In Re: DAVID LEE PHILLIPS
Bar No.: 538
Case No.: 73592
Filed: February 23, 2018

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT AND SUSPENDING ATTORNEY

Attorney suspended one year, with the suspension stayed, following three violations of RPC 1.1 (competence), three violations of RPC 1.3 (diligence), one violation of RPC 1.4 (communication), three violations of RPC 3.2 (expediting litigation), two violations of RPC 3.4(c) (fairness to opposing party and counsel: failure to comply with rules of a tribunal), one violation of RPC 8.4 (misconduct), and two violations of RPC 8.4(d) (misconduct prejudicial to the administration of justice). Attorney placed on probation, subject to conditions.

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 David Lee Phillips. The conditional guilty plea agreement concerns conduct addressed in two formal disciplinary complaints and five pending grievances or investigations. Under the agreement, Phillips admitted to three violations of RPC 1.1 (competence), three violations of RPC 1.3 (diligence), one violation of RPC 1.4 (communication), three violations of RPC 3.2 (expediting litigation), two violations of RPC 3.4(c) (fairness to opposing party and counsel: failure to comply with rules of a tribunal), one violation of RPC 8.4 (misconduct), and two violations of RPC 8.4(d) (misconduct prejudicial to the administration of justice). Phillips agreed to a one-year suspension, to be stayed upon approval by this court, subject to several conditions and to pay the actual costs of the disciplinary proceedings not to exceed $7,500 plus $2,500 under SCR 120(1).

Phillips has admitted to the facts and violations alleged in four counts set forth in the complaints. (In exchange for Phillips' guilty plea, the State Bar agreed to dismiss the remaining six counts in the complaints and the five pending grievances or investigations.) The record therefore establishes that Phillips violated RPC 1.1 (competence) and RPC 8.4 (misconduct) by failing to disburse to his client the full amount of settlement funds to which she was entitled based on his misapplication of the law as it pertains to securing funds pending the resolution of claims or disputes with a client. Phillips also twice violated each of the following rules of professional conduct in representing two clients in appeals before this court by failing to comply with the rules of appellate procedure and court orders directing him to file necessary documents on behalf of his clients: RPC 1.1 (competence), RPC 1.3 (diligence), RPC 3.2 (expediting litigation), RPC 3.4(c) (fairness to opposing party and counsel: failure to comply with rules of a tribunal), and RPC 8.4(d) (misconduct prejudicial to the administration of justice). Additionally, Phillips violated RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 3.2 (expediting litigation) by failing to serve a summons and complaint on a defendant leading to the dismissal of the complaint and the filing of a new complaint by the defendant against Phillips' client.

As Phillips admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts and the legal profession. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining 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). Phillips acted either negligently or knowingly in violating duties owed to his clients (competence, diligence, communication) and to the legal system (expediting litigation, failing to comply with rules and orders of a tribunal, and misconduct prejudicial to the administration of justice). His clients were harmed because one did not timely receive settlement funds to which she was entitled, two had their appeals dismissed, and one had her case dismissed and had a default judgment entered against her in an action filed by the former defendant in her case.

The baseline sanction before considering aggravating and mitigating circumstances is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2015) ("Suspension is generally appropriate when … a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or … a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."); Standard 6.22 (providing that suspension is appropriate when a lawyer knows he is violating a court rule or order, 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."). Further, because Phillips has previously received letters of reprimand for similar misconduct, suspension is appropriate. *Id.* at Standard 8.2 ("Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.").

The length of the suspension depends on the number of violations, the degree of injury, and the aggravating and mitigating circumstances. We conclude that a one-year suspension, stayed subject to the agreed-upon conditions is appropriate, considering that Phillips' conduct resulted in harm to his clients and to the integrity of the profession and considering and weighing the aggravating factors (prior disciplinary offenses, multiple disciplinary offenses, and substantial experience in the practice of law) and the mitigating factors (delay in disciplinary proceedings and remorse). Therefore, we conclude that the guilty plea agreement should be approved. *See* SCR 113(1).

Accordingly, we hereby suspend attorney David Lee Phillips from the practice of law in Nevada for a period of one year commencing from the date of this order. The suspension is stayed for one year and Phillips is placed on probation subject to the following conditions: (1) that Phillips provide the State Bar with quarterly audits of his IOLTA trust account, at his expense, with the audits due on March 1, June 1, September 1, December 1, and if he fails to provide an audit to the Office of Bar Counsel within 45 days of its due date, he has breached this condition; (2) that between May 17, 2017 (the date of the formal plea hearing) and the

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end of the one-year stay period, there be no grievances submitted to the State Bar challenging Phillips' compliance with the Rules of Professional Conduct concerning events that occurred after May 17, 2017, in which a disciplinary screening panel recommends a formal hearing; (3) that Phillips not accept any new cases requiring his appearance before the Nevada Supreme Court, but may continue to prosecute any appeals already pending on the date of this order; (4) that Phillips satisfy any outstanding debt to Louis Garfinkel, Esq. on behalf of Stephanie Ellis or comply with any arbitration decision that may have been entered previously regarding such debt within 30 days of the date of this order; and (5) that Phillips pay the actual costs of the bar proceedings (not to exceed $7, 500) plus $2,500 under SCR 120 within 30 days of the date of this order. If Phillips breaches any of the above listed conditions during the probationary period, the State Bar shall immediately convene a disciplinary hearing panel to conduct a hearing and make a recommendation as to whether this court should revoke the stay and impose the one year suspension. The State Bar shall comply with the applicable provisions of SCR 121.1.

It is so ORDERED.

