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SJC-12732

IN THE MATTER OF ILYA LIVIZ.

May 12, 2020.

Attorney at Law, Disciplinary proceeding, Suspension, Contempt.
Contempt.

The respondent, Ilya Liviz, appeals from an order of a single justice of this court administratively suspending him from the practice of law, and from an order of a second single justice adjudicating him in contempt for failing to comply with the order of administrative suspension.¹ We affirm.

On April 2, 2019, the first single justice administratively suspended the respondent from the practice of law for failure to respond to requests for information by bar counsel during the course of her investigation of alleged professional misconduct. See S.J.C. Rule 4:01, § 3 (1) (b), 3 (2), as appearing in 453 Mass. 1308 (2009). He was not reinstated within thirty days. Accordingly, the terms of the suspension order, as well as S.J.C. Rule 4:01, § 17, as amended, 425 Mass. 1321 (1997), required that the respondent withdraw his appearances in all pending matters; resign from fiduciary appointments; provide notices to clients and to counsel in pending matters; close any trust accounts and distribute trust funds and unearned fees; make client files and property available to clients; and not engage as a lawyer or in legal work while under suspension. The respondent also was required to file an affidavit certifying

¹ We have reviewed the respondent's preliminary memorandum and record appendix, as well as the records that were before the single justices. Pursuant to S.J.C. Rule 2:23, 471 Mass. 1303 (2015), governing appeals in bar discipline cases, we dispense with oral argument.

compliance with the order and bar disciplinary rules. See S.J.C. Rule 4:01, § 17 (5).

On June 6, 2019, bar counsel filed a complaint for contempt, alleging that the respondent had failed to comply with the order of administrative suspension. A substituted complaint for contempt was filed on July 8, 2019. After a hearing, a second single justice adjudged the respondent in civil contempt. The respondent appeals from both orders.

With respect to the first order, the respondent was administratively suspended from the practice of law because bar counsel fulfilled the requirements of S.J.C. Rule 4:01, § 3 (2), by filing a petition, accompanied by an affidavit of bar counsel, and made a showing that the respondent failed without good cause "to respond to requests for information by Bar Counsel or the [board of bar overseers] made in the course of the processing of a complaint."² S.J.C. Rule 4:01, § 3 (1). The respondent alleged that he "DID COMPLY, and DID PROVIDE AN ANSWER, and my answer was provided in a form of SILENCE. (BOOM SHAKALAKA)." He also stated that, to the extent an answer was required, he "formally den[ied], and demand[ed] a Jury Trial."

² By letter dated February 20, 2019, bar counsel provided to the respondent a copy of a Federal District Court judge's order, and a transcript of a hearing in that court. The respondent represented the plaintiffs in that matter. Bar counsel indicated that the materials raised questions of professional misconduct, and requested the respondent to respond, with supporting documentation. He was asked to provide, among other things, the names and contact information for plaintiffs not identified by name in the Federal litigation; the dates of his engagement, engagement letters, and fee agreements; the dates of his last communication with the plaintiffs; identifying information concerning other litigation involving the plaintiffs; identifying information concerning cases in which he had been removed as counsel or ordered not to speak to particular parties; cases in which he had been sued for malpractice or otherwise; and cases in which he had appeared as counsel since 2016.

The respondent did not produce any of the requested documents. He did not assert that any one or more of bar counsel's requests sought records that were not within the scope of the required records doctrine. See Matter of Kenney, 399 Mass. 431, 438 (1987).

By failing without good cause to cooperate with bar counsel's investigation of a complaint of misconduct, the respondent violated S.J.C. Rule 4:01, § 3 (1). Silence in the face of bar counsel's request for information is not, as the respondent claims, a "response" categorically protected by the privilege against compelled self-incrimination under the Fifth Amendment to the United States Constitution. See Matter of Kenney, 399 Mass. 431, 441 (1987) ("required records exception" precludes "valid assertion of the Fifth Amendment privilege"). See also Stornanti v. Commonwealth, 389 Mass. 518, 521-522 (1983); Mass. R. Prof. C. 1.15A, 480 Mass. 1316 (2018) (generally requiring retention of client files for six-year period). He is not entitled to a jury trial. See Matter of Carver, 224 Mass. 169, 172 (1916), and cases cited. See also Matter of Gargano, 460 Mass. 1022, 1025 (2011). The respondent has thus demonstrated no error in the single justice's order administratively suspending him from the practice of law.³

We need go no further. The respondent makes no meaningful attempt to challenge on appeal the second single justice's order adjudging him in contempt for failing to comply with the first single justice's order of administrative suspension. He focuses instead on his claims concerning the validity of the suspension order. We therefore consider the facts alleged in bar counsel's complaint for contempt established for purposes of appeal. See Matter of Shaughnessy, 446 Mass. 1013, 1013 (2006). After a

³ Contrary to the respondent's claim, a single justice has jurisdiction to issue an order of suspension. See S.J.C. Rule 4:01, § 1 (1), as amended, 430 Mass. 1319 (2000). The Supreme Judicial Court and its single justices have "exclusive disciplinary jurisdiction" over "[a]ny lawyer . . . admitted to, or engaging in the practice of law in this Commonwealth." Matter of Moore, 449 Mass. 1009, 1011 (2007), quoting S.J.C. Rule 4:01, § 1 (1). See Matter of Fordham, 423 Mass. 481, 485 (1996). Although the respondent claims that bar counsel's petition for administrative suspension was "frivolous" or otherwise deficient because it did not describe the alleged misconduct under investigation, the respondent was not administratively suspended from the practice of law for the conduct under investigation. He was suspended because bar counsel established that the respondent failed to cooperate with bar counsel's investigation, which itself "shall constitute misconduct and shall be grounds for appropriate discipline." S.J.C. Rule 4:01, § 3 (1). Bar counsel's letter of February 20, 2019, see note 2, supra, adequately informed the respondent of the nature of the misconduct under investigation.

hearing, at which the respondent appeared and was given an opportunity for explanation and defense, the second single justice was warranted in concluding that the respondent failed to comply with the first single justice's clear and unambiguous order. Among other things, the second single justice did not err in concluding that the respondent rendered legal services after the effective date of the suspension.⁴ See id.

Order of administrative suspension affirmed.

Order of civil contempt affirmed.

The case was submitted on the record, accompanied by a memorandum of law.

Ilya Liviz, pro se.

⁴ To the extent the respondent claims that he was not afforded due process, we observe that the respondent responded in writing to bar counsel's petition for administrative suspension and was given an opportunity to challenge the temporary, administrative suspension in person at the hearing before the second single justice. See Matter of Kenney, 399 Mass. at 436. See also Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 ("The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement"). In the circumstances, nothing more was required.