



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

December 19, 2014

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioners have been disciplined by the United States Tax Court for reasons explained in an order issued in the case of each practitioner.

Copies of the orders are attached.

1. Charles A. Malalah
2. George R. Neely

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Charles A. Malalah

ORDER OF SUSPENSION

By order of the District of Columbia Court of Appeals, filed March 25, 2014, Mr. Malalah was suspended from the practice of law in the District of Columbia, pending final disciplinary proceeding before that Court. Mr. Malalah failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the entry of the March 25, 2014, order of the District of Columbia Court of Appeals, within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Court issued an Order to Show Cause on August 12, 2014, affording Mr. Malalah the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. The Order to Show Cause instructed Mr. Malalah to (1) submit a written response to the order on or before September 15, 2014, and (2) notify the Court in writing on or before September 15, 2014, of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, on October 9, 2014.

The Order to Show Cause was mailed to Mr. Malalah by both certified and regular mail, to an office address in the District of Columbia and to a post office box in Montgomery Village, Maryland. The copy of the Order to Show Cause mailed by certified mail to the office address was returned to the Court by the United States Postal Service, the envelope marked "Unable to Forward/For Review." The copy of the Order to Show Cause mailed by certified mail to the post office box was returned to the Court by the United States Postal Service, the envelope marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward." The copy of the Order to Show Cause mailed by regular mail to the post office box address was returned to the Court by the United States Postal Service, the envelope marked, "Return to Sender – Not Deliverable as Addressed – Unable to Forward." The copy of the Order to Show Cause mailed by regular mail to the office address has not been returned to the Court by the United States Postal Service. The Court has received no response from Mr. Malalah to the

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Order to Show Cause, issued August 12, 2014, nor has the Court received by September 15, 2014, notice of Mr. Malalah's intention to appear at the scheduled hearing.

Upon due consideration and for cause, it is hereby

ORDERED that the Court's Order to Show Cause, issued August 12, 2014, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Malalah is forthwith suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that Mr. Malalah's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

ORDERED that, until reinstated, Mr. Malalah is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that the Court will file orders to withdraw Mr. Malalah as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Malalah shall, with 20 days of service of this order upon him, surrender to this Court his certificate of admission to practice before this Court.

By the Court:

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
December 19, 2014

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: George R. Neely

ORDER OF DISBARMENT

By Final Judgment of Disbarment filed June 18, 2008, Commission for Lawyer Discipline v. Neely, No. 2003-63182, District Court of Harris County, Texas, 164th Judicial District, aff'd 302 S.W.3d 331 (14th Tex. App (Houston) 2009), Mr. Neely was disbarred from the practice of law in the State of Texas. Additionally, Mr. Neely failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the entry of the June 18, 2008, Final Judgment of Disbarment of the District Court of Harris County, Texas, 164th Judicial District, within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Court issued an Order to Show Cause on May 29, 2014, affording Mr. Neely the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. The Order to Show Cause instructed Mr. Neely to (1) submit a written response to the order on or before June 27, 2014, and (2) notify the Court in writing on or before June 27, 2014, of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the United States Tax Court, 400 Second Street N.W., Washington, D.C. 20217, at 10:00 a.m. on July 16, 2014. On June 30, 2014, the Court received Mr. Neely's response to the Order to Show Cause in which he requested an accommodation regarding the scheduled hearing. By Order dated July 2, 2014, the Court rescheduled the hearing for October 9, 2014, on which date the hearing was held.

Upon due consideration and for the reasons set forth in the attached Memorandum Sur Order, it is hereby

ORDERED that the Court's Order to Show Cause, issued May 29, 2014, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Neely is forthwith disbarred from further practice before the United States Tax Court. It is further

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ORDERED that Mr. Neely's name is hereby stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and his practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

ORDERED that Mr. Neely is hereby prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that the Court will file orders to withdraw Mr. Neely as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Neely shall, within 20 days of service of this order upon him, surrender to this Court his certificate of admission to practice before this Court.

