

Bar Counsel Report

In Re: DOUGLAS E. MILES
Bar No.: 4007
Case No.: 81997
Filed: 01/15/2021

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Douglas E. Miles. Under the agreement, Miles admitted to violating RPC 1.15 (safekeeping property) and RPC 8.1 (disciplinary matters). He agreed to a two-year suspension, stayed for two years, subject to certain conditions.

Miles has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated RPC 1.15 by overdrawing his trust account and commingling personal and business funds with client funds held in trust. He violated RPC 8.1 by failing to respond to the State Bar's requests for information.

The issue for this court is whether the agreed-upon discipline sufficiently protects 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) (explaining the purpose of attorney discipline). In determining the appropriate discipline, 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).

Miles admitted to knowingly violating a duty owed to his clients (safekeeping property) and a duty owed to the profession (responding to State Bar inquiries). His clients suffered actual or potential injury because their funds were commingled with Miles' personal funds. The baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) (providing that suspension is appropriate when "a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client"). The record supports the panel's findings of three aggravating circumstances (pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and three mitigating circumstances (absence of prior discipline, personal or emotional problems, and remorse).¹ Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, commencing from the date of this order, we hereby suspend Douglas E. Miles from the practice of law in Nevada for two years, stayed for two years subject to the following conditions: (1) Miles must close his trust account ending in x8098; (2) Miles must become current with his Continuing Legal Education obligations, complete 15 CLE hours (8 general, 6 ethics in the area of client trust account management and/or maintenance, and 1 substance abuse), and apply for reinstatement with the NV CLE board;² (3) Miles must employ an accountant approved by the State Bar and submit a monthly report for the first year of the stayed suspension and a quarterly report for the second year of the stayed suspension that complies with the requirements outlined in the conditional guilty plea agreement; and (4) Miles must not receive discipline for any grievance related to conduct engaged in after the execution of the conditional guilty plea agreement. Miles shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order, if he has not done so already. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: JOHN A. PIET
Bar No.: 10717
Case No.: 82176
Filed: 01/15/2021

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney John A. Piet. Under the agreement, Piet admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.2 (expediting litigation), and RPC 8.1 (disciplinary matters). He agreed to a six-month suspension, stayed for one year, subject to certain conditions.

Piet has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated the above-listed rules by failing to provide legal services related to a DUI matter for which his client had paid him a \$3,000 retainer, failing to communicate with the client, and failing to respond to the State Bar's requests for information.

The issue for this court is whether the agreed-upon discipline sufficiently protects 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) (explaining the purpose of attorney discipline).

In determining the appropriate discipline, 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).

Piet admitted to knowingly violating duties owed to his client (diligence and communication) and to the profession (responding to State Bar inquiries). His client suffered actual injury because he was denied a job as he had an outstanding warrant against him related to the DUI matter he had retained Piet to handle. Additionally, his client was thereafter arrested on that warrant during a routine traffic stop. The baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass’n 2017) (providing suspension is appropriate when “a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client”). The record supports the panel’s findings of two aggravating circumstances (prior discipline and substantial experience in the practice of law) and one mitigating circumstance (absence of dishonest or selfish motive). Considering all four factors, we conclude that the agreed upon discipline is appropriate.

Accordingly, commencing from the date of this order, we hereby suspend attorney John A. Piet from the practice of law in Nevada for six months, stayed for one year subject to the following conditions: (1) Piet shall obtain a mentor who shall submit quarterly reports to the State Bar, (2) Piet shall pay \$3,000 in restitution, and (3) Piet shall “complete additional CLEs on diligent client representation and the importance of responding to the State Bar.” Piet shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order, if he has not done so already. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: VERNON A. NELSON
Bar No.: 6434
Case No.: 82117
Filed: 01/15/2021

**ORDER APPROVING MODIFIED
CONDITIONAL GUILTY PLEA AGREEMENT**

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel’s recommendation that this court approve, pursuant to SCR 113, a modified conditional guilty plea agreement in exchange for a

stated form of discipline for attorney Vernon A. Nelson. Under the modified agreement, Nelson admitted to violating RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 1.5 (Fees); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 5.4 (Professional Independence of a Lawyer); and RPC 8.4 (Misconduct), and agreed to a six month stayed suspension subject to certain conditions.

