

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2009-02304

DECISION & ORDER ON MOTION

In the Matter of Charles Adam Willinger,
an attorney and counselor-at law.

Grievance Committee for the Second,
Eleventh, and Thirteenth Judicial Districts,
petitioner; Charles Adam Willinger, respondent.

(Attorney Registration No. 2579993)

Motion by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts for an order: 1) suspending the respondent from the practice of law, pursuant to 22 NYCRR 691.4(1)(i), upon a finding that he is guilty of professional misconduct immediately threatening the public interest in that he has failed to submit written answers to the complaints of professional misconduct filed against him and has failed to comply with the Grievance Committee's lawful demands in connection with its investigation; 2) authorizing it to institute and prosecute a disciplinary proceeding based upon the petition dated March 10, 2009; 3) directing the respondent to submit an answer to the petition; and 4) referring the issues raised to a Special Referee to hear and report. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on March 2, 1994.

Upon the papers submitted in support of the motion and no papers having been submitted in opposition or in relation thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that pursuant to 22 NYCRR 691.4(1)(1)(i), the respondent, Charles Adam Willinger, is immediately suspended from the practice of law in the State of New York, pending

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further order of the court; and it is further,

ORDERED that the respondent shall promptly comply with this court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until further order of this court, the respondent, Charles Adam Willinger, is commanded to desist and refrain from (1) practicing law in any form, either as principal or agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts is hereby authorized to institute and prosecute a disciplinary proceeding in this court against Charles Adam Willinger, based on the petition dated March 10, 2009; and it is further,

ORDERED that Diana Maxfield Kears, Chief Counsel to the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, Renaissance Plaza, 335 Adams Street, Suite 2400, Brooklyn, N.Y. 11201-3745, is hereby appointed as attorney for the petitioner in such proceeding; and it is further,

ORDERED that within 20 days after service upon him of a copy of this decision and order on motion, the respondent shall serve an answer upon the petitioner and the Special Referee, and shall file the original answer with this court; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable James A. Gowan, a retired Justice of the Supreme Court, Suffolk County, 90 Sequams Lane East, West Islip, N.Y. 11795, as Special Referee to hear and report within 60 days after the conclusion of the hearing or the submission of post-hearing memoranda; and it is further,

ORDERED that if the respondent, Charles Adam Willinger, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

We find, *prima facie*, that the respondent is guilty of professional misconduct immediately threatening the public interest based upon his failure to cooperate with an investigation of the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts.

On December 15, 2008, the Grievance Committee received a complaint from Basem K. Taalab alleging that after he paid the respondent a legal fee, plus \$120 for bond fees, to handle three moving violations before the Brooklyn South Traffic Violations Bureau, the respondent failed to appear at any hearing and failed to respond to telephone calls. By letter dated December 24, 2008,

the Grievance Committee requested the respondent's answer within 10 days and advised him that failure to reply constituted professional misconduct independent of the merits of the complaint. The respondent neither answered nor requested additional time in which to do so.

On December 29, 2008, the Grievance Committee received a complaint from Ishaq Mohammad alleging that although the respondent received a legal fee for handling eight moving violations for him, he failed to appear at any hearing. This resulted in the suspension of Mr. Mohammad's driver's license. Mr. Mohammad visited the respondent's office only "to note he disappeared." By letter dated January 9, 2009, the Grievance Committee requested the respondent's answer within 10 days and advised him that failure to reply constituted professional misconduct independent of the merits of the complaint. The respondent neither answered nor requested additional time in which to do so.

By letter dated January 22, 2009, sent via regular and certified mails, the Grievance Committee directed the respondent to provide answers to both complaints within 10 days and warned that continued failure to cooperate could result in a motion for his interim suspension. Although the return receipt indicates delivery on January 23, 2009, the respondent failed to comply.

On January 22, 2009, the Grievance Committee received a complaint from Alan Intrator alleging that after receiving a legal fee to handle moving violations in Nassau County District Court, the respondent failed to appear at the hearing. In addition, the respondent's cell phone was disconnected and he failed to respond to a faxed letter. By letter dated January 26, 2009, sent via regular and certified mails, the Grievance Committee requested an answer within 10 days and advised the respondent that an unexcused failure to reply constituted professional misconduct independent of the merits of the complaint. Although delivery of the certified letter was confirmed, the respondent failed to comply.

On February 24, 2009, and March 10, 2009, counsel for the Grievance Committee called the telephone number which the respondent had provided to Office of Court Administration with his most recent attorney registration and which is the same telephone number provided by all three complainants. Counsel obtained a voice recording indicating that the telephone number was temporarily out of service. On February 24, 2009, counsel telephoned a number for the respondent provided by complainant Taalab. That call was answered by "Vitaly" who stated that he had worked for the respondent until November 2008 but the respondent "has not been around" since that time. Vitaly indicated that the respondent might be working in traffic court in Queens. On February 24, 2009, and March 10, 2009, Counsel called another telephone number which complainant Intrator had provided. That number appeared to connect to a fax machine.

On May 13, 2008, the respondent received a Personally Delivered Admonition in nine matters for conduct similar to that now complained of and for failing to cooperate with the Grievance Committee's investigations. The Grievance Committee submits that the respondent is fully aware of the consequences of failing to cooperate with it.

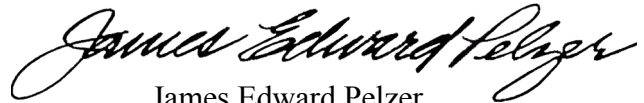
A petition dated March 10, 2009, which contains one charge of failing to cooperate based on the foregoing allegations is annexed to the Grievance Committee's order to show cause.

Although the respondent admitted personal service of the order to show cause on March 18, 2009, he failed to reply or request additional time in which to do so.

Accordingly, the Grievance Committee's motion is granted in all respects, the respondent is immediately suspended pursuant to 22 NYCRR 691.4(l)(1)(i) on the ground that he constitutes an immediate threat to the public based on his failure to cooperate; the Grievance Committee is authorized to institute and prosecute a disciplinary proceeding based on the petition dated March 10, 2009; the respondent is directed to submit an answer within 20 days; and the issues raised are referred to a Special Referee to hear and report, with a report to be filed within 60 days after the conclusion of the hearing or the submission of post-hearing memoranda.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO, and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court