By the Court:

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
December 19, 2014

In re: George R. Neely

Memorandum Sur Order

On May 29, 2014, the Court issued an order to show cause to George R. Neely, a member of the Bar of this Court, affording him the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. This is a reciprocal discipline case. The order to show cause was predicated on the final judgment of disbarment filed June 18, 2008, Commission for Lawyer Discipline v. Neely, No. 2003-63182, District Court of Harris County, Texas, 164th Judicial District, aff'd, 302 S.W.3d 331 (14th Tex. App. (Houston) 2009), by which Mr. Neely was disbarred from the practice of law in the State of Texas. In this memorandum, we refer to the district court which issued the final judgment of disbarment as the Texas district court, and we refer to the proceeding in which the final judgment of disbarment was issued as Mr. Neely's 2008 disciplinary proceeding.

Additionally, Mr. Neely failed to inform the Chair of the Court's Committee on Admissions, Ethics, and Discipline of the entry of the June 18, 2008, final judgment of disbarment within 30 days, as required by Rule 202(b) of the Tax Court Rules of Practice and Procedure. By failing to inform the Chair of the Court's Committee on Admissions, Ethics, and Discipline of the above-referenced

disbarment, Mr. Neely violated rule 3.4(c) of the Model Rules of Professional Conduct of the American Bar Association (knowingly disobey an obligation under the rules of a tribunal).

Mr. Neely responded to the order to show cause in the following written submissions: (1) response to order to show cause, received on April 18, 2014; (2) notice of appearance at show cause hearing, received on July 17, 2014; (3) Letter dated August 27, 2014, received on September 5, 2014; and (4) letter dated September 9, 2014, received on September 15, 2014. Mr. Neely also appeared for hearing on October 9, 2014, before a panel of three Judges of the Court.

Background

The Basis for Discipline: The action of the Texas district court disbarring Mr. Neely from the practice of law in the State of Texas was based upon the court's finding that he had committed professional misconduct by violating rule 1.14(a) of the Texas Disciplinary Rules of Professional Conduct. That rule provides as follows:

(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and

appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

The above rule is similar to ABA Model Rule 1.15, Safekeeping Property.

The Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas that acts as the State Bar in lawyer disciplinary proceedings, see rule 4.06.A of the Texas Rules of Disciplinary Procedure, filed a motion for partial summary judgment in Mr. Neely's 2008 disciplinary proceeding. The commission's motion asserted that Mr. Neely's deposition testimony and the other evidence established that: (1) Mr. Neely did not separate his clients' funds from his personal funds within his only trust account during 2001 and 2002; (2) Mr. Neely acknowledged paying for numerous personal- and business-related expenses from this same trust account; and, (3) Mr. Neely failed to preserve five years of records pertaining to the trust account as required by rule 1.14(a) of the Texas Disciplinary Rules of Professional Conduct. Neely 302 S.W.3d at 336. The Texas district court granted the commission's motion, finding that the commission had proved, as a matter of law, that Mr. Neely had violated rule 1.14(a). Id. at 337. After considering the appropriate sanction, the Texas district court issued the final judgment of disbarment. The action of the Texas district court was affirmed on appeal. Id.

Mr. Neely's Response to Order To Show Cause: During his hearing on the order to show cause issued by this Court, Mr. Neely stated that his "failure to keep [his] funds separate from other [sic] clients' funds" was an attempt to deal with his ex-wife's "inability to control her spending." He said:

I basically treated myself and my wife like I would any other client, holding funds for them. When the funds needed to be dispersed, they were dispersed either for me or for her for any number of different things. And, quite frankly, it worked. I was able to keep her from doing and able to better manage finances.

Thus, Mr. Neely admitted his failure to keep client funds separate from his own. He argued that there was no misappropriation or misspending of client funds. Nevertheless, he stated: "I mean, I shouldn't have done it, and I wish I hadn't done it."

In his response to the order to show cause and during his hearing, Mr. Neely stated that he had filed in the Texas district court a petition for reinstatement, pursuant to rule 11.02 of the Texas Rules of Disciplinary Procedure, and an amended original petition for reinstatement. He argued that he satisfied all conditions required for reinstatement, but the Texas district court denied reinstatement because he had not paid the attorney's fees to the State Bar of Texas of \$19,990 that were ordered in the following ordered paragraph of the final judgment of disbarment :

IT IS ORDERED that Respondent pay reasonable and necessary attorneys' fees in the amount of Nineteen Thousand, Nine Hundred Ninty and No/100 Dollars (\$19,990.00). Payment is to be remitted to the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002, by money order, certified check, or cashier's check. Respondent shall make such payment on or before September 2, 2008, subject to the orders of the United States Bankruptcy Court for the Southern District of Texas.