Nelson admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that Nelson violated the above-referenced rules by (1) forming a partnership with Credit Restoration of Nevada (CRN) and its non-attorney principal to engage in activities that included the unauthorized practice of law, sharing legal fees, and allowing CRN to regulate or direct his professional judgment; (2) filing a Fair Debt Collections Practices Act (FDCPA) action on behalf of two clients to whom Nelson was introduced over email without further communication without authorization from them;³ (3) failing to comply with discovery requests and appear at a court-ordered judgment debtor exam for the clients after the court dismissed the FDCPA action based on bad faith and awarded attorney fees to the defendant creditors;⁴ (4) offering to post a bond on behalf of the clients without obtaining their consent; (5) failing to timely notify or consult with the clients about a scheduled deposition and inform them about the status of their case, including decisions that required their informed consent; (6) handling the FDCPA matter on a contingent fee arrangement without a written agreement with the clients or mandatory disclosures; and (7) assisting or inducing CRN and its principal in violating the rules of professional conduct.

The issue for this court is whether the agreed-upon discipline is sufficient 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) (explaining the purpose of attorney discipline). In determining the appropriate discipline, 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).

Nelson admitted to knowingly or negligently violating duties owed to his clients (diligence, communication, scope of representation, and allocation of authority) and to the profession (fairness to opposing party and counsel and professional independence). His misconduct injured or potentially injured both his clients and the profession because the court entered a judgment against the clients and found that Nelson brought the case in bad faith and for the purpose of harassment and

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then he unreasonably multiplied the proceedings. The baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2018) ("Suspension is generally appropriate when ... a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client ... "); Standard 7.2 ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."). The record supports the existence of two aggravating circumstances (multiple offenses and substantial experience in the practice of law) and four mitigating circumstances (absence of a prior disciplinary record, full and free disclosure to disciplinary authority/cooperative attitude, imposition of other penalties, and remorse). Considering the four factors from *Lerner*, including the mitigating circumstances of no prior disciplinary record and remorse and the fact that Nelson paid the attorney fees judgment entered against his clients, we agree with the panel that a six-month stayed suspension subject to conditions is appropriate discipline.

Accordingly, we hereby suspend attorney Vernon A. Nelson from the practice of law in Nevada for six months, with the suspension stayed for one year subject to the following conditions. Nelson must submit quarterly reports to the State Bar certifying his compliance with probation requirements, which include completion of six additional continuing legal education hours beyond those required by SCR 210, and that he limit his practice by not taking any cases in the area of consumer credit. Additionally, Nelson shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order.

It is so ORDERED.

In Re: AMY L. SUGDEN
Bar No.: 9983
Case No.: OBC19-1104
Dated: 01/26/2021

PUBLIC REPRIMAND

To Amy L. Sugden:

On or about October 29, 2020, a Formal Hearing Panel of the Northern Nevada Disciplinary Board convened and heard the above-referenced grievance. Based on the evidence presented through the

Conditional Guilty Plea in Exchange for a Stated Form of Discipline, the Panel concluded that you violated the Rules of Professional Conduct ("RPC") and should be issued a Public Reprimand. This letter shall constitute a delivery of that reprimand.

On or about March 6, 2012, John Di Francesco and Bob Feron (hereinafter "clients") retained the Law Offices of Brian C. Padgett to represent them in a lawsuit related to the Truckee River Flood Management Project. You were the primary attorney assigned to their case. RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) states, in pertinent part, that a lawyer "shall abide by a client's decision concerning the objectives of representation" and "shall consult with the client as to the means by which they are to be pursued." You failed to abide by your clients' decisions to set the matter for trial and schedule depositions at the times requested by the clients. This type of ethical breach potentially caused injury to your clients.

RPC 1.3 (Diligence) states that a lawyer "shall act with reasonable diligence and promptness in representing a client." Further, RPC 3.2 (Expediting Litigation) states that a lawyer "shall make reasonable efforts to expedite litigation consistent with the interests of the client." You failed to reschedule your clients' matter for trial prior to the expiration of the Five-Year Rule and failed to promptly file responsive pleadings. This type of ethical breach potentially caused injury to your clients.

