

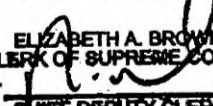
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
ALEX B. GHIBAUDO, BAR NO. 10592
and MICHANCY M. CRAMER, BAR NO.
11545.

No. 86960

FILED

DEC 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

*ORDER OF PUBLIC REPRIMAND
AS TO MICHANCY M. CRAMER*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Michancy M. Cramer be publicly reprimanded. The State Bar alleged, and the hearing panel found, that Cramer committed two violations of RPC 3.4(c) (fairness to opposing party and counsel), two violations of RPC 4.4 (a) (respect for rights of third persons), and one violation each of RPC 3.5(d) (decorum of the tribunal), and RPC 8.4(a), (d) (misconduct) during two court hearings and after a deposition in 2020.¹ The State Bar challenges the hearing panel's finding that Cramer had a negligent mental state when committing the various acts of misconduct. Cramer disagrees and also challenges the hearing panel's findings as to several of the violations.

The State Bar has the burden of showing by clear and convincing evidence that Cramer committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

¹The State Bar also brought additional allegations against Cramer, which the hearing panel found unproven. The State Bar does not challenge those findings.

“Our review of the panel’s findings of fact is deferential, so long as they are not clearly erroneous and are supported by substantial evidence.” *In re Discipline of Colin*, 135 Nev. 325, 330, 448 P.3d 556, 560 (2019) (citing SCR 105(3)(b)). However, we apply de novo review to the panel’s conclusions of law. SCR 105(3)(b).

Having reviewed the record and considered the parties’ arguments, we agree with the hearing panel that Cramer violated RPC 3.4(c), RPC 4.4(a), and RPC 8.4(a), (d). As to the RPC 3.4 violations, we agree with the hearing panel that Cramer “[k]nowingly disobey[ed] an obligation under the rules of a tribunal,” RPC 3.4(c), by ignoring the court’s multiple admonitions to discontinue certain lines of questioning. We also agree that Cramer violated RPC 4.4(a) by using a derogatory term when referring to a party during a May 13, 2020, hearing and by calling opposing counsel a vulgar name during an argument after a deposition on August 3, 2020. In both instances, substantial evidence supports that Cramer had “no substantial purpose other than to embarrass” those third parties by her comments. RPC 4.4(a) (“[A] lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person . . .”). Finally, because Cramer’s actions violated the Rules of Professional Conduct and her conduct during hearings on May 13, 2020, and September 11, 2020, disrupted the tribunal, we also conclude that Cramer violated RPC 8.4(a) and (d).² See RPC 8.4(a) (providing that it is misconduct for an attorney to violate the Rules of Professional Conduct), (d)

²We reject Cramer’s argument that the RPC 8.4 charges should be dismissed as duplicative. We agree with Cramer, however, that her line of questioning about a car insurance policy during a hearing on September 11, 2020, was for a proper purpose.

“It is professional misconduct for a lawyer to . . . [e]ngage in conduct that is prejudicial to the administration of justice.”); *In re Discipline of Colin*, 135 Nev. 325, 332, 448 P.3d 556, 562 (2019) (explaining that conduct that “is intended to or does disrupt a tribunal” may constitute an RPC 8.4(d) violation).

As to the RPC 3.5(d) violation, however, we conclude that substantial evidence does not support the panel’s findings. The plain language of RPC 3.5(d) provides that “[a] lawyer shall not engage in conduct intended to disrupt a tribunal.” Here, the panel found that Cramer violated RPC 3.5(d) by her conduct during a May 13, 2020, court hearing in which she made inappropriate comments to a witness and opposing counsel. And while we conclude that Cramer acted with a knowing mental state during the May 13, 2020, hearing, the record does not support that she acted with an intent to disrupt the court proceedings. Accordingly, we conclude that the panel erred in finding that Cramer violated RPC 3.5(d).

In determining the appropriate discipline for Cramer’s violations of RPC 3.4(c), RPC 4.4(a), and RPC 8.4(a), (d), we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Cramer violated duties owed to the legal profession (fairness to opposing party and counsel, impartiality and decorum of the tribunal, respect for rights of third persons, and misconduct). We agree with the panel that Cramer’s actions caused actual or potential injury by potentially delaying the proceedings and resolution of the matters at issue in the respective litigations. However, we disagree with the panel’s conclusion that Cramer’s mental state in committing these acts of

misconduct was negligent.³ Rather, the record demonstrates that Cramer had a knowing mental state during the May 13, 2020, and September 11, 2020, hearings. In particular, she appeared to have a “conscious awareness of the nature or attendant circumstances of” her actions but did not appear to have the intent to accomplish a particular result beyond representing her client at those hearings. *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, 452 (Am. Bar Ass’n 2023) (*Standards*) (defining a knowing mental state). We further conclude that the record demonstrates that Cramer’s conduct after the August 3, 2020, deposition, during which she called opposing counsel a vulgar name after asking opposing counsel to leave Cramer’s office, was done with an intentional mental state. Indeed, the record demonstrates that Cramer had a “conscious objective or purpose to accomplish a particular result,” *id.* (defining an intentional mental state), particularly since she directed her comments to opposing counsel after she had left the office and then repeated the vulgar terminology a second time when questioned.

Because the most serious misconduct was Cramer’s intentional violation of her duty to respect the rights of third parties, the baseline

³We reject Cramer’s argument that a negligent mental state is supported by her testimony that she was suffering from a stress-related medical condition when she committed the misconduct. Although Cramer’s medical condition may be considered as a mitigating circumstance (e.g., personal or emotional problems and physical or mental disabilities) “after misconduct has been established,” *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standards 9.1, 9.3 (Am. Bar Ass’n 2023); *see also* SCR 102.5(2) (listing mitigating circumstances), we are not convinced that it establishes negligence with respect to the misconduct.

sanction, before considering aggravating or mitigating circumstances, is suspension. *See Standards*, Standard 6.22 ("Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding."). Substantial evidence in the record supports two aggravating circumstances (multiple offenses and substantial experience in the practice of law) and five mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, interim rehabilitation, and remorse). *See* SCR 102.5 (listing "[a]ggravating and mitigating circumstances [which] may be considered in deciding what sanction to impose"). Weighing the mitigating and aggravating circumstances, and the minimal actual injury, we agree with the panel's recommendation that a downward deviation from the baseline sanction of suspension is appropriate. Thus, considering all of the *Lerner* factors, we conclude that a public reprimand is sufficient to serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (recognizing that the purpose of attorney discipline is to protect the public, the courts, and the legal system).

Accordingly, we hereby publicly reprimand attorney Michancy M. Cramer for violating RPC 3.4(c) (fairness to opposing party and counsel), RPC 4.4(a) (respect for rights of third persons), and RPC 8.4(a), (d) (misconduct). Cramer shall pay the costs of the disciplinary proceedings, plus fees in the amount of \$1,500, *see* SCR 120(3), within 30 days from the

date of this order.⁴ Cramer shall also be required to complete an additional six (6) hours of continuing legal education in the area of civility, in addition to her annual CLE requirement. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Chair, Southern Nevada Disciplinary Board
Glenn Machado
Rob W. Bare
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court

⁴Cramer shall pay the State Bar's costs jointly and severally with attorney Alex B. Ghibaud, but Cramer is solely responsible for the \$1,500 fee pursuant to SCR 120(3).