Mr. Neely said that he has appealed the denial of reinstatement. According to Mr. Neely, if the court of appeals affirms the Texas district court and rules that he was required to pay the attorney's fees before filing his petition for reinstatement, "then Neely will make arrangements to pay the fees." On the other hand, if the court of appeals rules that Mr. Neely was not required to pay the attorney's fees before filing his petition for reinstatement, then he should be reinstated. Either way, according to Mr. Neely, he "anticipates obtaining an order of reinstatement within the next six months." He asks this Court to "abate these proceedings pending the ruling of the court of appeals."

Mr. Neely also said that he would like to retain his license to practice in this Court. He said that he has been admitted to the graduate tax program of the University of Houston Law School, and he plans to begin that program in January. He said that he would like to make tax law the focus of his practice after he is reinstated. "Alternatively", Mr. Neely requested that he be permitted to practice

before the Court as a nonlawyer, taking into account his extensive trial experience in both State and Federal courts.

We note that the Order to Show Cause issued to Mr. Neely directed him to file a response in which

you shall, inter alia, (1) inform the Court whether there is now, or has been in the past, any disciplinary proceeding involving you, other than as described above, (2) explain in detail the circumstances that led to each disciplinary proceeding involving you, and (3) provide any material in your possession that is part of the record in each disciplinary proceeding involving you.

Mr. Neely failed to do so. This is particularly significant in Mr. Neely's case because, according to the court of appeals, Mr. Neely has a "lengthy disciplinary record". Neely, 302 S.W.3d at 349-350. Mr. Neely failed to provide any information about his "lengthy disciplinary record" in his written response to the order to show cause.

Mr. Neely's Disciplinary Record: At his hearing, a member of the panel asked Mr. Neely whether he had been involved in other disciplinary proceedings. After first stating "I can't tell you all of them", Mr. Neely vaguely enumerated six disciplinary proceedings in which he had been involved. First, he said that he had received a "nine-month" suspension for improper advertising. Second, he said that he had received an "agreed probated suspension" in a divorce case for

misconduct that Mr. Neely could not remember, but “it had to do with pleadings, filing pleadings or bringing cases that are not prosecuting [sic] claims in good faith.” Third, he said he had received a “six-month probated suspension” in a grievance involving “a dispute over the amount of attorney’s fees due under the contract.” Fourth, he said that he “was sued by the State Bar with two or three people making claims that I did or didn’t do something. I don’t remember what it was.” According to Mr. Neely, this matter was resolved after he won a jury trial. Fifth, there was a grievance involving “a guy who owed child support” that was dismissed. Finally, according to Mr. Neely, there was a grievance as to which he failed to file his response until after the response date, and he received an unpublished reprimand.

What we learn from reported cases about Mr. Neely’s disciplinary history is the following. In Neely v. Commission For Lawyer Discipline, 196 S.W.3d 174, 187 (1st Tex. App. (Houston) 2006), the court of appeals affirmed the judgment of the trial court that Mr. Neely had engaged in professional misconduct by violating the rules governing lawyer advertising, including rule 7.02(a) (making a false or misleading communication about the qualifications or services of the lawyer), rule 7.03(a) (soliciting professional employment), rule 7.04(j) (advertisements in public media must contain geographic location of lawyer or firm), rule 7.05

(prohibited written, electronic, or digital solicitations), and rule 7.07 (filing requirements for public advertisements and certain solicitations) of the Texas Disciplinary Rules of Professional Conduct. The court of appeals also affirmed the sanctions imposed on Mr. Neely by the trial court consisting of a three-year suspension of legal practice, with nine months of active suspension and two years and three months of probated suspension, and the award of attorney's fees to the commission. Id.

In the course of reviewing the judgment of the trial court, the court of appeals stated that Mr. Neely had been disciplined on three prior occasions. Id. The court described the discipline that Mr. Neely had received in those cases as follows:

Neely had been disciplined three times before the imposition of the current sanction, as follows: (1) private reprimand for not responding to a grievance, in violation of Disciplinary Rule of Conduct 8.01(b); (2) eight-month probated suspension for taking more fees out of a client's settlement than the amount to which Neely and the client agreed, in violation of Disciplinary Rule of Conduct 1.02(a)(1)(2); and (3) 18-month probated suspension for bringing a frivolous lawsuit, in violation of Disciplinary Rules of Conduct 3.01, 8.04(a)(1), 8.04(a)(3), and 8.04(a)(12). [Id.]

