

Bar Counsel Report

In Re: BRIAN C. PADGETT

Bar No.: 7474

Case No.: 81918

Filed: 05/21/2021

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Brian C. Padgett be suspended from the practice of law in Nevada for five years based on violations of RPC 1.2 (scope of representation and allocation of authority between client and lawyer); RPC 1.4 (communication); RPC 1.8 (conflict of interest: current clients); RPC 1.15 (safekeeping property); RPC 3.3 (candor toward the tribunal); RPC 8.1 (disciplinary matters); and RPC 8.4(d) (misconduct).

The State Bar has the burden of showing by clear and convincing evidence that Padgett committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, after Padgett failed to answer the complaint, the State Bar entered a default and the hearing proceeded on a default basis. SCR 105(2) (providing that when an attorney fails to answer the complaint, "bar counsel shall enter a default and the charges shall be deemed admitted" and allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is "attributable to mistake, inadvertence, surprise, or excusable neglect"). In his briefing in this court, Padgett argues that the panel's findings of fact, conclusions of law, and recommendation should be set aside because the disciplinary proceedings did not afford him due process. In particular, although Padgett does not dispute receiving the State Bar complaint, he asserts that after he notified Bar counsel of his intention not to respond to the complaint based on issues he was having with his cannabis business, he assumed the Bar stayed the disciplinary proceedings, but it instead moved forward with proceedings without properly notifying him.

Having reviewed the record and considered the arguments, we perceive no due process violation and conclude that the matter properly proceeded on a default basis. Copies of the complaint, first amended complaint, and notice of intent to proceed by default were served on Padgett via regular and certified mail at his SCR 79 mailing and email addresses.¹ Additionally, the State Bar sent copies of the order appointing hearing panel chair and notice of initial case conference by mail and email to Padgett's SCR 79 addresses. The State Bar also sent Padgett the default order by mail and email and sent to him by email the scheduling order, order appointing hearing panel, and notice of amended hearing date. It also unsuccessfully attempted six times to serve Padgett personally with all of the documents, twice at his SCR 79 address; once at his former home address; and three times at his current home address. On May 22, 2020, the State Bar sent by first class mail to Padgett's SCR 79 mailing address, and by email, the notice of formal hearing, which was held on June 8, 2020. These efforts to notify Padgett of

the charges against him² and the hearing comply with SCR 109, which incorporates due process requirements.³ SCR 109 (providing that service of a disciplinary complaint must be made by personal service "in the manner prescribed by Nevada Rule of Civil Procedure 4(c), or by registered or certified mail at the current address shown in the state bar's records or other last known address," and that other papers and notices must be served in accordance with NRCP 5); *see Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008) (observing that administrative bodies must follow their established guidelines for notifying a defending party, and due process requirements are satisfied where the party has been served with notice of the charges so the party may rebut issues on which a decision will turn); *Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (rejecting a party's claimed lack of knowledge of a scheduled hearing when notice of the hearing was mailed to the party's address of record because, under NRCP 5(b), service is complete upon mailing).

With the default properly entered under SCR 105(2), the record therefore establishes that Padgett violated the above-referenced rules by (1) having his client's judgment (plus interest) of \$151,599.83, which had been deposited with the district court pending appeal, released to Padgett's firm by filing an ex parte motion without the client and appellate counsel's knowledge or authorization and attempting to have an additional \$13,845.45 of the client's funds on deposit with the court released to his firm by submitting a proposed order directly to the court without notifying the client or any other parties; (2) agreeing to represent a client in a suit in which the plaintiff claimed that the client violated a no-compete agreement, even though the client allegedly breached the agreement by forming a new security company and accepting employment with Padgett's cannabis business, advising the client to agree to joint and several liability for breaching the agreement, offering to pay any judgment against the client, and filing an appeal after judgment was entered but then withdrawing his representation leading to the appeal's dismissal and an unpaid \$130,000 judgment against the client; and (3) failing to meaningfully respond to the State Bar's inquiries about the two grievances and misrepresenting a material fact to the State Bar.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). 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).

Padgett violated duties owed to his clients (safekeeping client funds, communication, allocation of authority, conflict of interest), the profession (candor, failure to respond to lawful requests for information by a disciplinary authority), and the public (misconduct). The record supports the panel's finding that Padgett's mental state was intentional as to the RPC 1.2 violation and knowing as to the remaining violations. His misconduct harmed his clients and the legal profession.

The baseline sanction for Padgett's misconduct, before considering aggravating and mitigating circumstances, is

suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (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"; 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 panel found and the record supports seven aggravating circumstances (dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution), and one mitigating circumstance (absence of a prior disciplinary record).

