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Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

August 18, 2023

To:

Pablo Galaviz Jr.
Galaviz Legal LLC
711 W. Moreland Blvd., Ste. 100
Waukesha, WI 53188-2483

James J. Winiarski
Referee

John T. Payette
Francis X. Sullivan
Office of Lawyer Regulation
110 E. Main Street, Suite 315
Madison, WI 53703

You are hereby notified that the Court has entered the following order:

No. 2022AP1417-D Office of Lawyer Regulation v. Pablo Galaviz, Jr.

Attorney Pablo Galaviz was admitted to practice law in Wisconsin in 1990. The most recent address furnished by Attorney Galaviz to the State Bar of Wisconsin is in Waukesha, Wisconsin. Attorney Galaviz has no prior disciplinary history.

On August 19, 2022, the Office of Lawyer Regulation (OLR) filed a complaint alleging three counts of misconduct arising out of Attorney Galaviz's representation of K.B. In 2016, a jury found K.B. guilty of one count of first-degree intentional homicide by use of a dangerous weapon, as a party to a crime. In July 2017, the State Public Defender (SPD) appointed Attorney Galaviz as successor appellate counsel for K.B.

On July 12, 2018, Attorney Galaviz filed a no-merit report, pursuant to Anders v. California, 386 U.S. 738 (1967) and Wis. Stat. § (Rule) 809.32 in K.B.'s appeal. K.B. filed a response to the no-merit report. Attorney Galaviz told OLR that K.B. did not send him a copy of the response at the time he filed it. In January 2019, the court of appeals held K.B.'s appeal in abeyance pending this court's consideration of a separate criminal appeal. On January 10, 2020, the court of appeals issued an order directing Attorney Galaviz to file a supplemental no-merit report by February 20, 2020 addressing specific issues identified in the order or, in the alternative,

Page 2

August 18, 2023

No. 2022AP1417-D

Office of Lawyer Regulation v. Pablo Galaviz, Jr.

file a motion to dismiss the appeal and extend the time for filing a postconviction motion. Attorney Galaviz did not comply with the January 10, 2020 order.

On February 20, 2020, the court of appeals issued a second order directing Attorney Galaviz to file a supplemental no-merit report or motion to dismiss the appeal and extend the time for filing a postconviction motion within fourteen days. On February 28, 2020, Attorney Galaviz filed a motion entitled "Voluntary Dismissal of No-Merit Report and Motion to Extend Time to File Postconviction Motion." Attorney Galaviz told OLR that he obtained a copy of K.B.'s response to the no-merit report from the circuit court in March 2020, but he told the court of appeals in a May 13, 2020 filing that he was still attempting to obtain a copy of K.B.'s response as late as April 2020.

On February 28, 2020, the court of appeals rejected Attorney Galaviz's no-merit report and dismissed K.B.'s appeal without prejudice. It extended the deadline for Attorney Galaviz to file a postconviction motion to May 4, 2020. On May 14, 2020, the court of appeals granted Attorney Galaviz's request to extend the deadline for filing a postconviction motion or notice of appeal under Wis. Stat. § (Rule) 809.30(2)(h) until August 25, 2020.

On August 25, 2020, Attorney Galaviz filed a document in the circuit court entitled "Notice of Motion and Motion for Postconviction Relief Pursuant to § 974.06 and § 805.15, Wis. Stats." The motion requested a new trial based on insufficient evidence. In the alternative, it requested an unspecified modification of K.B.'s mandatory life sentence. The circuit court denied the motion by order dated August 31, 2020. In a footnote, the circuit court noted that Attorney Galaviz had sought relief under § 974.06 even though the court of appeals had extended the deadline for filing a postconviction motion or notice of appeal under Wis. Stat. § (Rule) 809.30(2)(h).

On September 18, 2020, Attorney Galaviz filed a document in circuit court entitled "Notice of Intent to Appeal Postconviction Decision." Galaviz cited Wis. Stat. § (Rule) 809.30 and followed the format of a notice of intent to pursue postconviction relief under Wis. Stat. § (Rule) 809.30(2)(b), rather than properly pleading the requirements of a notice of appeal pursuant to Wis. Stat. § (Rule) 809.10. This error resulted in the document being wrongly docketed as a "Notice of Intent" pursuant to Wis. Stat. § (Rule) 809.30(2).