RPC 1.4 (Communication) states, in pertinent part, that a lawyer shall "[k]eep the client reasonably informed about the status of a matter" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." You failed to reasonably inform your clients of when pleadings would be filed and/or failed to inform them of whether any depositions would be scheduled and/or taken. This type of ethical breach caused injury to your clients.

Under ABA Standard 4.42, suspension is generally appropriate when a lawyer fails to perform services for a client, or engages in a pattern of neglect, and causes injury or potential injury to a client. You neglectfully failed to perform certain services for your clients' case. Although it was shown that you believed you had an agreement wherein opposing counsel would not move to dismiss based on the Five-Year Rule, this was not sufficiently documented from the evidence presented. Based on your absence of a prior disciplinary record and dishonest/selfish motive, your cooperative attitude toward the instant proceedings, and your remorse for your actions, mitigation of your disciplinary sanction is appropriate.

Accordingly, you are hereby REPRIMANDED for violating RPC 1.2, 1.3, 1.4, and 3.2. In addition, pursuant to Supreme Court Rule 120(3), you are required to remit to the State Bar of Nevada the amount of \$1,500 within 30 days of this letter.

In Re: FRANCISCO J. ARMSTRONG
Bar No.: 14161
Case No.: OBC20-0690
Dated: 12/18/2020

LETTER OF REPRIMAND

To Francisco J. Armstrong:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) as you attempted to close your law office in 2014.

You were retained to pursue claims in *DeBell v. Reno-Vation, Inc., et al.*, Second Judicial District Court Case No. CV19-01314. The opposing party filed a Counterclaim in the case. The opposing party then filed a Motion to Dismiss based on failures to comply with the initial discovery requirements.

At, or about, the same time that the Motion to Dismiss was filed, your client informed you that it would like to dismiss the claims if the opposing party would also drop the counterclaim. You did not oppose the Motion to Dismiss. You have stated that you believed your client's intentions would be accomplished by allowing the Motion to Dismiss to be granted.

You admit that you failed to adequately communicate with your client leading up to the dismissal of the complaint. You also did not inform your client of the pending Motion to Dismiss, discuss whether to respond to it, or discuss the means by which to accomplish your client's goal of a complete dismissal of the lawsuit. Your failures to communicate resulted in the client terminating the ongoing attorney-client relationship and seeking substitution of counsel in another pending matter.

The Motion to Dismiss was granted in the *Reno-Vation* lawsuit, in large part because of your failure to respond to it. Thereafter, the opposing party submitted a Memorandum of Costs, pursuant to NRS 18.020. Although you continued to be attorney of record in the lawsuit, you did not respond to the Memorandum of Costs or inform your client that it had been filed. Based on the Memorandum of Costs, the opposing party obtained an Amended Judgment against your client for \$1,882.30.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

Your conduct related to representation of the foregoing client, violated Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 1.1 (Competence) for failing to understand that letting a matter be dismissed by failing to respond to a Motion to Dismiss exposed your client to a monetary judgment, pursuant to NRS 18.020, and that the dismissal did not accomplish your client's goal of resolving the entire lawsuit because the counterclaim remained pending; and

RPC 1.4 (Communication) for failing to communicate with your client concerning the status of the matter and the means by which to accomplish the client's objectives so that your client could make informed decisions regarding the matter;

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 4.43 of the ABA Standards for Imposing Lawyer Sanctions provides that "reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client. In this instance, you negligently failed to apply the skill, knowledge, and/or thoroughness necessary to represent your client and accomplish its objectives in the lawsuit. You also failed to adequately communicate with your client regarding the matter and accomplishing its objectives. This failure caused injury to your client, who now has a monetary judgment entered against it.

In Nevada, a reprimand can be a Public Reprimand or a Letter of Reprimand, with the later [sic] being the lowest form of discipline available. Taking into consideration your absence of prior discipline and inexperience in the practice of law, the Panel finds that the lesser of the two sanctions is appropriate.