In Re: JASON C. FARRINGTON
Bar No.: 8063
Case No.: 74477
Filed: March 19, 2018

ORDER IMPOSING RECIPROCAL DISCIPLINE AND DISBARRING ATTORNEY

Attorney disbarred following his violations of RPC 1.4 (communication); RPC 1.16 (declining or terminating representation); RPC 8.1 (bar admission and disciplinary matters); RPC 8.4 (misconduct); and SCR 115 (imposing a duty to notify certain parties of an attorney's suspension) in Arizona.

This is a petition for reciprocal discipline of attorney Jason C. Farrington pursuant to SCR 114. Farrington accepted money from a set of clients and then failed to keep in communication with them, including failing to inform them of a large judgment entered against them.

Farrington also failed to respond to the Arizona State Bar's investigation or otherwise participate in the disciplinary process in Arizona and failed to notify statutorily-required parties of his previous CLE suspension (Farrington has been CLE suspended in Arizona since February 27, 2015, as well as CLE suspended in Nevada since April 10, 2014).

In considering this misconduct, the State Bar of Arizona hearing panel report concluded that there were eight aggravating circumstances (prior disciplinary offenses, selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution) and no mitigating circumstances. On October 4, 2016, the presiding disciplinary judge of Arizona entered an order disbarring Farrington and directing him to pay $17,500 in restitution along with $2,000 in costs related to the disciplinary proceedings. Farrington did not self-report his disbarment to the State Bar of Nevada.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or the court finds, that one of four exceptions applies. We conclude that none of the four exceptions weighs against the imposition of identical reciprocal discipline in this case. By failing to keep in communication with his clients regarding their cases, failing to participate in the State Bar of Arizona's investigation, and failing to comply with the terms of his CLE suspension, Farrington violated RPC 1.4 (communication); RPC 1.16 (declining or terminating representation); RPC 8.1 (bar admission and disciplinary matters); RPC 8.4 (misconduct); and SCR 115 (imposing a duty to notify certain parties of an attorney's suspension). The facts underlying these violations were deemed admitted due to Farrington's failure to respond to the State Bar of Arizona's complaint and Farrington does not contest reciprocal discipline here.

Because disbarment is appropriate when an attorney causes serious injury to a client by abandoning a practice, failing to perform a service, or knowingly engaging in conduct in violation of an ethical obligation with the intent to obtain a benefit, see *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards (2017), Standards 4.41, 7.1*, we grant the petition for reciprocal discipline.

We hereby disbar attorney Jason C. Farrington from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

JOHN S. ROGERS
Bar No.: 4730
Case Nos.: 08-191-1538, 09-126-1538 and 09-045-1538
Filed: June 23, 2017

PUBLIC REPRIMAND

To John S. Rogers:

In September, 2008, your client lived in a condominium and was presented with a new lease agreement. On behalf of your client, you called the property manager four times between 3:30 p.m. and 10:15 p.m. on October 6, 2008. Each time you left voice messages that were intimidating, abusive, threatening and contained profanity.

Pursuant to Rule 4.4 (Respect for Rights of Third Persons) of the Nevada Rules of Professional Conduct ("RPC"), a lawyer, while representing a client, "shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

Your conduct on October 6, 2008, served no substantial purpose, except to embarrass and/or burden the property manager. Therefore, your conduct violated RPC 4.4. On March 9, 2005, a client sought your representation in an immigration matter. He met with a nonlawyer in your office, who he believed to be an attorney. The nonlawyer advised the client to file for divorce, which was initiated, but not pursued. In the immigration matter, you failed to file a necessary petition on time. The petition was denied on this basis, but you were able to appeal the decision and the client was still able to pursue a legal immigration status. Then, the day before the client's next court appearance, you were suspended and your office referred the client to a new attorney. You then failed to provide the client his file in a timely manner, thereby impeding his new attorney's ability to represent him.

Finally, in 2007, you were retained to pursue a civil suit against your client's co-worker. You failed to inform your client of the potential that he would be required to pay the defendant's legal costs if the suit was unsuccessful. After the suit was heard in the short trial program, a jury returned a defense verdict and awarded the defendant legal fees and costs in the amount of $14,879.11, plus interest. You failed to adequately explain the cost award to your client and instead told the client that it was just a matter of record and nothing more. The defendant filed a lien against the client's home. You told the client that you would investigate some recourse for him, but failed to communication

with the client thereafter. You were then served with an order for a debtor's exam of the client. You made no effort to communicate with the client regarding the notice of the judgment debtor examination because the defendant's counsel told you that the client had been personally served with the notice and you believed your representation ended with the trial. The client stated that he was never informed of the debtor exam.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.3 (Diligence), RPC 1.16 (Declining or Terminating Representation), RPC 3.1 (Meritorious Claims and Contentions), RPC 4.4 (Respect for Rights of Third Persons), RPC 5.3 (Responsibilities regarding Non-lawyer Assistants, RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct).

In mitigation, all of this misconduct occurred prior to you being placed on disability inactive status in September, 2009, due to untreated alcoholism. You were reinstated in March, 2011 and have been actively engaged in recovery from alcoholism since then.

As a consequence of the foregoing violations of the Rules of Professional Conduct, the Supreme Court directed that you be suspended for six-months-and-one-day, with the last 91 days of the suspension stayed pending successful completion of a one-year probation. Upon successful completion of that probation, a Public Reprimand was to issue. You have successfully completed the terms of the probation, and therefore, are hereby **PUBLICLY REPRIMANDED.**

STEVEN T. LOIZZI, JR.
Bar No.: 10920
Case Nos.: sg13-1760, sg14-051, sg14-1042, sg14-1434 and sg15-0070
Filed: July 12, 2017

PUBLIC REPRIMAND

To Steven T. Loizzi, Jr.:

Between September 2012 and July 2013, you agreed to represent the following clients in attempts to obtain modifications of their respective mortgages. As set forth in more detail below, your representation of these clients was lacking, thereby violating the Rules of Professional Conduct.