Mr. Neely also received a partially probated suspension that was signed on November 14, 2006, by the district court for Harris County, Texas, the 333rd Judicial District, in case no. 2005-56137. We do not know the nature of Mr.

Neely's misconduct in that case. Mr. Neely appealed that suspension, but his appeal was dismissed after the final judgment of disbarment was affirmed on appeal. See Neely v. Commission for Lawyer Discipline, No. 14-07-00137-CV, 2010 WL 2400380 (14th Tex. App. (Houston) June 17, 2010).

In addition to the above disciplinary cases, there are cases in which Texas courts had sanctioned Mr. Neely for filing frivolous pleadings and other misconduct. See Neely v. Trippon (In re Neely), Bankruptcy No. 04-44898-H5-7, Adversary No. 11-03637, Civil Action No. 12-1008, 2013 WL 3148676 at *23, *24 (S.D. Tex. June 19, 2013) (in bankruptcy case, imposing sanctions of \$27,703 against Mr. Neely after finding that his lawsuit was groundless and frivolous and brought for purposes of harrassment, that he had "a history in his bankruptcy case of vexatious behavior", and that his "testimony was not credible"), aff'd, 559 Fed. Appx. 410 (5th Cir. 2014); Lawrence v. Kohl, 853 S.W.2d 697 (1st Tex. App. (Houston) 1993) (in case involving an order for temporary child support, imposing sanctions on Mr. Neely for his conduct in connection with an order, submitted by Mr. Neely and erroneously signed by the trial judge, awarding sanctions against the opposing party and his attorney); Glass v. Glass, 826 S.W.2d 683 (Tex. App. Texarkana 1992) (in divorce case, imposing sanctions of \$32,150 against Mr.

Neely after finding that various pleadings he filed “were frivolous, filed in bad faith and solely for harassment and delay”).

Mr. Neely filed for protection under the United States Bankruptcy Laws on, at least, four occasions, viz., a petition under chapter 11 in 1989, a petition in June of 1996, a petition under chapter 13 in late 1996, and a petition under chapter 7 in 2004. See Neely v. Smith (In re Neely), 334 B.R. 863, 865 (S.D. Tex. 2005). The cited case involves the fourth bankruptcy proceedings in which Mr. Neely had made a motion to convert the case from a chapter 7 to a chapter 13 bankruptcy under section 706(a) of the Bankruptcy Code. One of the issues presented in that case was whether Mr. Neely’s conduct justified denial of the section 706(a) conversion because it qualified as an “extreme circumstance.” Id. at 872-874. The District Court summarized the findings of the bankruptcy court regarding Mr. Neely’s actions as follows:

In his current bankruptcy Neely failed to disclose his position as trustee of his children's trust on his initial schedules. Neely made a post-petition transfer of trust property that he did not disclose. Neely made dubious claims that certain property was the separate property of his wife, but admitted that some of the monies used to purchase the separate property were Neely’s. Neely refused to provide the trustee with requested records of this transaction. [Id. at 873-874.]

The District Court agreed that while there was evidence that could support a finding of bad faith by Mr. Neely, no such finding was made by the bankruptcy

court. Accordingly, the District Court remanded the case for further findings as to whether Mr. Neely's actions constituted a flagrant abuse of the bankruptcy laws sufficient to justify the bankruptcy court's denial of Mr. Neely's section 706(a) motion to convert. Id. at 874.

In Commission for Lawyer Discipline v. Neely (In re Neely), Bankruptcy No. 04-44898-H5-7, Adversary No. 05-3503, 2008 WL 4547521 (Bankr. S.D. Tex. Oct. 10, 2008), the bankruptcy court considered the complaint of the Commission for Lawyer Discipline objecting to Mr. Neely's discharge under 11 U.S.C. secs. 523 and 727. At issue were two judgments against Mr. Neely for professional misconduct, both of which included the award of attorney's fees to the Commission for Lawyer Discipline. One case involved Mr. Neely's violations of the advertising rules, described above, in which the 165th District Court, Harris County, Texas, awarded the commission attorney's fees of \$14,320. The other case involved the judgment of the 333rd District Court, Harris County, mentioned above, under which the commission was awarded attorney's fees of \$20,000, plus costs and expenses of \$3,350. The following is the conclusion of the bankruptcy court:

The Court finds that Neely, with intent to hinder, delay, or defraud a creditor and his bankruptcy trustee transferred and concealed property of the debtor, within one year before the date of

the filing of the petition and property of the estate after the date of the filing of the petition in violation of 11 U.S.C. § 727(a)(2)(A) and (B). The Court further finds that Neely knowingly and fraudulently, in connection with this case made a false oath or account and withheld from his bankruptcy trustee recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs in violation of 11 U.S.C. § 727(a)(4)(A) and (D). Based on the foregoing, the Court concludes that George R. Neely's discharge is DENIED. [Id., 2008 WL 4547521, at *16.]