Based upon the foregoing, you are hereby **REPRIMANDED** for your negligent violation of RPC 1.1 (Competence) and RPC 1.4 (Communication).

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

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RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this rule:

NAME	BAR NO.	ORDER NO.	DATE FILED
Michael L. Miller	836	82240	01/07/2021
Guy P. Kroesche	4657	82268	01/07/2021

ENDNOTES:

1. The panel also found the mitigating circumstance of other penalties or sanctions, but nothing in the record supports that finding.
2. Miles has been CLE suspended since 2015. Nothing in the record suggests that Miles has been engaged in the active practice of law in Nevada since the administrative suspension. He has continued to practice in California, where he also is licensed. We remind Miles that he may not engage in the practice of law in Nevada until he is reinstated by the CLE Board.
3. The clients signed a power of attorney with CRN authorizing work on their behalf, through which, CRN hired Nelson. Nelson did not have a separate retainer agreement with the clients.
4. Nelson ultimately paid the attorney fees judgment entered against his clients and the portion entered against him personally.

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FROM THE BAR COUNSEL

Lawyers Must Remain Vigilant about Duty of Loyalty

Practicing law under normal circumstances usually requires resilience along with the other expected attributes: competence, diligence, communicating with clients and all the rest.

But after 13 months into the pandemic, the phrase “COVID fatigue” isn’t just an abstract way to express frustration with unprecedented times. It’s now part of our vernacular, and shorthand for how we deal with continual lifestyle changes.

The pandemic affected nearly all facets of life, including in the legal community and its clients. And as the government-mandated restrictions and new legal procedures changed how law is practiced in Nevada, the Office of Bar Counsel is seeing heightened emotional outbursts from attorneys and members of the public.

Working remotely often requires a basic knowledge of technology which, in many situations, did not exist only a few years ago. Calls to the State Bar’s ethics hotline, especially from older lawyers, often deal with the aftermath of computer-related issues.

Examples:

- Missed court hearings via Blue Jeans or Zoom because of internet problems in the lawyer’s home office;
- The need to create legal pleadings or documents with little or no working knowledge of computer apps and file formats like PDF, Word or Adobe; and
- Successfully downloading a required court form, but then finding that words cannot be typed on it.

Attorneys also are frustrated about their failure to respond in a timely manner to mail – whether from clients, opposing counsel, an insurance company, courts or even the state bar – which the post office did not forward to the home office.

Lawyers who stayed in their offices sometimes worry about physical contact with potentially COVID-carrying clients. In turn, clients complain to

the state bar that nobody will answer a usually locked door at the lawyer’s office even though talking can be heard inside.

Attorneys also have expressed depression about being stuck in miserable jobs but feel trapped by the fear of unemployment until the pandemic passes.

The Office of Bar Counsel, of course, has discussed lawyer/client issues with lawyers and clients for decades. However, since March 2020 – and especially in the last few months – telephone calls regarding the above problems and the myriad other COVID-caused issues have increased to a higher decibel of urgency and/or frustration.

State bar members who need an ear for purposes of venting or discussing issues regarding the Rules of Professional Conduct can always contact the ethics hotline and speak with an assistant bar counsel.

Those who think they might need more help can contact the Nevada Lawyer Assistance Program (NLAP), which provides services to attorneys suffering from abuse, addiction and/or mental health issues. Nevada attorneys can contact NLAP to speak with a professional, and the initial assessment is free.

It has been reported that alcohol use – throughout society – has increased significantly since March 2020. Attorneys who fear they may have a problem with substance abuse can contact Lawyers Concerned for Lawyers (LCL), which was established by Nevada attorneys in the mid-1980s to help fellow lawyers.

More information regarding NLAP and LCL can be found on the State Bar’s website at www.nvbar.org/for-lawyers/resources/lawyer-wellbeing/ or by calling 1-866-828-0022.

Everybody has recently heard it: there’s light at the end of the COVID tunnel. Life might not go back to pre-COVID times, but it’s probably going to get better. Attorneys, and everybody else, should try to take care of themselves and stay safe. If someone needs help, it’s just a phone call away.

