

2 **STATE BAR OF NEVADA**

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4 **NORTHERN NEVADA DISCIPLINARY BOARD**

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7 STATE BAR OF NEVADA,

8 Complainant,

PUBLIC REPRIMAND

9 vs.

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11 DOUGLAS K. FERMOILE, ESQ., NEVADA
STATE BAR NO. 662,

12 Respondent.

13 _____)
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15 TO: DOUGLAS K. FERMOILE, ESQ.
16 427 Ridge Street
Reno, Nevada 89505

17 In July of 2007, Frank Kertanis consulted with you about representation in connection with
18 personal injuries he sustained in an auto accident that took place on July 13, 2007. Prior to your
19 representation, Frank and Tandy Kertanis "were very good friends" with your oldest daughter, and they
20 had been guests in your home on several occasions.
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22 On August 8, 2007, you sent State Farm a letter stating that you had been retained by Mr. Kertanis
23 with regards to the personal injuries he sustained in an accident with its insured motorist, who had a policy
24 limit of \$25,000.00.

25 Approximately one year after Mr. Kertanis retained you, on July 31, 2008, Mr. Kertanis signed a
26 Contingency Agreement with you. The Contingency Agreement contained a power of attorney to "endorse
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1 all settlement drafts on the [client's] behalf for deposit into the attorney's client trust account in
2 preparation for final disbursement." One week earlier, on July 22, 2008, you signed Frank Kertanis' name
3 on an Authorization for Release of Information for State Farm Insurance Company, without his
4 knowledge.

