

JAMES M. MCMILLAN
(Resignation in Lieu of Disciplinary Proceedings)

On December 24, 2020, the Idaho Supreme Court entered an Order accepting the Resignation in Lieu of Disciplinary Proceedings of Wallace attorney James M. McMillan. The Idaho Supreme Court's Order followed a stipulated resolution of a disciplinary proceeding that related to the following conduct.

Initially, as discussed below, after Mr. McMillan failed to respond to Bar Counsel during the disciplinary investigations, the Idaho Supreme Court entered an August 24, 2020 Order interim suspending Mr. McMillan's license to practice law. On September 14, 2020, the Idaho State Bar filed a motion for an order finding Mr. McMillan in contempt for violating the Court's interim suspension Order, alleging that he was practicing law while suspended. Following an October 14, 2020 hearing, the Idaho Supreme Court issued Findings of Fact and Conclusions of Law and entered a Judgment finding Mr. McMillan in contempt of its Order. The Judgment required Mr. McMillan to pay a \$5,000 fine, sentenced him to two days in jail on each of five separate contempt violations, suspended the sentence, and placed Mr. McMillan on a 30-day probation. The contempt case was ultimately resolved as part of Mr. McMillan's stipulation to resign in lieu of disciplinary proceedings.

The Idaho Supreme Court found that Mr. McMillan violated the Idaho Rules of Professional Conduct ("I.R.P.C.") related to 14 different client cases. In the first case, Mr. McMillan failed to engage in discovery, exchange exhibit and witness lists, and file a trial brief on behalf of his client as required by the district court's pretrial order. The district court dismissed the client's case as a sanction for that conduct. Mr. McMillan appealed that dismissal, but failed to file the Appellant's Brief, resulting in the dismissal of the appeal. Mr. McMillan never informed his client that the appeal was dismissed. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.2, 3.4(c), and 8.4(d).

In the second case, Mr. McMillan filed his client's appeal of the district court's disallowance of a water right claim, but failed to file the Appellant's Brief, resulting in the dismissal of the appeal. Despite that dismissal, Mr. McMillan continued to inform his client that the appeal was still pending. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.2, 3.4(c), 8.4(c), and 8.4(d).

In the third case, Mr. McMillan filed his client's appeal of the district court's adverse decision in a breach of contract case, but failed to file the Appellant's Brief despite five extensions, resulting in the dismissal of the appeal. Mr. McMillan never informed his client that her appeal was dismissed. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.2, 3.4(c), and 8.4(d).

In the fourth case, Mr. McMillan failed to respond to his client's inquiries regarding the status of a potential lawsuit against a county and failed to respond to Bar Counsel's inquiry regarding that client's grievance. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 8.1(b), and Idaho Bar Commission Rule ("I.B.C.R.") 505(e).

In the fifth case, Mr. McMillan failed to file a probate petition for a client, yet continued to inform his client that the petition had been filed and that he was awaiting court action in the probate case. After the Idaho Supreme Court suspended Mr. McMillan's license on August 24, 2020, he failed to inform his client about that suspension and continued to provide legal advice to the client. Upon termination of the representation, he failed to refund unearned fees and did not promptly return the client's file documents. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 8.4(c), 5.5(a), and I.B.C.R. 516(a) and 517.

In the sixth case, Mr. McMillan failed to timely submit a complete witness list, exhibit list, and pretrial brief in his client's divorce case and failed to file a proposed Decree as ordered by the magistrate court. He failed to inform his client that he was suspended and that the Decree was never filed. Upon termination of the representation, he failed to return the client's complete file. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 8.4(c), 8.4(d), 5.5(a), and I.B.C.R. 516(a) and 517.

In the seventh case, Mr. McMillan failed to promptly file an Affidavit of Service confirming service of his client's Complaint upon the opposing party and failed to file a motion for a preliminary injunction regarding the client's property. He failed to inform his client that he was suspended and, after that suspension, agreed to represent the client in a new matter. Upon termination of the representation, he failed to refund unearned fees and promptly return the client's complete file. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 8.4(c), 8.4(d), 5.5(a), and I.B.C.R. 516(a) and 517.

In the eighth case, Mr. McMillan failed to file his client's divorce petition and failed to respond to the client's inquiries regarding the case status. He also failed to inform his client that he was suspended and advised the client that he was continuing to work on the case after his suspension. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.2, 8.4(d), 5.5(a), and I.B.C.R. 516(a) and 517.

In the ninth case, Mr. McMillan failed to promptly inform his client about a plea offer in the client's misdemeanor criminal case and failed to promptly file the client's notification of rights form and signed plea agreement. He failed to inform his client that he was suspended, failed to promptly return client funds after that suspension, and attempted to appear for his client's sentencing hearing one month after his suspension. Mr. McMillan also failed to promptly return the client's complete case file upon termination. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.15(d), 1.16(d), 8.4(c), 8.4(d), 5.5(a), and I.B.C.R. 516(a) and 517.

In the tenth case, Mr. McMillan failed to file the client's petition to set aside a trustee appointment, but repeatedly informed the client that he had filed the petition and was waiting for the magistrate court to schedule a hearing. He failed to inform his client that he was suspended and failed to refund unearned fees upon termination. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 8.4(c), 8.4(d), and I.B.C.R. 516(a) and 517.

In the eleventh case, Mr. McMillan failed to timely serve the client's complete discovery responses, failed to promptly inform the client about his suspension, failed to inform the client about a hearing on the opposing party's motion for summary judgment, appeared at that hearing despite his suspension, and failed to promptly return the client's complete case file upon termination. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 3.4(d), 8.4(c), 8.4(d), 5.5(a), and I.B.C.R. 516(a) and 517.

In the twelfth case, Mr. McMillan failed to serve the client's mandatory disclosures and discovery responses in her divorce case and failed to inform her that he was suspended, despite an upcoming trial in her case. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.4(c), 8.4(c), 8.4(d), and I.B.C.R. 516(a) and 517.

In the thirteenth case, Mr. McMillan failed to publish a notice to creditors in a probate case, failed to inform the magistrate court that the personal representative of the estate had died, failed to promptly prepare and file documents to appoint a new personal representative, and failed to respond to his client's inquiries about the case status. He also failed to inform his client that he was suspended, continued to practice law after that suspension, and failed to promptly return the client's file upon termination. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 5.5(a), 8.4(c), 8.4(d), and I.B.C.R. 516(a) and 517.

In the fourteenth case, Mr. McMillan failed to serve his client's discovery responses in a breach of contract case and failed to keep her informed about the case status. He also failed to inform his client that he was suspended and continued to practice law after that suspension. The Idaho Supreme Court found that with respect to that case, Mr. McMillan violated I.R.P.C. 1.2(a), 1.3, 1.4, 3.4(d), 5.5(a), 8.4(d), and I.B.C.R. 516(a) and 517.

The Idaho Supreme Court accepted Mr. McMillan's Resignation in Lieu of Disciplinary Proceedings. By the terms of the Order, Mr. McMillan may not make application for admission to the Idaho State Bar sooner than five (5) years from the date of his resignation. If he does make such application for admission, he will be required to comply with all bar admission requirements in Section II of the Idaho Bar Commission Rules and will have the burden of overcoming the rebuttable presumption of the "unfitness to practice law."

By the terms of the Idaho Supreme Court's Order, Mr. McMillan's name was stricken from the records of the Idaho Supreme Court and his right to practice law before the courts in Idaho was terminated.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.