

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
JEFFREY P. AYLWARD, BAR NO. 7983.

No. 71049

**FILED**

OCT 21 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF SUSPENSION*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Jeffrey P. Aylward be suspended from the practice of law in Nevada for three years based on multiple violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(b) (bar admission and disciplinary matters), and RPC 8.4 (misconduct). No briefs have been filed and this matter stands submitted for decision based on the record. SCR 105(3)(b).<sup>1</sup>

The State Bar has the burden of showing by clear and convincing evidence that Aylward committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Aylward failed to answer the complaint and a default was entered. SCR 105(2). The record therefore establishes that Aylward violated RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), and RPC 1.15 (safekeeping property) by agreeing to represent and accepting fees from three clients in separate

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<sup>1</sup>Aylward currently is administratively suspended for failing to comply with continuing legal education (CLE) requirements and failing to pay annual bar dues.

matters over a two-year period of time but then failing to perform the work he was retained to do, failing to keep the clients informed as to the status of their matters, and being unresponsive to the clients' efforts to contact him or recoup their money. By violating those rules, Aylward also violated RPC 8.4(a). Additionally, the record establishes that Aylward failed to cooperate with the disciplinary investigation into the three grievances, thereby violating RPC 8.1(b).

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo, SCR 105(3)(b), and therefore "must . . . exercise independent judgment," *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, this court has considered four factors to be weighed: "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).

Aylward violated duties owed to his clients (competence, diligence, communication, and safekeeping property) and to the legal profession (fees and cooperation in disciplinary investigation). He was aware of the nature or attendant circumstances of his conduct, particularly that he had agreed to represent the aggrieved clients and accepted money from them but never did the work he was retained to do and did not communicate with them about their matters or respond to their inquiries. Aylward's misconduct also caused actual injury to his clients. He arguably acted with intent to delay the disciplinary proceedings when he failed to cooperate during the investigation, particularly after he met with a representative of bar counsel's office and obtained an extension of time to respond to the grievances and to provide

documentation about a purported medical condition. Aylward's failure to cooperate in the disciplinary investigation "violated one of his most fundamental duties as a professional," *In re Riddle*, 857 P.2d 1233, 1235-36 (Ariz. 1993), and threatens the self-regulating disciplinary system that is crucial to the legal profession. The failure to cooperate also constitutes an aggravating circumstance with respect to the other violations. See SCR 102.5(1). And the other aggravating circumstances found by the hearing panel—dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution, see SCR 102.5(1)—are supported by the record.<sup>2</sup> Considering all of these factors, we agree that a suspension is warranted, see Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standards 4.42 and 7.2 (Am. Bar. Ass'n 2015); see also Annotated Standards for Imposing Lawyer Sanctions 360-61 (Am. Bar. Ass'n 2015), and that the recommended suspension of three years is sufficient to serve the purpose of attorney discipline to protect the public, the courts, and the legal profession, see *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988).<sup>3</sup>

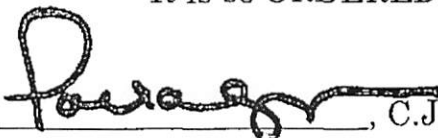
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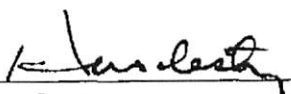
<sup>2</sup>The hearing panel also found an aggravating circumstance based on prior disciplinary offenses. We conclude that finding is not supported by the record. Aylward's suspension for failing to pay bar dues and provide the disclosures required by SCR 79 is an administrative, not a disciplinary, suspension.

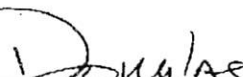
<sup>3</sup>Where, as here, there are multiple charges of misconduct, "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards* 452 (Am. Bar. Ass'n 2015). In this  
*continued on next page . . .*

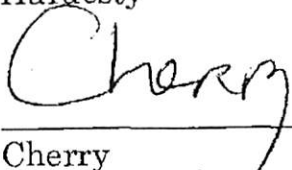
Accordingly, we hereby suspend attorney Jeffrey Aylward from the practice of law in Nevada for a period of three years commencing from the date of this order. Aylward shall pay the costs of the disciplinary proceedings, plus \$2000 for bar staff salaries, within 30 days from the date of this order. We further agree with the hearing panel that, before seeking reinstatement under SCR 116, Aylward must pay restitution to the grievants in the amounts identified in the hearing panel's written decision and reimburse the Client Security Fund for any amounts paid to the grievants.<sup>4</sup> The parties shall comply with SCR 115 and SCR 121.1.

