

# Bar Counsel Report

**In Re: AARON A. AQUINO**  
**Bar No.: 11772**  
**Case No.: 83339**  
**Filed: 01/27/2022**

## ORDER OF DISBARMENT

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Aaron A. Aquino be suspended from the practice of law for three years based on three violations of RPC 1.15 (safekeeping property); two violations of RPC 1.3 (diligence); and one violation each of RPC 1.4 (communication), RPC 1.16 (declining or terminating representation), RPC 1.5 (fees), RPC 8.1 (Bar admission and disciplinary matters), and RPC 8.4 (misconduct). The State Bar has filed a brief opposing the panel's recommendation and instead seeking disbarment. Aquino has not filed a brief.*

We employ a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and thus, will not set them aside unless they are clearly erroneous or not supported by substantial evidence, see generally *Sowers v. Forest Hill Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). In contrast, we review a disciplinary panel's conclusions of law and recommended discipline de novo. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Aquino committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's findings of fact in this matter as Aquino and the State Bar stipulated to them during the disciplinary proceedings. Based on those findings, we agree with the panel's conclusions that the State Bar established by clear and convincing evidence that Aquino violated the above-listed rules by misappropriating approximately \$700,000 in client funds, failing to properly communicate with clients, and failing to respond to inquiries from the State Bar.

In determining whether the panel's recommended discipline is appropriate, 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). We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 224, 756 P.2d 464, 527-28, 535 (1988) (noting the purpose of attorney discipline).

Aquino violated duties owed to his clients, to the public, and to the legal profession. Because Aquino knew

his accounts were out of balance, misled clients regarding their funds, and could not explain how the personal purchases from his accounts related to client costs, Aquino knowingly violated his ethical duties. Aquino's misconduct caused injury to his clients as they did not receive their funds or their lienholders were not paid. Based on the most serious instance of misconduct at issue, see *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards* 452 (Am. Bar Ass'n 2018) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations. ..."), we agree with the State Bar that the baseline sanction before considering aggravating and mitigating circumstances is disbarment. See *id.* *Standard* 4.11, at 455 ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). The record supports the panel's findings of two aggravating circumstances (prior discipline and "the almost uniform failure to monitor what was going on with [his] accounts"). But to the extent the record supports the mitigating circumstances found by the panel (acceptance of responsibility, inexperience in the practice of law, personal and emotional problems, and remorse), we conclude they do not warrant a downward deviation from disbarment.

Accordingly, we hereby disbar attorney Aaron A. Aquino from the practice of law in Nevada. Such disbarment is irrevocable. SCR 201(1). Aquino shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days from the date of this order if he has not already done so. The parties shall comply with SCR 115 and 121.1.

It is so ORDERED.

**In Re: KEVIN D. HOLTMAN**  
**Bar No.: 11603**  
**Case No.: 83770**  
**Filed: 01/28/2022**

## ORDER OF SUSPENSION

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that Kevin D. Holtman be suspended for two years and one day based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.2 (expediting litigation), and RPC 8.1 (disciplinary matters). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).*

The State Bar has the burden of showing by clear and convincing evidence that Holtman 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 Holtman failed to answer the complaint and a default was entered.<sup>1</sup> SCR 105(2). The record therefore establishes that Holtman violated the above-referenced rules by failing to diligently investigate claims and litigate on behalf of two clients, by failing to communicate with those clients, and by failing to respond to the State Bar's inquiries.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must ... exercise independent judgment," the panel's recommendation is persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). 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 10-67, 1077 (2008).

Holtman violated duties owed to his clients and the profession. Holtman's mental state appears to have been intentional or knowing. His misconduct harmed his clients by causing their cases to be delayed and failing to properly investigate their claims. Holtman's failure to cooperate with the disciplinary investigation harmed the integrity of the profession which depends on a self-regulating disciplinary system.

The baseline sanction for Holtman's misconduct, before considering aggravating and mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 & Standard 7.2 (Am. Bar Ass'n 2017) (recommending suspension when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client" and 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 panel found and the record supports five aggravating circumstances (pattern of misconduct, multiple offenses, bad faith obstruction by intentionally failing to comply with rules or orders, vulnerability of the victim, and substantial experience in the practice of law). As we recently suspended Holtman for three years *In re Discipline of Holtman*, No. 82993, 2021 WL 4399344 (Nev. Sept. 24, 2021) (Order of Suspension), the mitigating circumstance of absence of prior discipline does not apply. Considering all the factors and that the hearing panel recommends Holtman pass the Nevada Bar Examination and the Multi-State Professional Responsibility Examination before applying for reinstatement, the recommended two-year-and-one-day suspension 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) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby suspend attorney Kevin D. Holtman from the practice of law in Nevada for a period of two years and one day commencing from the date of this order. Before applying for reinstatement, Holtman shall take and pass the Nevada Bar Examination and the MultiState Professional Responsibility Examination. Further, Holtman shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120(3), within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

#### **SILVER, J., concurring in part and dissenting in part:**

I concur in the decision to suspend Holtman and with the length of the suspension. But I would impose this suspension consecutive to the three-year suspension that Holtman began serving on September 24, 2021. *In re Discipline of Holtman*, No. 82993, 2021 WL 4399344 (Nev. Sept. 24, 2021) (Order of Suspension) (suspending Holtman for three years for failing to pursue litigation on behalf of a client, failing to communicate with clients, making misrepresentation to clients, and failing to participate in the disciplinary proceedings). I therefore dissent with respect to when the suspension in this matter commences.