Representation of Jane Solis (SG13-1760)

On September 11, 2012, California resident Janie Solis (Solis) retained you to help her obtain a modification of her home mortgage. Solis' home is located in Madera, California. Solis first contacted your office located in Clark County, by telephone and explained to the staff that she had been approved for a modification in December 2011. Nonlawyer Mike Thompson ("Thompson"), who identified himself as the Authorized Agent/ Case Manager for your law office, provided Solis with retainer information and was Solis's sole contact in your office for the purpose or initiating the representation.

Per the retainer agreement, Solis paid a retainer fee of $3,980 and a monthly fee of $795 for the representation. Your nonlawyer employee Wendy Herrera ("Herrera") was the only person in your office that substantively communicated with Solis regarding her loan modification between September 11, 2012 and September 17, 2013. On September 27, 2013, Herrera received documentation from Solis's lender declining the modification request. On October 28, 2013, Herrera advised Solis that her supervisor, nonlawyer Carlos Rendon ("Rendon") was working on the financials so that they could appeal the decision. On or about November 7, 2013, Rendon analyzed Solis's financial information and advised that it was unlikely Solis could get a loan modification based on the information he had.

On or about November 13, 2013, Solis requested to speak with an attorney (presumably you). You did not attempt to speak with Solis until 10 days later. In the meantime, Solis sent an email to Thompson and Herrera terminating payment and the representation. As of November 14, 2013, Solis paid you a total of $11,930 for the representation and had never communicated directly with you.

On or about September 3, 2014, you did refund Solis $9,000. Solis was eventually able to retain possession of her home by working directly with her lender in 2014.

Representation of Thu Be Thi Le (SG14-0511)

On or about July 3, 2013, California resident Thu Be Thi Le ("Le") received a flyer in the mail. Mrs. Le's home was, and is, located in Westminster, CA. The flyer was entitled "payment reduction notice" and it informed her that she was eligible for a loan modification. Le contacted the telephone number on the flyer (888) 574-6440 and spoke with Bonita. Le was told that she would not be taken on as a client unless "they" felt she could qualify for a loan modification. Le agreed by telephone to retain you and a retainer agreement was emailed directly to her.

The retainer agreement stated an initial payment of $1,250 was due. It also stated that subsequent payments of $775 were due each month until case completion or termination. On or about July 3, 2013, Le signed the retainer agreement and authorized your office to charge her the initial retainer fee and the monthly fee of $775. Le returned the initial paperwork to your office via email.

On July 11, 2013, Le spoke with and emailed with one of your nonlawyer employees. Le submitted documents to the nonlawyer employee in order to begin the loan modification process. Between July, 2013 and April, 2014 Le communicated only with nonlawyer employees in your office. You never personally communicated with Le. Le's loan modification application was first denied in October 2013. Herrera and Rendon submitted an appeal of the denial, which was denied in February 2014. Le's home had a sale date for foreclosure. Once your office learned of the foreclosure sale date, nonlawyer Herrera advised Le that filing bankruptcy was necessary to stop the sale. Le filed an emergency bankruptcy, and thereby, stopped the foreclosure sale. After filing bankruptcy Le communicated to Herrera that she was not happy with your representation and requested a refund.

As of April, 2014, Le paid you $7,450 and had not received a loan modification. Le subsequently retained a California law office to assist her with the modification. She was successful in getting a loan modification. You have refunded $5,000 to Le.

Representation of Andrea J. Portello-Deller (SG14-1042)

On or about February 26, 2013, Andrea J. Portello-Deller ("Deller") went to your law office and met with you and nonlawyer Paul. Deller is a Nevada resident and was seeking a loan modification.

At the time of the initial intake Paul wrote on the form that Deller's husband had passed away in 2008. On March 1, 2013, Deller signed the retainer agreement for a loan modification and paid $500 towards the retainer fee of $2,000. The retainer agreement also required Deller to pay a monthly maintenance fee of $99 until the matter was closed. Outside of the initial meeting, Deller communicated only with your nonlawyer employees during the representation.

Although Deller informed your employee at the initial consultation, later in the representation, other employees failed to note that Deller's husband was deceased and relied

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on the bank's mistaken representation on that issue. Your employees did ultimately locate and provide the death certificate to the lender again, but Deller believes this failure caused issues with her loan modification application. Deller received a letter from her lender, dated April 23, 2014, which stated that it was unable to reach a timely decision because it required documents from a third-party and the reason that it could not complete its review was "outstanding attorney fees and costs" owed to the bank's foreclosure attorneys.

On May 4, 2014, your nonlawyer employee Herrera noted in Deller's file that the file was still in review with the lender and no docs were needed. Herrera emailed the same information to Deller two minutes after the [sic] Herrera's telephone call with the lender. After Deller received the denial, your office sent Deller an email requesting payment for June 2014. The next day Deller sent an email cancelling your representation. Deller paid you a total of $2,700 before terminating the representation.

Deller sold her home for an amount that was sufficient to satisfy the mortgage but for less than what she paid when she purchased the home. You have refunded $500 to Deller.

Representation of Sandra Montalvo-Arroyo (SG14-1434)

On or about March 20, 2013, Sandra Montalvo-Arroyo ("Arroyo") and her husband met with your nonlawyer employee Vladimir Nicolas ("Nicolas"). They began the intake process and evaluation for a loan modification. Arroyo and her husband signed an Intake Acknowledgement which stated, "My/our situation is unique. I/we understand that an average workout timetable is 16 weeks. My situation may require more or less time to complete."