On October 8, 2020, the SPD filed a motion for leave to appoint successor counsel and for reinstatement and extension of the Wis. Stat. § (Rule) 809.30(2)(h) deadline for filing a postconviction motion or notice of appeal. The motion stated, "As a result of the numerous problems evident by his handling of this matter, the SPD has removed Attorney Galaviz from the list of attorneys eligible for appellate appointments." On October 26, 2020, the court of appeals granted the motion extending the deadline for the SPD to appoint successor counsel and further extended the deadline to file a postconviction motion or notice of appeal. On November 16, 2020, SPD appointed successor appellate counsel for K.B.

The OLR's complaint alleged that by failing to timely comply with the court of appeals' January 10, 2020 order, Attorney Galaviz violated SCR 20:1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client; by failing to advise K.B.

Page 3

August 18, 2023

No. 2022AP1417-D

Office of Lawyer Regulation v. Pablo Galaviz, Jr.

which issues he intended to present prior to filing the August 25, 2020 motion for postconviction relief, and that failure to present other potential issues in that motion could result in waiver of those issues for appeal, Attorney Galaviz violated SCR 20:1.4(a)(2), which provides that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished; and by failing to obtain a copy of K.B.'s response to the no-merit report prior to replying to the court of appeals, seeking relief under Wis. Stat. § 974.06 when he could still timely file a postconviction motion or notice of appeal under Wis. Stat. § (Rule) 809.30(2)(h), and citing Wis. Stat. § (Rule) 809.30 and following the format of a Notice of Intent to Pursue Postconviction Relief rather than the requirements of a Notice of Appeal pursuant to Wis. Stat. § (Rule) 809.10, Attorney Galaviz violated SCR 20:1.1, which provides that a lawyer shall provide competent representation to a client.

James J. Winiarski was appointed referee in the matter. Although Attorney Galaviz was personally served with a copy of the complaint and order to answer, he failed to file an answer or participate or appear at any of the scheduling conferences. In an October 25, 2022 scheduling order, the referee ordered Attorney Galaviz to file an answer to the complaint and appear at a November 30, 2022 conference. Attorney Galaviz was advised that the referee would consider a motion for default judgment if he failed to appear at the rescheduled conference. Attorney Galaviz did not appear at the November 30, 2022 conference. On January 31, 2023, the OLR filed a motion for default judgment. On February 21, 2023, the referee recommended that this court grant default judgment in favor of the OLR.

On May 8, 2023, the referee issued his report and recommendation finding that OLR had met its burden of proof with respect to all of the counts of professional misconduct alleged in the complaint. The referee recommended that Attorney Galaviz receive a private reprimand and that he pay the full costs of the proceeding, which are \$2,734.31 as of June 9, 2023.

We review a referee's findings of fact subject to the clearly erroneous standard. See In re Disciplinary Proceedings Against Eisenberg, 2004 WI 14, ¶5, 269 Wis.2d 43, 675 N.W.2d 747. We review the referee's conclusions of law de novo. Id. We determine the appropriate level of discipline independent of the referee's recommendation. See In re Disciplinary Proceedings Against Widule, 2003 WI 34, ¶44, 261 Wis.2d 45, 660 N.W.2d 686.

In light of Attorney Galaviz's failure to appear or participate in this case, we agree with the referee that Attorney Galaviz should be declared in default. We also agree with the referee that the allegations in OLR's complaint have been established and that Attorney Galaviz engaged in the three counts of misconduct alleged in the complaint. We also agree that a private reprimand is an appropriate sanction for the misconduct. Although no two disciplinary proceedings are alike, we agree with the referee that this case is similar to Private Reprimand No. 2007-9 in which a private reprimand was deemed sufficient for failure to provide diligent representation; failure to keep clients reasonably informed; and failure to explain a matter to a client.¹ Finally, we agree with the referee that, as is our usual practice, Attorney Galaviz should pay the full costs of this proceeding.

¹ No electronic copy is available at this time.

Page 4

August 18, 2023

No. 2022AP1417-D

Office of Lawyer Regulation v. Pablo Galaviz, Jr.

IT IS ORDERED that Attorney Pablo Galaviz is privately reprimanded for professional misconduct as alleged in the Office of Lawyer Regulation's complaint.

IT IS FURTHER ORDERED that within 60 days of the date of this order Attorney Pablo Galaviz shall pay to the Office of Lawyer Regulation the costs of this proceeding, which are \$2,734.31.

Samuel A. Christensen
Clerk of Supreme Court