**In Re: ELAINE A. DOWLING**  
**Bar No.: 8051**  
**Case No.: 83817**  
**Filed: 01/14/2022**

#### **ORDER APPROVING 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 conditional guilty plea agreement in exchange for a stated form of discipline for attorney Elaine A. Dowling. Under the agreement, Dowling admitted to violating RPC 1.7(a) (conflict of interest: current clients), RPC 1.8(h)(1) (conflict of interest: current clients: specific rules), RPC 2.4 (lawyer serving as a third-party neutral), RPC 4.1 (truthfulness in statements to others), and RPC 8.4(c) (misconduct). She agreed to a six-month suspension stayed during a two-year probationary period with conditions.*

Dowling has admitted to the facts and violations as part of her guilty plea agreement. The record therefore establishes that she violated the above-cited rules by

CONTINUED ON PAGE 40

# Bar Counsel Report

failing to disclose she was not a third-party neutral when acting as an escrow agent for a transaction between her client and an unrepresented non-client, by failing to timely inform the non-client to seek independent counsel, by limiting her liability in the escrow agreement, and by passing along incorrect information in response to the non-client's request for assurances that Dowling's client would fulfill the underlying contract.

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).

Dowling admitted that she knowingly violated duties owed to the public and to the profession. The non-client suffered injury by Dowling not advising it to seek independent counsel before entering into the escrow agreement, which allowed for immediate payment of the funds placed in escrow to Dowling's client and purported to limit Dowling's liability. 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 4.32 (Am. Bar Ass'n 2018) (providing that suspension is appropriate "when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client"). The record supports the panel's findings of one aggravating circumstance (substantial experience in the practice of law) and one mitigating circumstance (absence of selfish or dishonest motive). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend Elaine A. Dowling for six months, stayed during a two-year probationary period subject to the following conditions: Dowling participate in a legal practice mentoring program; she participate in a Nevada Lawyer Assistance Program evaluation and all recommended follow-up; she take eight additional CLE credits in law practice management, one of which must be on the topic of engagement agreements; she cease all business relationships with former Nevada attorney Shawn Hackman; and she not engage in any conduct that results in a letter of reprimand or more severe discipline. Dowling 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 she has not done so already. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

**In Re: JAMES J. JIMMERSON**  
**Bar No.: 264**  
**Case No.: 83255**  
**Filed: 01/28/2022**

## ORDER OF PUBLIC REPRIMAND

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to publicly reprimand James J. Jimmerson for violating RPC 1.15 (safekeeping property) by making five transfers from his trust account to his business account and a personal account. Jimmerson made three of the transfers before clients paid bills for earned fees, one transfer from a client's retainer before earning the fee, but with that client's permission, and one transfer through a clerical error.*

The State Bar does not contest the panel's conclusions as to Jimmerson's violation of RPC 1.15, his mental state, or potential injury to clients, but it argues that the recommended discipline is too lenient. In that regard, the State Bar asserts that two of the mitigating factors found by the panel (absence of dishonest or selfish motive and personal or emotional problems) are not supported and that, regardless of the other mitigating factors, discipline short of a suspension is not proper in a case involving misappropriation of client funds. Jimmerson does not contest the RPC 1.15 violation but asserts that the weight of mitigating circumstances, his mental state, and the level of harm, which all factor into a discipline determination, support the panel's recommendation.

As to the RPC 1.15 violation, we conclude that clear and convincing evidence supports the panel's findings. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (recognizing the State Bar's burden of proof in a disciplinary matter). As to the discipline, Jimmerson violated a duty owed to his clients (safekeeping client funds), and the record supports the panel's conclusion that he should have known not to make four of the transfers, given that he acknowledged that he did not verify whether his clients had actually paid their bills before making three of the transfers and that he made the fourth transfer before earning the fee, albeit with the client's permission. The record likewise supports that Jimmerson made a clerical error and thus acted negligently as to the fifth transaction. The panel found and the record supports that no actual injury occurred but the transfers from the trust account had the potential to injure clients.<sup>2</sup>

Suspension generally applies as a baseline sanction for Jimmerson's misconduct. See *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 should know that he is dealing improperly with client property and causes potential injury to clients). But based on the evidence supporting the weight of mitigating circumstances (free and full disclosure to the disciplinary authority and cooperative attitude in the

proceedings; personal or emotional problems;<sup>3</sup> remorse; timely good faith effort to rectify the consequences of the misconduct; and the remoteness of Jimmerson's prior discipline offense, which occurred in 1994) compared to the two aggravating circumstances (substantial experience in the practice of law and prior disciplinary offense), we conclude that a public reprimand is sufficient.<sup>4</sup> SCR 105(3)(b) (providing that a de novo standard of review applies to legal conclusions and recommended discipline and a deferential standard applies to findings of fact); *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001) (observing that the hearing panel's disciplinary recommendation is persuasive); see *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008) (setting forth the four factors used in determining whether the panel's recommended discipline is appropriate: "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").