Arroyo agreed to make an initial payment of $2,500, three payments of $626.66, and $195 each month until the loan modification was completed. In April 2013, Arroyo provided Nicolas with her two most recent tax returns. Arroyo's matter was assigned to nonlawyer Marie Peckson ("Peckson"). During the approximately nine-month application process, Peckson (i) requested documents that Arroyo had already provided to Nicolas and which she no longer had herself, (ii) failed to recognize that Arroyo was employed by a school district and (iii) insisted on creating a Profit and Loss spreadsheet for Arroyo's loan modification application. Peckson also advised Arroyo to stop paying her mortgage and to deposit $2,500 into a bank account twice a month and spend it.

As part of the application process, Arroyo was also provided a legal separation document and a quitclaim deed by nonlawyer Nicolas. Arroyo would testify that she had no intention of separating from her husband, but was advised by Nicolas and Peckson to execute the documents to make the loan modification process easier.

On February 18, 2014, Peckson advised Arroyo that she had been denied the loan modification due to insufficient income. Peckson informed Arroyo that, at first, the bank was asking for Arroyo's husband's income and Peckson was trying to tell them that he was no longer in the picture because of the quitclaim deed.

On February 25, 2014, at Arroyo's request to the accounting department, her file was transferred to nonlawyer Herrera for review. Between March 6, 2014 and March 19, 2014, Arroyo communicated with only Herrera to complete the paperwork for an appeal of the denial of the loan modification. On March 19, 2014, Herrera submitted the appeal paperwork to the lender in order for them to reconsider the loan modification request.

On or about April 15, 2014, you spoke with Arroyo on the phone. This was the first time you had any personal contact with Arroyo. Herrera continued to communicate with Arroyo's lender and Arroyo regarding the reconsideration of the loan modification request. In or about April, 2014, nonlawyer Herrera advised Arroyo multiple times that if her home got close to a sale date and the bank was not cooperating, then Arroyo would need to file an emergency bankruptcy to force them to hold the sale date. Multiple times, Herrera deflected Arroyo's request to speak with you, the attorney, regarding her matter.

On May 5, 2014, Arroyo emailed Herrera to terminate the representation and your file regarding the representation of Arroyo was closed on May 6, 2014. Arroyo paid your office a total of $5,939.98 for the representation.

Arroyo asked for a refund after terminating the representation. You responded to Arroyo that you knew your nonlawyer employees had handled her matter inappropriately, but you were not in the position to give her a refund. Arroyo was able to obtain a loan modification through another service provider and believes that that process was made unreasonably difficult because the lender originally attributed your nonlawyer employee's misrepresentations to Arroyo. You have now refunded $4,500 to Arroyo.

Representation of Cira Drake (OBC15-0070)

Cira Drake ("Drake") retained you to assist her with refinancing her mortgage though the Nevada Foreclosure Mediation Program and with a tax matter. Drake was initially signed up by nonlawyer Nicolas. On January 14, 2013, Nicolas began working on the file and ran a credit report for Drake under the name of Nevada Foreclosure Consult, not your office.

On or about February 4, 2013, Drake agreed to pay your office a retainer fee of $4,000 with a down payment of $1,500 followed by $500 monthly installments for the representation. Nonlawyer Peckson handled Drake's loan modification application and prepared the documentation for Drake's mediation. You arranged for another attorney to appear at mediation with Drake on July 26, 2013 because you had a family matter that could not be re-scheduled. Drake felt that the substitute attorney was not properly prepared to represent her at the mediation. Drake's mediation concluded with no agreement. After the mediation, Drake called your office; however, you were still out of town. You did not return Drake's call.

On or about August 13, 2013, your office received the foreclosure mediation certificate. Nonlawyer employee Peckson then explained the process to Drake and met with Drake to discuss how unhappy she was after waiting eight months. Drake stated she was notified by mail that her house would be foreclosed on in [sic] November 2013. Drake attempted to contact you after receiving the notice and was again referred to someone else. Drake brought the certificate of foreclosure that she received down to your office and requested to speak with you. She was told that you were in a meeting and Drake met with nonlawyer employee Allyson Levine. Levine explained the foreclosure mediation and loan modification application process to Drake, and told Drake to contact her or Peckson with any other questions or concerns.

Drake determined that due to the lack of direct communication with you she should retain new counsel to save her home. Drake sent a letter to you informing you of her concerns and requesting a refund. Drake also believes that you did nothing to resolve her tax issues. Drake resolved her tax issues on her own. Drake paid your office a total of $4,000 for the representation. You have refunded $1,000 to Drake.

You violated RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) by failing to properly supervise your nonlawyer employees, including failing to participate in initial retention meetings, failing to ensure that nonlawyer employees were submitting proper, valid documents on behalf of client,

and failing to ensure that nonlawyer employees were not giving clients legal advice.

You also violated RPC 1.4 (Communication) by failing to directly communicate with your clients, including not personally discussing the scope of the representation or the loan modification process with each client. Your nonlawyer employees also deflected Arroyo and Drake's attempts to communicate with you.

Finally, you violated RPC 1.5 (Fees) by charging your clients unreasonable amounts of legal fees considering you provided minimal, if any, direct representation to the clients and the monthly charges were not necessarily dependent on the actual work performed in any particular time period.

Your violation of the Rules of Professional Conduct is mitigated by the absence of prior discipline and your inexperience in the law at the time of the representations. In light of the foregoing, you are hereby **PUBLICLY REPRIMANDED** for violating RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 1.4 (Communication) and RPC 1.5 (Fees) and, pursuant to SCR 120, required to pay $1,500, plus all actual costs incurred by the State Bar in this matter.

ANDREW D. TAYLOR
Bar No.: 8688
Case No.: obc 16-1262
Filed: December 7, 2017

PUBLIC REPRIMAND

To Andrew D. Taylor:

Statement of Facts

In June 2013, Loretha Jordan ("Jordan") suffered injury following alleged improper placement of a bile duct drainage tube. Jordan retained Respondent to represent her in October 2013. On July 16, 2014, you filed a protective complaint, which was filed in Eighth Judicial District Court against the doctor and hospital in question.