5 On November 4, 2008, State Farm communicated an offer to you to settle the Kertanis matter for
6 \$7,000.00. You claimed that at that point Mr. Kertanis' medical bills only added up to \$4,294.75, although
7 the Bar alleges that Mr. Kertanis ultimately incurred medical bills totaling \$23,000.00. You maintained
8 that "after discussions", Mr. Kertanis rejected this offer, although there is no evidence in the record to
9 confirm this communication.
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11 On November 7, 2008, State Farm made another offer to settle in the amount of \$10,000.00, and
12 you claim that Mr. Kertanis "authorized" you to accept the offer if it could include an additional \$280.00
13 for a physical therapy bill. Mr. Kertanis maintained that you never conveyed this offer to him, he never
14 would have approved such an offer to settle in this amount because his medical expenses at that point far
15 exceeded that amount, and it was his understanding that you would try to obtain the full policy limit of
16 \$25,000.00.
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18 On November 10, 2008, State Farm sent you a letter confirming settlement of Frank Kertanis'
19 injury claim "in the amount of \$10,280.00", and requested that you return the enclosed Release after it is
20 "signed by your client." On November 12, 2008, you signed Frank Kertanis' name on a Release with State
21 Farm, releasing all further claims, for consideration in the amount of \$10,280.00. You also signed your
22 own name on the Release as a witness of Mr. Kertanis' signature. On November 12, 2008, you received
23 two checks from State Farm, for a total settlement amount of \$10,280.00.
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25 On December 2, 2008, Mr. Kertanis sent you an email informing you of an MRI appointment on
26 December 9, 2008, and inquiring whether you are "still trying to settle with State Farm." On December 2,
27 2008, you responded with an email stating that "[w]e're settling with State Farm for \$10,280.00, but
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1 there is a problem because Bob Dickey has put an Attorney's lien [in the amount of \$656.22] on the
2 claim." Your email did not inform Mr. Kertanis that the case had already been settled, that you had
3 already signed the settlement Release on November 12, 2008, and the settlement proceeds had in fact been
4 received. Nonetheless, Mr. Kertanis persuasively testified that he never authorized you to sign his name on
5 either the Authorization for Release of Information with State Farm or the settlement Release with State
6 Farm, neither you nor your office called him to ask him to come in and sign these documents, you never
7 discussed how the proceeds of the \$10,280.00 settlement were to be distributed, and he never would have
8 approved such a settlement.
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10 Meanwhile, with regards to Case No. NG12-0339, in July of 2007, after Tandy Kertanis found out
11 that she was under investigation for defrauding Wells Fargo Bank, she retained you as her defense counsel.
12 It does not appear from the record that there was ever any agreement or engagement letter regarding the
13 scope of your representation in this matter. Ms. Kertanis paid you a \$5,000.00 retainer, and you provided a
14 receipt of this payment dated August 6, 2007. You testified that Ms. Kertanis said that she had only been
15 helping her sister-in-law file online documents for a loan, and she maintained her innocence throughout
16 your representation of her. On your advice, on August 9, 2007, Ms. Kertanis withdrew \$180,000.00 from
17 an account with Linsco Private Ledger ("LPL"), and deposited it into your trust account. Ms. Kertanis
18 maintained that you suggested that, in your trust account, Wells Fargo would not be able to have access to
19 the money.
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22 The evidence, including a document entitled "Kertanis Account" provided by you, indicates that
23 between August 30, 2007, and May 15, 2009, you issued ten checks made out to Frank or Tandy Kertanis,
24 totaling \$163,556.00. The "Kertanis Account" document does not indicate when it was prepared, whether
25 you ever provided it to the Kertanis' during your representation of them, when you withdrew \$16,000.00
26 for your legal fees, or when you received the \$5,000.00 initially paid as a retainer.
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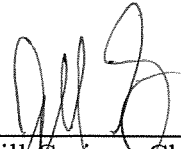
1 You also initially represented the Kertanis' in the civil suit related to the criminal matter, *Wells*
2 *Fargo Bank v. Tandy Kertanis, et. al*, CV08-00432, which was filed in February of 2008. On February 25,
3 2008, you sent Wells Fargo counsel Sarah Carrasco, Esq. a letter stating that the Kertanis' agree to have
4 you "transfer all funds presently held on their behalf in your trust account for holding during the pendency
5 of this action", and the total amount in your trust account is \$43,081.00. Moreover, despite these
6 assurances to Wells Fargo counsel, on March 1, 2008, you authorized and signed a check to Mr. Kertanis
7 withdrawing \$33,081.00. On March 4, 2008, Ms. Carrasco sent you a letter proposing a stipulation in
8 which you would remove all funds held on the Kertanis' behalf in your trust account to her firm's trust
9 account, in the amount of \$43,081.00, pending litigation, and without "further order of the court."
10 Nonetheless, the Kertanis' never signed the proposed stipulation, and on July 21, 2008, you authorized
11 another \$8,000.00 withdrawal from the account. On November 10, 2008, you also authorized and signed
12 for a \$700.00 withdrawal by Ms. Kertanis, and on May 15, 2009, you authorized another \$856.00
13 withdrawal by Mr. or Mrs. Kertanis.
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16 On October 22, 2009, Lynn Pierce, Esq., sent you a letter stating that she is taking over the
17 representation of the Kertanis' in the civil case filed by Wells Fargo, and she requested a copy of your
18 complete case file, including a complete accounting. Upon review of the file, Ms. Pierce learned that you
19 had taken \$16,000.00 out of the trust account for attorney's fees, in addition to the \$5,000.00 retainer,
20 although the retainer was not included in the "Kertanis Account" document referenced above. Ms. Pierce
21 testified that during a phone conversation with you on November 4, 2009, you told her that no funds
22 remained in the Kertanis' account despite the pending litigation.
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24 Therefore, in light of the foregoing, a hearing panel of the Northern Nevada Disciplinary Board
25 found that you violated Nevada Rules of Professional Conduct ("RPC") 1.2(a) (Scope of Representation),
26 1.4(a) (Communication), RPC 1.15 (Safekeeping Property), and 8.4(c) (Misconduct), and you are hereby
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1 PUBLICLY REPRIMANDED. A copy of this letter is to be published in the Nevada Lawyer Magazine.

2 Dated this 2nd day of August, 2014.

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6 _____
7 Jill Greiner, Chair
8 Formal Hearing Panel
9 Northern Nevada Disciplinary Board
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