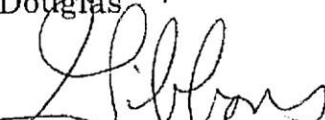
It is so ORDERED.

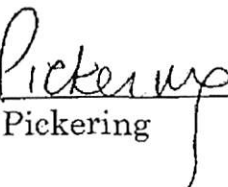
  
\_\_\_\_\_, C.J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

... continued

case, the most serious instances of misconduct warrant suspension, as indicated by Standards 4.42 and 7.2.

<sup>4</sup>We decline at this time to impose the four-year restriction on solo practice and access to client funds recommended by the hearing panel as a condition on reinstatement. Such conditions are more appropriately addressed in connection with the proceedings on any petition for reinstatement filed by Aylward.

cc: Chair, Southern Nevada Disciplinary Panel  
Jeffrey P. Aylward  
C. Stanley Hunterton, Bar Counsel, State Bar of Nevada  
Kimberly K. Farmer, Executive Director, State Bar of Nevada  
Perry Thompson, Admissions Office, U.S. Supreme Court



FILED

MAR - 1 2016

STATE BAR OF NEVADA  
BY *[Signature]*  
OFFICE OF BAR COUNSEL

1 Case Nos.: SG13-1389; SG13-1628;  
2 and SG14-1207

3  
4  
5 STATE BAR OF NEVADA

6 SOUTHERN NEVADA DISCIPLINARY BOARD

7 STATE BAR OF NEVADA, )  
8 )  
9 Complainant, )  
10 vs. )  
11 JEFFREY AYLWARD, ESQ., )  
12 Nevada Bar No. 7983 )  
Respondent. )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND PANEL  
RECOMMENDATION FOR DISCIPLINE

13  
14 TO: Jeffrey Aylward, Esq.  
15 624 S. Tenth St.  
Las Vegas, NV 89101  
16  
17 828 Golden Poppy Street  
Las Vegas, NV 89110

18 This matter came before a designated Formal Hearing Panel of the Southern Nevada  
19 Disciplinary Board (Panel) on Monday, December 7, 2015, at 9:00 a.m. The Panel consisted of  
20 Robert Eaton, Esq., Chair; Larry Lamoreux, Esq. Panel Member; and Carrie Taylor, CPA,  
21 Laymember.

22 Assistant Bar Counsel Jason Dworin, Esq., represented the State Bar of Nevada (State Bar).  
23 Respondent was not present at the hearing despite repeatedly being advised of the time and date of the  
24 hearing, and was not represented by counsel.

1 The State Bar proceeded on a default since Respondent never filed an answer to the complaint.  
2 The State Bar called Tiffany Bradley, a paralegal/investigator regarding the State Bar's attempts to  
3 contact Respondent regarding these allegations. The Panel admitted State Bar's Exhibit 1 (State Bar's  
4 hearing packet), Exhibit 2 (Affidavit of Respondent's prior disciplinary history), Exhibit 3, a file  
5 activity note from a State Bar Investigator/Paralegal indicating the State Bar had met with Respondent  
6 in October 2014 and provided him with copies of the grievances filed against him and indicating that  
7 Respondent had agreed to respond to the grievances by the end of October 2014. The State Bar  
8 further admitted Exhibit 4, which was an email from the State Bar to Respondent reiterating the need  
9 for Respondent to respond to the allegations lodged against him, Exhibit 5 which was a Notice of  
10 Default which was personally served on Respondent on November 18, 2015 and Exhibit 6, which was  
11 an email indicating that on November 30, 2015 Respondent was personally served with a copy of  
12 Exhibit 1.