On November 19, 2014, the defendant doctor filed a motion to dismiss the complaint. The motion was joined by the other defendants. The motion was based on whether the expert affidavit attached to the complaint met the requirements of NRS 41A.071. The other part of the motion was to dismiss causes of action relating to the negligent hiring and training and infliction of emotional distress. You opposed this on November 26, 2014.

On December 31, 2014, a hearing on the Motion to Dismiss was held. The court found that the affidavit filed in support of the litigation met the requirements of NRS 4 1A.071 and *Zahar v. Zbiegien,* and denied the motion to dismiss. However, the court found that Jordan failed to plead the cause of action regarding the negligent hiring and training of staff at the surgical center in a proper manner. As such, the motion to dismiss this cause of action without prejudice was granted.

On January 9, 2015, an Order Setting Medical/Dental Malpractice Status Check and Trial setting conference was entered. The parties were to appear on February 3, 2015 to set a firm trial date. On January 27, 2015, a discovery conference was held before Judicial Officer Bonnie Bulla at which you were present. Commissioner Bulla granted additional discovery if there was Medicare/Medicaid, and set the discovery cutoff date for November 23, 2015. Commissioner Bulla ordered that additional parties, amended pleadings, and initial expert disclosures were due July 23, 2015, with rebuttal disclosures due on September 23, 2015. Any and all dispositive motions were due December 23, 2015.

On June 1, 2015, you sent a letter to Jordan advising that her deposition would be taken on July 2, 2015. On June 30, 2015, a Stipulation for Extension of time to Complete Discovery (First Request) was filed. It was noted that there was discovery remaining, including expert disclosures and depositions, and supplemental medical records. The final date for initial expert disclosure was extended until October 5, 2015. Respondent signed this stipulation.

On October 12, 2015, a Stipulation for Extension of time to Complete Discovery (Second Request) was filed. It was noted that there was discovery remaining, including expert disclosures and depositions, and supplemental medical records. The final date for initial expert disclosure was extended until December 23, 2015. You signed this stipulation as well.

On December 23, 2015, initial expert disclosures were to be filed. Each defendant filed an expert disclosure on time; however, you did not file Jordan's disclosures. Also on December 23, 2015, the Supreme Court entered its Order Approving Conditional Guilty Plea Agreement suspending you on an unrelated matter for 18 months, stayed, with 120 days actual suspension. Pursuant to the Order, you had to cease practicing law within 15 days, and thereafter you would be eligible to resume the practice of law on April 23, 2016.

On January 15, 2016, you sent a letter to Jordan advising you would not be able to represent her and she would have to find another attorney to represent her. You provided a copy of the letter and a post office receipt that a letter was mailed to 89102. Jordan stated she did not receive the January 15th letter but she received other correspondence from you. You also stated that you spoke with Jordan on the phone about how you could no longer represent her. Jordan said she was notified of your license being suspended but indicated she did not want you to withdraw from the case, as it was so close to trial. On January 21, 2016, you sent a letter to Judge Vega and defense counsel advising that you were suspended for 120 days and would not be able to act as the attorney in the Jordan case.

On January 28, 2016, you filed a Notice of Withdrawal of Counsel. The document that was file-stamped with the court showed that the certificate of mailing was signed on January 27, 2016, certifying that the pleading was mailed to defense counsel. Ms. Jordan was not included in that certificate of service.

In your response to the State Bar's investigation, you provided a copy of the docket noticing that the withdrawal was filed and an unsigned copy of the Notice of Withdrawal of Counsel that is identical to the one filed with the court. Jordan provided the State Bar with a copy of the Notice of Withdrawal of Attorney that she received. According to the certificate of mailing signed January 27, 2016, you sent the notice to the three defendants and Jordan on that date.

On February 1, 2016, a Status Check was held before a district court judge. Neither you nor Jordan were present. As a result of this hearing, on February 2, 2016, an Amended Order Setting FIRM Civil Jury Trial and scheduling pretrial Conference, Calendar Call and Status Check dates was filed. The trial was scheduled for June 6, 2016, at 10:00 a.m. This notice was served on Jordan in proper person.

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On February 17, 2016, a status check was held before another district court judge. Jordan appeared and stated that her attorney was not present "due to a personal problem." Opposing counsel noted that you were suspended. The court stated that he did not wish for plaintiff to be harmed through no fault of her own. A status check was set for March 16, 2016. Jordan was to return with written confirmation from you whether you would be able to continue representing her and whether you would be ready for trial or if she would have new counsel.

On March 16, 2016, Jordan appeared and stated that she had attempted to retain new counsel, but was in the hospital and all the attorneys that she spoke with said it was too late in the proceedings to step in. Jordan would represent herself. The court ordered that the matter must proceed.

On March 25, 2016, the doctor in question filed a motion for summary judgment on an order shortening time and argued that plaintiff failed to serve her initial expert disclosures by December 23, 2015. Nevada law mandates that medical malpractice actions be established by a competent expert, and if this is not done, summary judgment is appropriate. The other defendants joined in the motion, and Jordan failed to file an opposition.

At the hearing for the Motion to Dismiss scheduled for April 20, 2016, Jordan did not appear. The minutes noted that Plaintiffs attorney was suspended for 120 days but that suspension should have expired by the hearing date. However, in fact, you were still suspended and the minutes were not correct. It was further noted that Jordan did not ask for a stay of proceedings. Since there was no opposition and all parties were served, the Court granted the motions. The trial date was vacated.

On October 18, 2016, an Amended Judgment was entered in favor of the defendant doctor in the amount of $7,645.24.

