

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

M88267
E/cb

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
ROBERT A. SPOLZINO
STEVEN W. FISHER, JJ.

2008-05666

DECISION & ORDER ON MOTION

In the Matter of Thomas Edward Wynne,
an attorney and counselor-at-law.

Grievance Committee for the Tenth Judicial
District, petitioner Thomas Edward Wynne,
respondent.

(Attorney Registration No. 1774629)

Motion by the Grievance Committee for the Tenth Judicial District for an order: 1) suspending the respondent from the practice of law, pursuant to 22 NYCRR 691.4(l)(1)(i), based upon his professional misconduct immediately threatening the public interest; 2) authorizing it to institute and prosecute a disciplinary proceeding against the respondent based on a petition dated February 9, 2009; and 3) referring the issues raised by the petition and any answer thereto 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 Third Judicial Department on January 14, 1982.

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 pursuant to 22 NYCRR 691.4(l)(1)(i), the respondent, Thomas Edward Wynne, is immediately suspended from the practice of law in the State of New York, pending further order of the court; and it is further,

ORDERED that the respondent, Thomas Edward Wynne, 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,

June 18, 2009

MATTER OF WYNNE, THOMAS EDWARD

Page 1.

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until further order of this court, the respondent, Thomas Edward Wynne, 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 Tenth Judicial District is hereby authorized to institute and prosecute a disciplinary proceeding in this court against Thomas Edward Wynne, based on the petition dated February 9, 2009; and it is further,

ORDERED that Rita E. Adler, Chief Counsel to the Grievance Committee for the Tenth Judicial District, 150 Motor Parkway, Suite 102, Hauppauge, N.Y. 11788, 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 order with Notice of Entry, the respondent, Thomas Edward Wynne, 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 Elaine Jackson Stack, a retired Justice of the New York State Supreme Court, Tenth Judicial District, 666 Old Country Road, Suite 600, Garden City, N.Y. 11530, 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, Thomas Edward Wynne, 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); and it is further,

ORDERED that personal service of this order and any subsequent orders relating to this matter shall be effected by mailing said documents to the respondent at his address at 15 Grand Avenue, Suite Number 1, Baldwin, N.Y. 11510-3109, by both regular mail and certified mail, return receipt requested, and by affixing a copy of said documents to the door of those premises.

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 Tenth Judicial District.

The Grievance Committee moved for the respondent's interim suspension by order to show cause dated February 13, 2009. That order to show cause provided for personal service of the papers on the respondent on or before February 20, 2009. The Grievance Committee's investigator made four attempts at personal service at the respondent's last known personal

residence/business address at 15 Grand Avenue, Suite Number 1, Baldwin, N.Y., 11510-3109, on three consecutive days, at various times of day. The Grievance Committee conducted a database investigation on February 17, 2009, using the New York State Court's Accurint Database to locate the most current address for the respondent. That was the address used to attempt service. It is also the address at which the respondent is registered with the Office of Court Administration.

In view of the Grievance Committee's inability to personally serve the respondent, the Grievance Committee requested authorization to serve a replacement order to show cause dated March 6, 2009, and the verified petition dated February 9, 2009, via substituted service, as follows: by mailing said documents to the respondent at the aforesaid address via regular and certified mail, return receipt requested, and by affixing a copy of those documents to the door of that residence.

The respondent's failure to respond to repeated requests for information concerning the complaints and his failure to comply with judicial subpoenas and subpoenas duces tecum, compels the Grievance Committee to seek court intervention.

On or about April 26, 2007, the Lawyers' Fund for Client Protection notified the Grievance Committee that a check for \$3,000 issued by the respondent from his attorney trust account with Bank of America was dishonored on or about March 28, 2007, due to insufficient funds. On or about April 30, 2007, the Lawyers' Fund notified the Grievance Committee that checks drawn on the respondent's Bank of America attorney trust account in the sums of \$14,319.81 and \$17,588 were dishonored on March 29, 2007, and March 30, 2007, respectively, due to insufficient funds.

By letters dated May 4, 2007, the Grievance Committee requested written answers to both matters within 20 days, along with certain bank and bookkeeping records with respect to the Bank of America attorney trust account. The respondent provided an answer on May 23, 2007. By letter dated May 25, 2007, the Grievance Committee requested additional information within 15 days. The respondent provided additional information by letter dated June 11, 2007. By letter dated October 24, 2007, the Grievance Committee asked the respondent to call within 15 days in order to schedule an examination under oath. The respondent did not reply.