Discussion

As described above, Mr. Neely was disbarred from the practice of law in the State of Texas by the final judgment of disbarment filed June 18, 2008, in Neely, No. 2003-63182. While the final judgment of disbarment entered by the Texas district court and affirmed by the court of appeals is entitled to respect in this Court, and will normally be followed, it is not conclusively binding on us. E.g., In re Ruffalo, 390 U.S. 544, 547(1968); Theard v. United States, 354 U.S. 278, 282 (1957); Selling v. Radford, 243 U.S. 46, 50 (1917).

As true in the case of every reciprocal discipline case, the final judgment of disbarment raises a serious question about Mr. Neely's character and fitness to practice law in this Court. The landmark opinion of the United States Supreme Court in Radford, in effect, directs that we recognize the absence of fair private and professional character inherently arising as the result of the action of the Texas court and that we follow the disciplinary action of that court unless we

determine, from an intrinsic consideration of the record of Mr. Neely's 2008 disciplinary proceeding, that one or more of the following factors should appear: (1) that Mr. Neely was denied due process in the form of notice and an opportunity to be heard with respect to the Texas proceeding; (2) that there was such an infirmity of proof in the facts found to have been established in the proceeding as to give rise to a clear conviction that we cannot accept the conclusions of the Texas proceeding; and (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Texas court. See, e.g., Radford, 243 U.S. at 50-51; In re Squire, 617 F.3d 461, 466 (6th Cir. 2010); In re Edelstein, 214 F.3d 127, 131 (2d Cir. 2000).

Mr. Neely bears the burden of showing why, notwithstanding the discipline imposed by the Texas district court, this Court should impose no reciprocal discipline, or should impose a lesser or different discipline. See, e.g., In re Roman, 601 F.3d 189, 193 (2d Cir. 2010); In re Sibley, 564 F.3d 1335, 1340 (D.C. Cir. 2009); In re Surrick, 338 F.3d 224, 232 (3d Cir. 2003); In re Calvo, 88 F.3d 962, 967 (11th Cir. 1996); In re Thies, 662 F.2d 771, 772 (D.C. Cir. 1980). We have given Mr. Neely an opportunity to present, for our review, the record of his 2008 disciplinary proceeding and to point out any grounds to conclude that we should not give effect to the action of the Texas district court. See Radford, 243

U.S. at 51-52 ("An opportunity should be afforded the respondent * * * to file the record or records of the state court * * * [and] to point out any ground within the limitations stated which should prevent us from giving effect to the conclusions established by the action of the supreme court of Michigan which is now before us[.]").

We do not sit as a court of review with respect to Mr. Neely's 2008 disciplinary proceedings. See id. at 49-50; In re Sibley, 564 F.3d at 1341. To the contrary, as mentioned above, we are required to follow the action of the Texas district court unless, from an intrinsic consideration of the record before that court, we can conclude that (1) Mr. Neely did not receive notice or an opportunity to be heard in that proceeding, (2) there was an infirmity of proof as to the factual basis for the discipline, or (3) there was some other grave reason not to follow the action of the Texas court. Radford at 51.

In his response to the order to show cause, Mr. Neely did not argue or attempt to show that any of the three factors identified by the Supreme Court in Radford applies in the case of his 2008 disciplinary proceedings. Thus, there is nothing before this Court to suggest a want of notice or opportunity to be heard in the Texas proceeding. There is also nothing to suggest an infirmity of proof as to the underlying facts in that proceeding. Finally, Mr. Neely has not shown any

other grave reason why we should not give effect to the action of the Texas district court. See id. at 51. Accordingly, we will give full effect to the final judgment of disbarment.

Considering the entire record in this matter, we conclude that Mr. Neely has not shown good cause why he should not be suspended, disbarred, or otherwise disciplined, and we recommend that, under our Rule 202, the appropriate discipline in this case is disbarment.

Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
November 26, 2014