

STATE BAR OF NEVADA

June 9, 2021



LETTER OF REPRIMAND

Steve K. Parke, Esq.
c/o Bailey Kennedy
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
8984 Spanish Ridge Ave.
Las Vegas, Nevada 89148-1302

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

Re: State Bar of Nevada Disciplinary Grievances:
OBC20-0035 (John Matute)
OBC20-0601 (William Bryant)

Dear Mr. Parke:

A Formal Hearing Panel of the Southern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rule 1.3 (Diligence) and Rule 5.3 (Responsibilities Regarding Non-lawyer Assistants) of the Nevada Rules of Professional Conduct ("RPC").

GRIEVANCES

Client John Matute (OBC20-0035)

John Matute retained you, on a contingency fee basis, to represent him regarding a personal injury claim. You negotiated a settlement of Matute's claims. On or about January 5, 2015, you received a settlement check for \$18,600 to resolve Matute's claim.

You deposited Matute's settlement amount into your Client Trust Account. You then (i) transferred the contingency fee into your operating account for representing Matute, (ii) wrote a check to Matute, and (iii) wrote checks to three lienholders.

Matute did not come to your office to pick up his check in 2015. The check to one lienholder cleared in your Client Trust Account on or about January 15, 2015. But, the checks to the other two lienholders were never presented for payment.

In 2017, Matute requested disbursement of his funds and you re-issued the check to him. You did not re-issue any other checks for Matute or his lienholders in 2017.

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In or about December 2019, Las Vegas Radiology initiated collections efforts against Matute for failure to pay for certain treatment associated with the matter. In January 2020, Matute submitted a grievance to the State Bar regarding your failure to pay the lienholders. He also separately contacted you about the collection notice from Las Vegas Radiology.

In January 2020, upon hearing from Matute but before receiving notice of the grievance from the State Bar, you determined that the checks to the two lienholders had never been presented for payment. You also determined that you had failed to account for a second bill from Las Vegas Radiology, which was the subject of the collection effort.

On or about January 13, 2020, you issued new checks to the original two outstanding lienholders. On or about January 16, 2020, you issued a second check to Las Vegas Radiology to pay the outstanding bill. The lienholders received the January 2020 checks and deposited them.

On January 13, 2020, you also issued another check to Matute for \$1,323.50. At the time you issued the second check to Matute, you believed that Las Vegas Radiology would discount its outstanding bill, leaving a final sum of \$1,323.50 to distribute to Matute. However, you were unable to secure a discount because the bill had gone into collections. Matute deposited the second check.

In March 2020, you issued a third check to Matute for \$724, because you believed that amount was still outstanding from Matute's 2015 settlement. Your accounting failed to include the 2015 payment to the first lienholder and the January 2020 \$1,323.50 payment to Matute. You realized the errant exclusion of the \$450 payment and deposited your own funds into the Client Trust Account to reconcile the imbalance.

When the State Bar pointed out the overpayment to Matute, you promptly deposited \$1,323.50 of your own funds into the Client Trust Account to reconcile the imbalance.

Matute's claim was one of the first matters you handled after being licensed to practice law in Nevada. You have since implemented policies and procedures at your office to carefully track payments of all medical bills for clients and ensure that checks are presented for payment within a timely manner and, if not, to follow up with the lienholders. Further, you now use a case management software to help efficiently manage your clients' claims. The errors in the belated distribution of Matute's funds are due, in part, to Matute's accounting not being originally, or subsequently, entered into that case management system.

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Client William Bryant (OBC20-0601)

William Bryant and Dawn Garrick retained you and your office, the Law Firm of Parke Esquire ("Parke Law Firm"), to represent them in pursuing personal injury claims. Richard Wong is a non-lawyer employee at Parke Law Firm.

During the course of the representation, Bryant sought additional communication from your office, often without scheduling appointments with you in advance. On some of these occasions, Wong attempted to satisfy the client who was demanding immediate answers to his questions despite your absence and, in the process, overstepped the limitations of his position as a non-lawyer employee in your office.

You have discussed with Wong the need to refrain from answering a client's questions that could cause Wong to overstep the limitations of his position as a non-lawyer employee in your office. You have also instructed Wong to call or locate you if any client demands answers to questions that should be answered by a licensed attorney.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

Your conduct related to representation of the foregoing clients, violated the Nevada Rules of Professional Conduct ("RPC"), as follows:

RPC 1.3 (Diligence) by (i) failing to promptly forward payment to your client's lienholders and, (ii) failing to accurately account for the various distributions of funds to that client and his lienholders over time; and

RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants) by (i) failing to ensure that the distribution of your client's funds proceeded in a timely manner and was accurate, and (ii) failing to ensure that Wong refrained from providing legal advice to a client, regardless of pressure the client applied.

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 4.43 of the ABA Standards for Imposing Lawyer Sanctions provides that reprimand is the appropriate baseline sanction for your negligence and lack of reasonable diligence in representing your client, which caused injury to the lienholders and potential injury to your client. Similarly, Standard 7.3 provides that reprimand is the appropriate baseline sanction for your negligent conduct that violated your duty to the profession to supervise your non-lawyer assistants and had the potential to injure your clients.

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In Nevada, a reprimand can be a Public Reprimand or a Letter of Reprimand, with the latter being a lower form of discipline. Balancing the pattern of misconduct exhibited herein with your absence of prior discipline, an absence of a dishonest or selfish motive, your acceptance of responsibility for the misconduct, and your inexperience in the practice of law when first distributing Matute's funds, the Panel finds that the lesser of the two sanction is appropriate.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your negligent violation of RPC 1.3 (Diligence) and RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants).

You are required to complete six Continuing Legal Education (CLE) credits in the area of office management and/or staff supervision within six months after entry of the Findings of Fact, Conclusions of Law, and Order in this matter. These CLE credits shall be in addition to the annual requirement. You must report the completion of the additional CLE credits to the Office of Bar Counsel directly on or before the deadline for completion.

Finally, in accordance with Nevada Supreme Court Rule 120, you are assessed costs in the amount of \$1,500 plus the costs of the Formal Hearing, which are to be paid no later than 30 days after the filing of the Order in the disciplinary matter.

Sincerely,

Africa Sanchez
Africa Sanchez (Jun 17, 2021 16:49 PDT)

Africa Sanchez, Esq., Formal Hearing Panel Chair
Southern Nevada Disciplinary Board