13 Based upon the pleadings on file herein, the testimony given, and the evidence admitted during  
14 the hearing, the Panel issues the following Findings of Fact, Conclusions of Law, and Order:

#### 15 FINDINGS OF FACT

16 1. Respondent, Nevada Bar No. 7943, is an attorney licensed to practice law in the State  
17 of Nevada since October 1, 2002. Respondent has no prior discipline. *See Exhibit 2.*

18 2. As to Count 1, the grievants in this matter owned a small business for general  
19 contractor work. They hired Respondent in 2012 in two (2) matters. In the first, they were suing a  
20 broker for breach of contract. In the second, they were defending a matter in front of the Department  
21 of Employment, Training, and Rehabilitation (DERT). In total they paid Respondent approximately  
22 \$9,000 over the course of a year for his services. *See Exhibit 1 pps. 2-3 Transcript of November 12*  
23 *Hearing pps. 9-13.*

24 3. The Panel unanimously found that as to Count 1, Respondent knowingly violated Rule  
25 of Professional Conduct ("RPC") 1.1 (Competence), for not demonstrating the competence necessary

1 to effectuate the litigation which resulted in the complaint being dismissed in the grievants' first  
2 matter and in the second matter DERT had gotten a judgment against the grievants because  
3 Respondent failed to defend the matter appropriately. The Panel also found that Respondent  
4 knowingly violated RPC 1.3 (Diligence), for not diligently representing his clients which result in the  
5 dismissal of one matter and a judgment in the second. The Panel found that Respondent knowingly  
6 violated RPC 1.4 (Communication) for failing to keep his clients apprised of their matters, and then  
7 later becoming utterly unresponsive to his clients attempts to contact Respondent. Respondent was  
8 found to have knowingly violated RPC 1.5 (Fees) for charging his clients over \$9,000 and failing to  
9 follow through on the work he was retained to do. The Panel unanimously found that Respondent  
10 knowingly violated RPC 1.15 (Safekeeping) for failing to maintain the monies paid to him by his  
11 clients until the work Respondent was supposed to do had been performed. Respondent was  
12 unanimously found to have knowingly violated RPC 8.1(b) (Bar Admission and Disciplinary Matters),  
13 for failing to respond to the State Bar's investigation despite having been given repeated opportunities  
14 to respond to this matter. Finally, Respondent was unanimously found to have knowingly violated  
15 RPC 8.4 (Misconduct) for his actions in this matter. *See Exhibit 1 pps. 2-3 Transcript of November 12*  
16 *Hearing.*

17 4. With regard to Count 2, the grievants retained Respondent for assistance in terminating  
18 a lease and evicting problem tenants from a rental home. For this service Respondent was paid  
19 \$2,000. Respondent did no work on this matter and failed to respond to the State Bar's investigation.  
20 *See Exhibit 1 pps. 3-4 Transcript of November 12 Hearing pps 14-15.*

21 5. The Panel unanimously found that as to Count 2, Respondent knowingly violated Rule  
22 of Professional Conduct ("RPC") 1.1 (Competence), for failing to show that he possessed the requisite  
23 legal knowledge, skill, thoroughness, and preparation to represent his clients. The Panel also found  
24 that Respondent knowingly violated RPC 1.3 (Diligence), for doing nothing on this matter for one  
25 year. The Panel found that Respondent knowingly violated RPC 1.4 (Communication) for failing to



1 keep his clients apprised of their matters, and then later becoming unresponsive to his clients attempts  
2 to contact Respondent. Respondent was found to have knowingly violated RPC 1.5 (Fees) for  
3 charging his clients \$2,000 doing nothing on his clients' behalf. The Panel unanimously found that  
4 Respondent knowingly violated RPC 1.15 (Safekeeping) for failing to maintain the monies paid to him  
5 by his clients until the work Respondent was supposed to do had been performed. Respondent was  
6 unanimously found to have knowingly violated RPC 8.1(b) (Bar Admission and Disciplinary Matters),  
7 for failing to respond to the State Bar's investigation despite having been given repeated opportunities  
8 to respond to this matter. Finally, Respondent was unanimously found to have knowingly violated  
9 RPC 8.4 (Misconduct) for his actions in this matter. *See Exhibit 1 pps. 3-4 Transcript of November 12*  
10 *Hearing.*

11 6. As to Count 3, the grievant in that matter retained Respondent to assist him with  
12 litigation against Wells Fargo, and Western Union. Respondent was paid \$5,500 for this  
13 representation. After the money was paid Respondent disappeared and his client never heard from  
14 Respondent again. *See Exhibit 1 pps. 5-6 Transcript of November 12 Hearing.*