Accordingly, we hereby publicly reprimand attorney James J. Jimmerson for violating RPC 1.15. Additionally, Jimmerson shall pay the costs of the disciplinary proceedings, including \$1,500 under SCR 120(3) within 30 days from the date of this order if he has not already done so. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

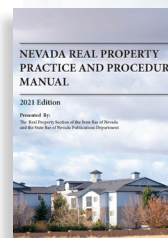
#### ENDNOTES:

1. The complaints and the notice of intent to take a default were served on Holtman via mail at his SCR 79 address and another address and via email at his SCR 79 email address and an alternate email address. Holtman never responded to the Bar's letters.
2. The record supports the panel's finding that potential injury was remote here because (1) the clients subsequently paid their bills, some within days of Jimmerson's withdrawals from his trust account, (2) he earned the retainer fee that the client consented to Jimmerson using shortly after he withdrew it from his trust account, and (3) he immediately corrected the clerical-error transfer upon discovering it.
3. Contrary to the State Bar's argument, the testimony supports the panel's finding that personal or emotional problems apply as a mitigating factor here.
4. We need not address the State Bar's argument regarding the panel's finding that Jimmerson's misconduct was additionally mitigated by absence of a selfish motive because under these circumstances, we conclude that even without that mitigating factor, the panel appropriately found that the circumstances here weigh in favor of a public reprimand, which sufficiently serves the purpose of attorney discipline. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (stating that the purpose of attorney discipline is to protect the public, the courts, and the legal system). Also, to the extent the State Bar argues that suspension should apply as a hard and fast minimum threshold discipline for any violation that fits under Standard 4.12, we decline to adopt such a rule. The Standards and our caselaw support that discipline is partly determined by considering the extent of potential or actual harm caused by the misconduct and circumstances that may mitigate or aggravate it. *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008); *Standards for Imposing Lawyer Sanctions*, Standard 3.0 (listing factors to be considered, including the potential or actual injury and the existence of aggravating or mitigating factors); Standard 4.1 (stating that the recommended levels of discipline are "generally appropriate in cases involving the failure to preserve client property" and apply "[a]bsent aggravating or mitigating circumstances, upon application of the factors set out in 3.0").

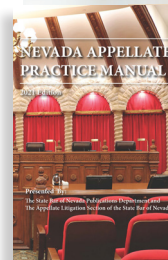
## BOOKS FROM THE BAR



The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.



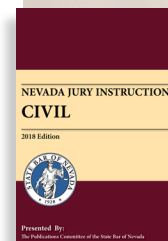
### Nevada Real Property Practice and Procedure Manual - 2021 Edition



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# TIP

## FROM THE BAR COUNSEL



### Thinking About Retiring?

**Are you tired of dealing with needy clients and constantly putting out fires? Do you find yourself wishing you were at the golf course instead of at the office? Is your dream of a career in underwater basket weaving appealing to you more and more?**

If you answered “yes” to any of those questions (or any variation of those questions), then follow your heart. Quit practicing law. BUT ... before you do, follow these tips!

First, consider inactive status. If you want to enroll in inactive status, then submit a written request to the State Bar of Nevada. See SCR 98(4).

You cannot hold a judicial office, render legal advice, or offer legal services. This is an excellent interim option for the indecisive. You can easily return if you change your mind. Just notify the state bar and pay the current annual fee.

Second, if you decide to resign, consider the requirements in SCR 98(5). You cannot resign with discipline, fee dispute arbitration, or clients’ security fund matters pending. You must also be current on your membership fees and other financial commitments. Both the state bar’s Board of Governors and the Nevada Supreme Court must review and approve your resignation request. However, take time to consider this option because resignation is

irrevocable. If you decide to return, then you will need to complete the admission process again, which includes passing the bar exam.

Third, NEVER abandon your clients! Follow SCR 115. It requires you to notify every client. Inform them of relevant limitation periods and deadlines. Encourage them to seek new legal counsel. If the client has an active matter, then notify opposing counsel and the court.

Finally, consider selling your practice. Make sure you know the limitations. Until the late 20<sup>th</sup> century, most states considered it unethical to sell a law practice. Now RPC 1.17 allows lawyers to sell their practice with important limitations. Paragraph (a) requires the seller to cease private practice in that area and jurisdiction. Retirees should have no problems there. Paragraph (b) requires the seller to sell the entire practice or practice area. Sellers cannot sell only the most profitable clients and leave less profitable clients unrepresented. To finalize the sale, the seller must notify each client of their right to retrieve the file, to retain new counsel, and of their presumed consent if they take no action.

Follow these tips to avoid bar complaints and potential disciplinary charges that could delay your retirement (or new career). In the words of Sweet Sugar Brown, “ain’t nobody got time for that!”