorized to practice law at that time.

"Aggravating and Mitigating Evidence

"35. Under Rule 223(b)(2)(D), the ODA and the respondent stipulate that the following aggravating and mitigating factors are applicable in this case:

"Aggravating Factors

"36. *Prior Disciplinary Offenses.* The respondent has been disciplined on four prior occasions.

- i. In 2006, the ODA informally admonished the respondent for violating 4.2 (communication with person represented by counsel).
- ii. In 2008, the ODA informally admonished the respondent for violating KRPC 1.1 (competence) and KRPC 1.2 (scope of representation).
- iii. In 2013, the respondent successfully completed an attorney diversion agreement for violating KRPC 1.15 (safeguarding client property).
- iv. In May 2021, the Supreme Court suspended respondent for violating KRPC 1.2 (scope of representation); KRPC 1.6 (confidentiality); KRPC 1.7 (conflict of interest: current clients); KRPC 1.8 (conflict of interest: current clients); KRPC 1.9 (conflict of interest: former clients); KRPC 1.16 (termination of representation); KRPC 3.1 (meritorious claims and contentions); KRPC 3.3 (candor to the tribunal); KRPC 4.1 (truthfulness in

statements to others); KRPC 8.3 (failure to report misconduct); KRPC 8.4(c) (engaging in dishonest conduct); and KRPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent engaged in the current misconduct while serving the suspension for these rule violations.

"37. *Dishonest or Selfish Motive.* Respondent acted with a dishonest motive when he failed to notify K.E.B. of his suspension when she reached out to him in August 2021 regarding the pending cohabitation and antenuptial agreement and proceeded to act as her attorney in communicating with Edwards regarding changes to the agreement and providing advice to K.E.B. regarding those changes.

"38. *Substantial Experience in the Practice of Law.* Respondent was admitted to the Kansas Bar in 1979. When respondent was suspended in May 2021, he had been practicing law for more than forty years.

"Mitigating Factors

"39. *Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings.* Respondent fully cooperated in the investigation of disciplinary complaint. Once the ODA's filed its formal complaint, Respondent filed an answer, admitting to all allegations. Lastly, respondent willingly entered into this summary submission agreement, stipulating to facts and rule violations.

"40. *Previous Good Character and Reputation in the Community Including any Letters from Clients, Friends and Lawyers in Support of the Character and General Reputation of the Attorney.* The respondent was an active and productive member of the bar of Wichita, Kansas. The respondent also enjoys the respect of his peers and generally possesses a good character and reputation as evidenced by numerous letters of support.

"41. *Remorse.* The respondent is genuinely remorseful for engaging in the misconduct in this case.

"Recommendation for Discipline

"42. Under Supreme Court Rule 223(b)(3), the ODA and respondent agree to a recommended sanction of indefinite suspension and that such suspension will begin to run on the date the parties execute this summary submission agreement."

DISCUSSION

In a disciplinary proceeding, we consider the evidence and the parties' arguments and determine whether KRPC violations exist and, if they do, the appropriate discipline. Attorney misconduct must be established by clear and convincing evidence. *In re Spiegel*, 315 Kan. 143, 147, 504 P.3d 1057 (2022); see Supreme Court Rule 226(a)(1)(A) (2023 Kan. S. Ct. R. at 281). "Clear and convincing evidence is 'evidence that causes the factfinder to believe that "the truth of the facts asserted is highly probable.'" 315 Kan. at 147 (quoting *In re Lober*, 288 Kan. 498, 505, 204 P.3d 610 [2009]).

Respondent Ayesh had adequate notice of the formal complaint, to which he filed an answer. He waived formal hearing after entering into a summary submission agreement. In this agreement, the parties agreed they would take no exception to the findings of facts and conclusions of law. By Supreme Court rule, the parties thus admitted the factual findings and conclusions of law in the summary submission. See Supreme Court Rule 228(g)(1) (2023 Kan. S. Ct. R. at 288).

We adopt the findings and conclusions in the summary submission, which taken together with the parties' stipulations establish by clear and convincing evidence that Ayesh's conduct violated KRPC 5.5(a) and 8.4(c) and Rule 231(b). The remaining issue is discipline.

The parties' summary agreement recommending discipline is advisory only and does not prevent us from imposing a greater or lesser discipline. Kansas Supreme Court

Rule 223(f) (2023 Kan. S. Ct. R. at 279). That said, after review of the stipulated facts and conclusions of law we agree with the recommendation that indefinite suspension is the appropriate remedy. We do not agree, however, with the recommendation that the suspension begin to run on the date when the parties executed the summary submission agreement. Instead, we order that the suspension begins to run on the date of this decision.

CONCLUSION AND DISCIPLINE

IT IS THEREFORE ORDERED that Mark Gregory Ayesh is hereby suspended from the practice of law in the state of Kansas for an indefinite period, effective the date of this opinion in accordance with Supreme Court Rule 225(a)(2) (2023 Kan. S. Ct. R. at 281) for violating KRPC 5.5(a) and 8.4(c) and Rule 231(b).

IT IS FURTHER ORDERED that respondent shall comply with Rule 231 (notice to clients, opposing counsel, and courts following suspension or disbarment).

IT IS FURTHER ORDERED that respondent shall comply with Supreme Court Rule 232 (2023 Kan. S. Ct. R. at 293) (reinstatement following suspension or disbarment) when seeking reinstatement.

IT IS FURTHER ORDERED that the costs of these proceedings be assessed to the respondent and that this opinion be published in the official Kansas Reports.