15 7. The Panel unanimously found that as to Count 3, Respondent knowingly violated Rule  
16 of Professional Conduct ("RPC") 1.1 (Competence), for failing to show that he possessed the requisite  
17 legal knowledge, skill, thoroughness, and preparation to represent his client. The Panel also found that  
18 Respondent knowingly violated RPC 1.3 (Diligence), for taking \$5,500 and doing no work. The Panel  
19 found that Respondent knowingly violated RPC 1.4 (Communication) for disappearing and completely  
20 ignoring his client's attempts to contact Respondent. Respondent was found to have knowingly  
21 violated RPC 1.5 (Fees) for charging his clients \$5,500 doing no work on his clients behalf. The Panel  
22 unanimously found that Respondent knowingly violated RPC 1.15 (Safekeeping) for failing to  
23 maintain the monies paid to him by his clients until the work Respondent was supposed to do had been  
24 performed. Respondent was unanimously found to have knowingly violated RPC 8.1(b) (Bar  
25 Admission and Disciplinary Matters), for failing to respond to the State Bar's investigation despite

1 having been given repeated opportunities to respond to this matter. Finally, Respondent was  
2 unanimously found to have knowingly violated RPC 8.4 (Misconduct) for his actions in this matter.  
3 *See Exhibit 1 pps. 5-6 Transcript of November 12 Hearing.*

4 **CONCLUSIONS OF LAW**

5 (A) The Panel was duly designated by the Southern Nevada Disciplinary Board Chair to  
6 adjudicate this matter.

7 (B) The Panel has jurisdiction over Respondent and the subject matter of these proceedings.  
8 SCR 99.

9 (C) Venue is appropriately with the Southern Nevada Disciplinary Board and in the County  
10 of Clark, Nevada. SCR 105.

11 **AGGRAVATION**

- 12 1. *Prior disciplinary offenses.* SCR 102.5(1)(a)
- 13 2. *Dishonest or selfish motives.* SCR 102.5(1)(b)
- 14 3. *Pattern of misconduct* SCR 102.5(1)(c)
- 15 4. *Multiple Offenses.* SCR 102.5(1)(d)
- 16 5. *Bad faith obstruction of the disciplinary proceeding by intentionally failing*  
17 *to comply with rules or orders.* SCR 102.5(1)(e)
- 18 6. *Refusal to acknowledge the wrongful nature of conduct.* SCR 102.5(1)(g)
- 19 7. *Selfish motives.* SCR 102.5(1)(b)
- 20 8. *Substantial experience in the practice of law* SCR 102.5(1)(i)
- 21 9. *Indifference to making restitution.* SCR 102.5(1)(i)

22 **MITIGATION**

- 23 1. The Panel found no mitigating factors.

24 The Panel was profoundly disturbed by Respondent's utter failure to participate in the  
25 disciplinary process despite the repeated attempts to engage Respondent.

1 **DECISION AND RECOMMENDATION**

2 Based upon the pleadings and papers on file herein, the documents admitted into evidence, the  
3 testimony provided, and the foregoing Findings of Fact and Conclusions of Law, the Panel hereby  
4 recommends the following discipline:

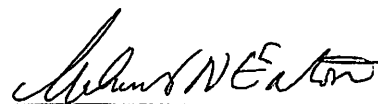
5 1. The Panel recommends that Respondent be suspended from the practice of law for  
6 three years.

7 2. The Panel recommends that as a condition precedent to reinstatement Respondent must  
8 pay restitution of \$9,000 to the Krajniaks, the grievants in Count 1, \$2,000 to the Kromers, the  
9 grievants in Count 2, and \$5,500 to Riad Aljaber, the grievant in Count 3. If any funds are paid from  
10 the Client Security Fund to reimburse any of the above named victims Respondent is to reimburse the  
11 Client Security Fund for the amounts paid to the grievants and that amount will be deducted from the  
12 amount owed to the named victims.

13 3. The Panel recommends that Respondent be forbidden to engage in the solo practice of  
14 law for four (4) years after he is reinstated and not have access to client funds for that four (4) year  
15 period.

16 4. Respondent is assessed the actual costs of these proceedings, and a further \$2,000 to  
17 reimburse the State Bar for staff salaries;


18 DATED this 24 day of ~~January~~ <sup>FEBRUARY</sup> 2016.

19 

20 Robert Eaton, Esq., Formal Hearing Panel Chair,  
Southern Nevada Disciplinary Panel

21 Submitted by:

22 STATE BAR OF NEVADA  
23 C. Stanley Hunterton, Bar Counsel

24   
25 Jason R. Dworin, Esq.  
Assistant Bar Counsel