

1 Case No. OBC16-0742



FILED

JUN 13 2017

STATE BAR OF NEVADA

BY: *[Signature]*
OFFICE OF BAR COUNSEL

7 STATE BAR OF NEVADA
8 NORTHERN NEVADA DISCIPLINARY BOARD

11 STATE BAR OF NEVADA,)
12 Complainant,)
13 vs.)
14 BRIAN C. KELLY, ESQ.,)
NV Bar No. 1993)
15 Respondent.)
16

LETTER OF REPRIMAND

17 To: BRIAN C. KELLY, ESQ,
18 c/o John Springgate, Esq.
19 Silverman Kattelman Springgate Chtd.
6140 Plumas Street, Suite 200
20 Reno, Nevada 89519

21 You were an attorney at the Hardy Law Group in August 2011 when a client retained
22 you, on a contingency fee basis, for representation in claims related to his deceased
23 mother's trust. The agreed upon fee was 25 % of the gross recovery, compromise or
24 settlement collected for the client, if the claims were settled at least thirty days prior to the
25 hearing and thereafter, 30% of the recovery. An attorney's lien was filed in the probate

1 matter on June 12, 2012. It identified that the Hardy Law Group was entitled to 30% of the
2 proceeds from the estate matter, which was anticipated to include a promissory note that
3 the Trust held after selling a piece of real property that it had owned.

4 Rather than recording the lien on the real property, on July 24, 2012, you recorded
5 an *Assignment of Note and Deed of Trust*, assigning an undivided interest in the proceeds
6 of the promissory note to Hardy Law Group, with the Washoe County Recorder.

7 You did not advise the client, in writing, of the desirability of seeking the advice of
8 independent legal counsel before assigning an ongoing interest in his property to the Hardy
9 Law Group. The client did not sign any documents indicating that he was giving informed
10 consent to the transaction.

11 On April 9, 2013, you recorded an *Assignment and Clarification of Interests in Note*
12 *and Deed of Trust* which divided the total interest in the note as follows: 71.8% to the client,
13 14.1% to you, personally, and 14.1% to Del Hardy ("Hardy"), personally. On the same day,
14 you also recorded a *Deed in Lieu of Foreclosure* which returned the mortgaged real
15 property back to the client, with you and Hardy having undivided property interests in the
16 real property.

17 Again, the client was not advised, in writing, of the desirability of seeking the advice
18 of independent legal counsel before assigning an ongoing interest in his property to you
19 and Hardy personally. The client did not sign any documents indicating that he was giving
20 informed consent to the transaction.

21 RPC 1.8 states

22 (a) A lawyer shall not enter into a business transaction with a client or
23 knowingly acquire an ownership, possessory, security or other pecuniary interest
adverse to a client unless:

24 (1) The transaction and terms on which the lawyer acquires the interest are
fair and reasonable to the client and are fully disclosed and transmitted in writing in
a manner that can be reasonably understood by the client;

25 (2) The client is advised in writing of the desirability of seeking and is given
a reasonable opportunity to seek the advice of independent legal counsel on the
transaction; and

1 (3) The client gives informed consent, in a writing signed by the client, to
2 the essential terms of the transaction and the lawyer's role in the transaction,
including whether the lawyer is representing the client in the transaction.

3 You are imputed with the knowledge of the requirements of RPC 1.8 (Conflict of
4 Interest: Current Clients: Specific Rules) and you violated the rule because you failed to
5 inform your client *in writing* about the terms of the transaction, the nature of the ownership
6 interest that you and Hardy were acquiring, and that it was desirable for him to seek the
7 advice of independent legal counsel. Although the transfer of interest to the Hardy Law
8 Group, and later to you and Hardy personally, does not appear to be unfair or
9 unreasonable, the client was minimally injured by your violation of RPC 1.8 (Conflict of
10 Interest: Current Clients: Specific Rules) because he was not afforded the opportunity to
11 be fully informed, and independently advised, about the consequences of the undivided
12 ownership in the real property. The integrity of the legal profession is injured by a violation
13 of RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules) because the client was not
14 properly informed and written consent was not obtained prior to you gaining an undivided
15 ownership interest in the real property.

16 The Panel has considered the available aggravating and mitigating factors and
17 determined that they do not warrant a deviation from the sanction as set forth herein.

18 In light of the foregoing, you violated Rule of Professional Conduct 1.8 (Conflict of
19 Interest: Current Clients: Specific Rules) and are hereby REPRIMANDED and required to
20 pay costs in the amount of \$1,500 plus the hard costs of this proceeding.

21 DATED this 13th day of June, 2017.

22
23 By: Bart A. Aaron
24 BARTH AARON, ESQ.
25 Formal Hearing Panel Chair
Northern Nevada Disciplinary Board