Based upon the foregoing, you violated RPC 1.16 (Declining or Terminating Representation) for failing to file a Motion withdrawing you from your client's case in a timely fashion and are hereby **PUBLICLY REPRIMANDED.**

TIMOTHY R. TREFFINGER
Bar No.: 12877
Case No.: CR15-0697
Filed: December 21, 2017

PUBLIC REPRIMAND

To Timothy R. Treffinger:

On Wednesday, December 6, 2017, a Hearing Panel of the Southern Nevada Disciplinary Panel convened to determine whether you violated the Rules of Professional Conduct.

On or about May 30, 2015, you were arrested in Nye County and charged by way of Criminal Complaint with one count of Knowingly Keeping or Maintaining a Place Where Controlled Substances are Unlawfully Used, Kept or Sold, in violation of NRS 453.326(1)(c) (a Category 'C' Felony), and one count of Possession of a Controlled Substance, in violation of NRS 453.336 (a Category 'E' Felony).

The Criminal Complaint alleged that between January and May 2015, you maintained a residence in Pahrump with the knowledge that the residence was being used for keeping or selling controlled substances, and was being frequented by persons who used controlled substances, to wit: heroin and/or methamphetamine.

The charges against you were ultimately reduced to one count of Possession of a Controlled Substance, in violation of NRS 453.336 (a Category 'E' Felony), by way of an Information filed September 22, 2015. On November 2, 2015, you entered into a Guilty Plea Agreement, pleading guilty to Possession of a Controlled Substance in violation of NRS 453.336 (a Category 'E' Felony).

Pursuant to NRS 453.3363, when a person who has not been previously convicted of a narcotics related offense tenders a plea of guilty to a charge under NRS 453.336, the court, without entering a judgment of conviction, may suspend further proceedings and place the person on probation on certain terms and conditions. Upon fulfillment of those terms and conditions, the statute requires that the court shall dismiss the proceedings against the defendant without an adjudication of guilt.

On January 13, 2016, the court found you eligible for the suspended sentence and you were ordered to diversion. The Order For Diversion placed you on probation for three (3) years subject to conditions set forth in the Order, including, in pertinent part: attendance and successful completion of a program of treatment and rehabilitation pursuant to NRS 453.580 and NRS 453.3363, and disclosure of the conviction to present or potential employers.

RPC 8.4(b) states: "It is professional misconduct for a lawyer to: … (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects …"

The Panel expressed concern about your continued successful participation in your probation and specifically warned you that should you fail to successfully complete your probation that such failure could be deemed as further violations of the Rules of Professional Conduct.

Your conduct unambiguously reflects adversely on your fitness as a lawyer and as such you are hereby **PUBLICLY REPRIMANDED.**

MARK A. SMITH
Bar No.: 7918
Case No.: OBC17-0178
Filed: February 21, 2018

LETTER OF REPRIMAND

To Mark A. Smith:

On Wednesday, December 19, 2017, a Hearing Panel of the Southern Nevada Disciplinary Panel convened to determine whether you violated the Rules of Professional Conduct.

According to their findings, on July 18, 2014, your client accepted settlement offer of $65,000 to resolve a personal injury matter. Unfortunately, there were issues with the settlement and the case was not fully settled until January 28, 2015.

On January 28, 2015, your then law partner, Douglas Monson, ("Monson") deposited the settlement check for $64,555.60 in the SmithMonson trust account. This was the settlement amount less the amount paid directly to Medicare for their lien. The total medical liens in the matter were $300,000, and as such on April 7, 2015, Monson filed an interpleader naming the 24 defendants.

On May 4, 2015, a motion was filed by SmithMonson requesting permission to release confidential settlement information. This was granted on June 25, 2015. Nothing was filed on this case after the order of June 25, 2015 until May 16, 2016, almost one year later. On May 16, 2016, a Motion to Interplead Funds and Distribute Proceeds was filed by you. According to the motion, there were over $300,000 in medical liens, $26,000 was owed for attorney's fees, and $4,689.10 was owed for costs relating to the settlement. Additionally, you argued that your office incurred an additional $7,945 for interpleader attorney's fees and $3,105.38 for costs. The total owed to SmithMonson

was $41,739.48, and you requested that amount be distributed to the firm and $22,816.12 be deposited with the court for the remaining parties.

The hearing on the interpleader was scheduled for a chambers hearing on June 20, 2016. According to the minutes of the hearing, Judge Cory granted the motion to interplead the funds in part and denied the motion to distribute the proceeds. It was noted that the court agreed the disputed funds should be deposited with the court, and directed your office to prepare an order following the hearing, however Monson did not submit the prepared Order to the Court until December 2016.

On November 10, 2016, Judge Cory entered a minute order finding that he directed you to prepare an order following the June 20th hearing. Since no Order was submitted to the court as required, the court directed you to deposit the settlement amount with the Clerk of the Court within ten days of the date of this order and provide proof of the deposit to the Court. The Court hoped the interpleader could be handled expeditiously thereafter. A status check for compliance was scheduled for December 5, 2016.

You again failed to deposit the funds with court as ordered.

On December 5, 2016, Judge Cory entered another minute order directing that a show cause hearing was to be set as to why you should not be held in contempt of court for failure to comply with the court's November 10, 2016 order. You were then ordered to appear on January 31, 2017 to address the matter.

On December 19, 2016, you issued a check payable to Clark County Clerk in the amount of $64,555.60 for the interpleader. This check cleared the trust account the following day, and the show cause hearing was vacated.

RPC 3.2(a) states: "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." In this matter it took nearly one year for the interpleader to be filed and then several additional court orders for the funds to be deposited with the court.

Your firm's conduct in delaying this matter is a clear violation of RPC 3.2(a) and as such you are hereby **REPRIMANDED**.