On or about October 24, 2007, the Grievance Committee received notice from the Lawyers' Fund that a check drawn on the respondent's Citibank attorney trust account in the sum of \$1,200 was dishonored on or about September 19, 2007, due to insufficient funds. By letter dated October 29, 2007, the Grievance Committee asked the respondent to submit a written answer within 20 days, along with certain bank and bookkeeping records with respect to the Citibank account. The respondent failed to reply.

By certified letter dated November 27, 2007, Grievance Counsel asked the respondent to immediately contact his office in order to schedule an examination under oath with respect to the three pending complaints. Although that letter was accepted for delivery on December 11, 2007, the respondent failed to reply.

On or about December 24, 2007, the Grievance Committee received notice from the

Lawyers' Fund that checks drawn on the respondent's Signature Bank attorney trust account in the sums of \$1,500 and \$1,000 were dishonored on or about November 30, 2007, and December 3, 2007 due to insufficient funds. By letter dated January 7, 2008, the Grievance Committee asked the respondent to submit a written answer with respect to those matters within 20 days, along with certain bank and bookkeeping records with respect to the Signature Bank account. The respondent failed to reply.

On or about January 7, 2008, the Lawyers' Fund notified the Grievance Committee that checks drawn on the respondent's Signature Bank attorney escrow account in the sums of \$3,000, \$1,000, \$1,500, \$1,000, \$436.88, \$3,000 and \$1,000 were dishonored between December 5, 2007, and December 10, 2007, due to insufficient funds. By letter dated January 14, 2008, the Grievance Committee asked the respondent to submit a written answer with respect to those matters within 20 days, along with certain bank and bookkeeping records with respect to the Signature Bank account. The respondent failed to reply.

By certified letter dated February 11, 2008, the Grievance Committee asked the respondent to submit a written answer to the three complaints filed under No. N-2657-07 within 10 days. The postal records reflect that said letter was returned unclaimed. Hence, the Grievance Committee received no reply.

By certified letter dated February 15, 2008, the Grievance Committee asked the respondent to submit a written answer to the seven complaints filed under No. N-27-08 within 10 days. Although the postal records reflect that said letter was accepted for delivery on February 20, 2008, the respondent failed to reply.

Pursuant to judicial subpoena and subpoena duces tecum, both dated December 31, 2007, and personally served upon the respondent on January 11, 2008, the respondent appeared at the Grievance Committee's offices on February 26, 2008. However, he did not produce certain bank and bookkeeping records as directed, stating "I started them, but I don't have them all." The respondent requested an adjournment so that he could retain counsel and agreed to contact Grievance Counsel or have his attorney do so by March 11, 2008.

The Grievance Committee received no further communication from the respondent or counsel on his behalf after February 26, 2008.

Pursuant to judicial subpoena and subpoena duces tecum dated March 18, 2008, and personally served on April 11, 2008, the respondent was directed to appear at the Grievance Committee's offices on May 13, 2008, and to produce certain bank and bookkeeping records. The respondent failed to appear or to produce the records as directed.

On September 29, 2008, the Grievance Committee received a complaint from Richard Southern alleging, inter alia, that the respondent failed to release funds he was holding in connection with a real estate transaction. By letter dated October 8, 2008, the Grievance Committee requested a written answer to the complaint within 10 days. The respondent failed to reply.

On October 21, 2008, the Grievance Committee received a complaint against the respondent from Ernastine Brown alleging that respondent failed to release funds he was holding in escrow in connection with a foreclosure action. By letter dated November 6, 2008, and certified letter dated December 17, 2008, the respondent was asked to submit a written answer to the Brown complaint within 10 days. Postal records reveal that the letter was returned unclaimed. The Grievance Committee received no response to the aforesaid letters.

The Grievance Committee submits that the record clearly establishes that the respondent has obstructed its investigation of the allegations of professional misconduct by failing to comply with judicial subpoenas and subpoenas duces tecum.

Although duly served with the Grievance Committee's order to show cause on March 9, 2009, the respondent has failed to interpose any reply.

Based on the foregoing, the Grievance Committee's motion is granted, without opposition, the respondent is found to constitute an immediate threat to the public interest based on his persistent pattern of failing to cooperate with the Grievance Committee, the Grievance Committee is authorized to institute and prosecute a disciplinary proceeding based on the petition dated February 9, 2009, the respondent is directed to submit an answer within 20 days, and that the issues raised are referred to a Special Referee to hear and report and to submit a report, within 60 days after the completion of the hearing or the submission of post-hearing memoranda. This order, and any subsequent papers in this proceeding, should be served in the manner designated by the Presiding Justice in the order to show cause dated March 6, 2009. Earlier orders to show cause, dated June 5, 2008, and March 13, 2009, respectively, previously submitted by the Grievance Committee have been withdrawn.

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

ENTER:



James Edward Pelzer
Clerk of the Court