



FILED

Jul 11, 2023

STATE BAR OF NEVADA

BY: *[Signature]*
OFFICE OF BAR COUNSEL

Case No: SBN21-99193; SBN22-00418

**STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

PRESTON S. KERR,
Nevada Bar No. 3978

Respondent.

PUBLIC REPRIMAND

On June 13, 2023, a Formal Hearing Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel unanimously accepted the Conditional Guilty Plea and concluded that you should be issued a Public Reprimand for violations of Rule of Professional Conduct (“RPC”) 1.7 (Conflict of Interest: Current Clients) and RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules).

On or about May 9, 2018, J.B. (hereinafter “Grievant”) and B.J. retained you for assistance in setting up an LLC. After Grievant and B.J. paid your initial retainer, you set up Meta-Tech Consultants, LLC (“Meta-Tech”) that same day. In or around August 2018, you agreed to form Circle Society, Corp. (“Circle Society”) for D.S., which was formed with the Nevada SOS on September 9, 2018.

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1 On September 24, 2018, you proposed a new business structure for Meta Fund in an email
2 to Grievant and B.J. Your proposal would have him manage Meta Fund, while Grievant and B.J.
3 solicited investors. Meta Fund would be owned by Meta-Tech, and the Meta Fund operating
4 agreement would be amended to restructure the ownership (51% to you; 49% to Grievant and
5 B.J., split equally). In an email, you wrote, “[a]lso, since I am your attorney I will need you to
6 sign a waiver indicating that you have had the opportunity to discuss this deal with your own
7 outside attorney and that we are agreeing to modify our relationship to business partners rather
8 than attorney/clients.” Grievant and B.J. agreed to your proposal.

9 On October 31, 2018, you, Grievant, and B.J. executed the Meta Fund operating
10 agreement. The Meta Fund operating agreement set forth the business relationship between the
11 parties and stated there was no longer an attorney-client relationship between you, Grievant, and
12 B.J. In the Meta Fund operating agreement, Bitex Mining, LLC (hereinafter “Bitex”) and Circle
13 Society were disclosed as “investment products.” Your attorney-client relationship with Circle
14 Society, however, was not disclosed. Meta Fund did no business with Bitex or Circle Society.

15 On August 22, 2019, you resigned as the manager of Meta Fund. You, however, offered
16 to stay on as Nevada counsel during any transition as a courtesy to Grievant while Grievant finds
17 a replacement manager. Grievant agreed that you should stay on as counsel for Meta-Tech and
18 Meta Fund. You agreed to amend the Operating Agreement and to transfer your 51% interest to
19 Grievant but, Grievant has not accepted your 51% interest.

20 RPC 1.7 (Conflict of Interest: Current Clients) states, in pertinent part, that a lawyer
21 “shall not represent a client if the representation involves a concurrent conflict of interest.” The
22 Rule further explains that there is a concurrent conflict of interest if “(1) the representation of one
23 client will be directly adverse to another client; or (2) there is a significant risk that the
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1 representation of one or more clients will be materially limited by the lawyer's responsibilities to
2 another client, a former client or a third person or by a personal interest of the lawyer."

3 Notwithstanding this conflict, a lawyer may represent a client if "(1) the lawyer reasonably
4 believes that the lawyer will be able to provide competent and diligent representation to each
5 affected client; (2) the representation is not prohibited by law; (3) the representation does not
6 involve the assertion of a claim by one client against another client represented by the lawyer in
7 the same litigation or other proceeding before a tribunal; and (4) each affected client gives
8 informed consent, confirmed in writing." You negligently violated RPC 1.7 (Conflict of Interest:
9 Current Clients) because you failed to disclose your attorney-client relationship with Circle
10 Society before Grievant and/or Mr. Johnson executed Meta Fund's operating agreement giving
11 you 51% ownership.

12 RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules) states, in pertinent part,
13 that a lawyer "shall not enter into a business transaction with a client or knowingly acquire an
14 ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) [t]he
15 transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client
16 and are fully disclosed and transmitted in writing in a manner that can be reasonably understood
17 by the client; (2) [t]he client is advised in writing of the desirability of seeking and is given a
18 reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3)
19 [t]he client gives informed consent, in a writing signed by the client, to the essential terms of the
20 transaction and the lawyer's role in the transaction, including whether the lawyer is representing
21 the client in the transaction." You negligently violated RPC 1.8 (Conflict of Interest: Current
22 Clients: Specific Rules) because you did not obtain separate written informed consent signed by
23 Grievant and/or Mr. Johnson, regarding your role in the transaction, when you acquired an
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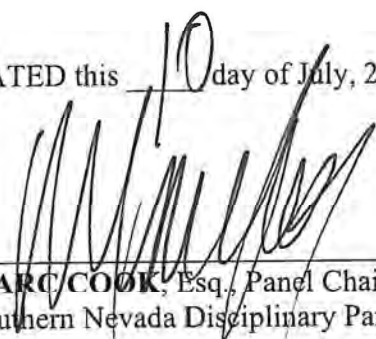
1 ownership interest in Meta Fund.

2 Under ABA Standard 4.33, reprimand is generally appropriate when a lawyer is negligent
3 in determining whether the representation of a client may be materially affected by the lawyer's
4 own interests, or whether the representation will adversely affect another client, and causes injury
5 or potential injury to a client. These types of ethical breach could have resulted in potential injury
6 to your client(s).

7 **DISCIPLINE IMPOSED**

8 In light of the foregoing, you are hereby PUBLICLY REPRIMANDED for violating RPC
9 1.7 (Conflict of Interest: Current Clients) and RPC 1.8 (Conflict of Interest: Current Clients:
10 Specific Rules). In addition, pursuant to SCR 120(3), you shall pay a \$1,500.00 fee plus the hard
11 costs of the instant proceedings. You shall make such payment no later than thirty (30) days after
12 receiving a billing from the State Bar.

13 DATED this 10 day of July, 2023.

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16 MARC COOK, Esq., Panel Chair
17 Southern Nevada Disciplinary Panel
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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the **PUBLIC**
3 **REPRIMAND** was electronically served upon:

- 4 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; sfagin@bckltd.com
5 2. Lars K. Evensen, Esq. (Respondent's Counsel): LKEvensen@hollandhart.com
6 3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

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8 DATED this 11th day of July 2023.

9 *Sonia Del Rio*
10 _____
11 Sonia Del Rio an employee of
12 the State Bar of Nevada.
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