JOHN OHLSON
Bar No.: 1672
Case No.: OBC17-0467
Filed: April 5, 2018

LETTER OF REPRIMAND

To John Ohlson:

On February 15, 2018, a Screening Panel of the Northern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

Underlying Facts

Vivian Harrison ("Harrison") sought representation to pursue claims against a psychiatrist that had rendered an expert opinion in a separate litigation, which she believed had been issued without sufficient supporting information. On or about May 22, 2013, you entered into an attorney-client relationship with Harrison and she paid you a total of $150,000 – $75,000 to pursue her claims before the Board of Medical Examiners and $75,000 to pursue a civil action against the psychiatrist for medical malpractice and other claims. Her payment was consistent with the fee agreement you entered into, which set forth that the Board Action was a one-time flat fee and the Civil Action was a two-tiered structure – the $75,000 portion as a flat fee and a contingent fee commensurate with the limitations set forth in NRS 7.095. (The fee agreement allocated $100,000 to the Board Action and $50,000, plus a contingency, to the civil action. You and Harrison informally agreed to allocate the $150,000 to be one half for each of the two proceedings.)

On June 26, 2013, you filed the civil action, on behalf of Harrison, against the psychiatrist. First, the litigation was transferred to a different jurisdiction. Then, the psychiatrist's Motion to Dismiss was granted. You appealed the dismissal, on Harrison's behalf, including presenting oral argument to the Nevada Supreme Court in the matter. The dismissal was ultimately upheld on December 17, 2015.

On July 2, 2013, you lodged a cover letter and complaint with the Board of Medical Examiners regarding the same psychologist. On July 31, 2013, you followed up with the Board by sending a letter to the investigator assigned to the matter clarifying the reason for the complaint and providing documentation that countered the psychiatrist's original opinion and discussed the validity of that opinion. On September 13, 2013, you sent a second letter to the Board investigator declining a request to Harrison for her medical records, citing that her medical records were not relevant in this circumstance (although Harrison did provide a HIPPA waiver for the psychiatrist that issued the countering opinion). On October 11, 2013, the investigator sent a letter to you informing you that the investigation was at the initial stage. Nothing happened in the Board Action between October, 2013 and June, 2016. Moreover, there was nothing that you could have done to cause the Board Action to move forward. If the Board of Medical Examiner's Investigator finds that there is a reason to present a matter to the Board's disciplinary panel, then the Board staff handles all of the investigation and presentation of the matter.

Application of Law to Fact

RPC 1.5 (Fees) states that "(a) [a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent.

In this instance, you charged, and were paid, a $75,000 fee to submit the Board Action. You anticipated that the representation would entail substantial work. However, prior to the representation you did not investigate whether the complaint process with the Board of Medical Examiners provided for outside representation of an aggrieved person. That

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complaint process does not, in fact, contemplate outside representation of an aggrieved person.

It is undisputed that your efforts on behalf of Harrison in the Board of Medical Examiners' complaint process was comprised of drafting/receiving a handful of correspondence in the matter and communicating with her about that correspondence. You have represented that you would bill a client at $500 per hour for your services; your years of experience in practicing law and reputation supports [sic] such a billable rate. However, you do not have a record of time that you dedicated to handling the Board Action and there is a dearth of information to support that you spent approximately 150 hours on submitting a complaint to the Board of Medical Examiners.

All attorneys are imputed with knowledge of the Rules of Professional Conduct. Absent a showing that the obligations were not obvious to a practitioner, Section 7.2 of the American Bar Associations' Standards for Imposing Lawyer Sanctions provides that a suspension from the practice of law is typically warranted in response to a violation of an obligation, such as this one, that causes the client injury through the loss of funds. In this matter, your lack of prior discipline over 45 years of practicing as an attorney and your ultimate return to Harrison of $70,000 of the fee charged for the Board Action are mitigating factors which warrant a downward deviation from the presumptive sanction.

Accordingly, you are hereby **REPRIMANDED** for violating RPC 1.5 (Fees) and assessed $1,500, pursuant to SCR 120. I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

SEAN L. BROHAWN
Bar No.: 7618
Case Nos.: OBC17-1053, OBC17-1157, and OBC17-1348
Filed: April 16, 2018

LETTER OF REPRIMAND

To Sean L. Brohawn:

A Screening Panel of the Northern Nevada Disciplinary Board recently reviewed the above-referenced grievance files. The Panel unanimously concluded that a Letter of Reprimand should be issued to you for violation of RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees), RPC 1.16 (Declining or Terminating Representation), RPC 8.1(b) (Bar Admissions and Disciplinary Matters) and RPC 8.4 (Misconduct).

OBC17-1053

A client hired you on July 23, 2016 and paid you a flat fee of $8,000 in exchange for your assistance with recovering damages due to flooding of her residential property. The client had the expectation that you would obtain a court hearing within a year.

The client claims that you were successful in obtaining a letter from a state agency which stated that a demand against the homeowner's association should/could be filed within one year. The client alleges that your preferred strategy was to hold meetings with the association and Coit Services of Reno (cleaning and restoration services).

The client says that you refused to go to court, which she wanted you to do. The Attorney Retainer Agreement that she provided states that "[t]he scope of Attorneys' employment by Clients in this agreement does not include litigation," but it also states that the matter involves "prosecution and defense of actions to final judgment(s)." The client had increasing difficulty communicating with you as you vacated your office without informing her and would not answer your phone.

On September 6, 2017, a grievance file was opened and you were asked to respond to the client's allegations. No response was received by the State Bar of Nevada. Your failure to perform sufficient services for the client renders the $8,000 fee unreasonable, and therefore, it is a violation of RPC 1.5 (Fees).

The client complained of your lack of diligence and communication, which the panel found credible in light of your failure to provide proof of any work completed on behalf of the client. The panel found that you violated RPC 1.3 (Diligence) and RPC 1.4 (Communication) based on the existing account of events.

OBC17-1157

You entered into an hourly Attorney Retainer Agreement with a client on April 8, 2017, and on April 10th, the client paid you a retainer of $2,500. Shortly after retention, the client lost communication with you. Your failure to communicate with the client is a violation of RPC 1.4 (Communication).

The client then hired a second attorney who determined that you never filed an Answer with the court, resulting in a Default and assessment of costs which new counsel was able to get overturned. This conduct is a violation of RPC 1.3 (Diligence). Any actual injury to the client, due to your misconduct, was averted by the client's own actions, but the potential injury to your client was significant.

The former client alleges that you finally responded to an attempt at communication, to which you explained that you had been suspended by the bar due to a "mental condition." The former client asked you for a full refund of the retainer and alleges that on August 19, 2017, you told him in an e-mail that a check had been mailed. The former client never received a refund and you, again, ceased all communication. Your failure to return the unearned retainer funds is a violation of RPC 1.16 (Declining or Terminating Representation). Moreover, your failure to perform any services on behalf of the client renders the $2,500 fee unreasonable, and therefore, a violation of RPC 1.5 (Fees).

OBC17-1348

In November 2014, a client and his brother entered into a flat fee agreement with you and paid $1,000 to have you open probate on their deceased mother's estate. The client wished to sell his mother's home and, in December, 2014, met with you to finish up the documents. You had not finished the documents but requested an additional $1,600 before you would file them. The client paid the additional $1,600 and claims that you told him that the documents would be ready for signature the following Monday, but they were never finished or filed. The client tried to call you and went by your office to get the documents finalized, but you had moved your office without notifying the client.

On November 16, 2017, a grievance file was opened and you were asked to respond to allegations made by the client. On February 14, 2018, you belatedly responded to the State Bar's inquiry, acknowledging that the allegations made against you were true and you believed that a full refund of $2,600 should be returned to the client.

All Grievances

In addition, the Office of Bar Counsel forwarded you a copy of each former client's grievance and requested responses. You failed to respond to the correspondence regarding two of the three grievances, which is a separate violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters). Finally, the panel

found that your conduct in handling the clients' matters and these discipline matters violated RPC 8.4(d) (Misconduct - prejudicial to the administration of justice).

Discipline

The Panel felt that this misconduct warranted suspension. But the Panel considered, as a mitigating factor, that you are already suspended for six-months-and-one-day for similar misconduct during, substantially, the same time period, and therefore, it expects that you will be required to account for this misconduct at any reinstatement hearing held in the future.

Accordingly, you are hereby **REPRIMANDED** for violating RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees), RPC 1.16 (Declining or Terminating Representation), RPC 8.1 (Bar Admission and Disciplinary Matters) and RPC 8.4 (Misconduct) and are assessed $1,500, pursuant to SCR 120, which shall be paid to the State Bar of Nevada within 30 days of the formal issuance of this Letter of Reprimand.

In addition, you shall return (i) $8,000 to your former client in OBC17-1053, (ii) $2,500 to your former client in OBC17-1157, and (iii) $2,600 to your former client in OBC17-1348 within 30 days of the formal issuance of this Letter of Reprimand. I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

JORGE G. CORRAL
Bar No.: 7313
Case No.: obc17-0026
Filed: February 21, 2018

LETTER OF REPRIMAND

To Jorge G. Corral:

A family of four (4) people was injured in a traffic accident. The family hired you to handle the related personal injury case. Two (2) of your clients were the couple's minor children. You settled claims for all four (4) of your clients, including the children, and subsequently received settlement funds from the insurance company. You did not file petitions in the Eighth Judicial District Court, Clark County, Nevada to compromise the minors' claims in accordance with NRS 41.200. Accordingly, you did not obtain approval for your clients from a District Court Judge to distribute the portion of the settlement funds intended for the minor children.

Despite not having court approval to do so, you distributed checks for the minor children to their parents and advised them to open blocked bank accounts in which to deposit and hold the settlement funds until the children reached eighteen (18) years of age.

In light of the foregoing, you violated Rule of Professional Conduct 1.1 (Competence) and are hereby **REPRIMANDED.**

TIPS FROM THE OFFICE OF BAR COUNSEL

Is the constant combat of civil litigation getting you down? Does the idea of negotiating athletes' contracts sound fascinating to you? Do you wish you had a greater variety of subjects to litigate than your government lawyer position offers? Are you looking to get out from behind the writing desk and hone your courtroom skills? Great, the beauty of practicing law is that you are not locked into any one practice area or type of law.

When seeking to transition your practice, remember that you are still required to be competent. According to Rule 1.1 of the Rules of Professional Conduct, that means you must have the legal knowledge, skill, thoroughness and preparation reasonably necessary for your new practice area. Some knowledge and skills are easily transferrable; every area of law practice requires analytical skills and the ability to research and apply case law. When you find yourself lacking in certain skills or knowledge necessary for your newly chosen area of law, you can often make up for it by applying more thoroughness and preparation than an attorney experienced in that particular area of practice. You can also associate with an experienced attorney until you feel more comfortable. (Remember to adequately inform your clients of your association with the other attorney and ensure that the other attorney treats your clients like his or her own.) Importantly, as you enter your new area of practice, you should not expect your client to pay for your education or for every minute of your extra preparation should you require more preparation time or education than a lawyer more experienced in the practice area.

The Office of Bar Counsel is here to help you practice ethically and competently. State bar attorneys offer callers informal opinions, based on comprehensive knowledge of the Rules of Professional Conduct.

Remember, there are no stupid questions. **Don't take chances; call the Ethics Hotline.** (All calls are confidential.)