Considering all the factors, including the balance of aggravating and mitigating circumstances and the scope of Padgett's misconduct, we agree with the panel's recommendation for a five-year suspension. *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 Brian Padgett from the practice of law in Nevada for five years commencing from the date of this order. Further, Padgett shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order.⁴

It is so ORDERED.

In Re: JEREMY T. BERGSTROM
Bar No.: 6904
Case No.: 82359
Filed: 06/07/2021

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that Jeremy T. Bergstrom be suspended for two years based on violations of RPC 1.15 (safekeeping property) 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 Bergstrom 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 Bergstrom failed to answer the complaint and a default was entered.⁵ SCR 105(2). The record therefore establishes that Bergstrom violated the above-reference [sic] rules by permitting his trust account to be overdrawn by \$5,973 and by failing to adequately 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 1067, 1077 (2008).

Bergstrom violated duties owed to his client (safekeeping property) and the profession (failure to respond to lawful requests for information by a disciplinary authority). Bergstrom's mental state appears to have been knowing at least as to the RPC 8.1 violation, as he was aware of the State Bar's investigation. His misconduct potentially harmed his client. Bergstrom'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 Bergstrom's misconduct, before consideration of aggravating and mitigating circumstances, is disbarment or suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 8.1(b) (Am. Bar Ass'n 2017) (recommending disbarment when a lawyer "has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession"); see also Standard 7.2 (providing suspension is 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 panel found and the record supports five aggravating circumstances (prior discipline, dishonest or selfish motive, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and no mitigating circumstances. Considering all the factors, we conclude the panel's recommended discipline serves 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).

Accordingly, we hereby suspend attorney Jeremy T. Bergstrom from the practice of law for two years to run consecutive to his suspension imposed in *In re Discipline of Bergstrom*, Docket No. 79205 (Order Approving Conditional Guilty Plea Agreement, Nov. 14, 2019), which ended on May 15, 2020.⁶ Bergstrom shall also retake the Nevada State Bar exam and MPRE and pay Farmers Financial Services \$10,433.16 in restitution, if he has not done so already. Further, Bergstrom 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.

CONTINUED ON PAGE 42

Bar Counsel Report

In Re: JEREMY T. BERGSTROM

Bar No.: 6904

Case No.: 82591

Filed: 06/07/2021

ORDER IMPOSING RECIPROCAL DISCIPLINE AND SUSPENDING ATTORNEY

This is a petition for reciprocal discipline of attorney Jeremy T. Bergstrom pursuant to SCR 114. Bergstrom has been suspended for two years from the practice of law in Arizona. Bergstrom is currently suspended from the practice of law in Nevada and has not sought reinstatement. In re Discipline of Bergstrom, Docket No. 79205 (Order Approving Conditional Guilty Plea Agreement, Nov. 14, 2019).

Bergstrom entered into an agreement for discipline by consent in Arizona and acknowledged the following misconduct. He failed to properly account for client funds; failed to update his client on the status of its cases; failed to attend an arbitration hearing resulting in a judgment being issued against his client and failed to inform the client of the judgment; and failed to litigate some of his client's cases, resulting in the dismissal of those cases. Bergstrom also listed himself as being licensed in California and Illinois on his signature block and letterhead when he was not. Lastly, he failed to respond to the Arizona State Bar's requests for information.

The Arizona Disciplinary Judge found Bergstrom violated Ariz. Sup. Ct. Rule 42, ER 1.3, similar to RPC 1.3 (diligence); Ariz. Sup. Ct. Rule 42, ER 1.4, similar to RPC 1.4 (communication); Ariz. Sup. Ct. Rule 42, ER 3.2, similar to RPC 3.2 (expediting litigation); Ariz. Sup. Ct. Rule 42, ER 5.5, similar to RPC 5.5 (unauthorized practice of law); Ariz. Sup. Ct. Rule 42, ER 8.1, similar to RPC 8.1 (disciplinary matters); Ariz. Sup. Ct. Rule 42, ER 8.4(d), similar to RPC 8.4(d) (misconduct: prejudicial to the administration of justice); Ariz. Sup. Ct. Rule 54(d), similar to RPC 8.1 (disciplinary matters); and Ariz. Sup. Ct. Rule 57(b), similar to SCR 114 (reciprocal discipline). "[A] final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purpose of a disciplinary proceeding in this state." SCR 114(5).

The Arizona Disciplinary Court suspended Bergstrom from the practice of law for two years. SCR 114(4) provides that this court must impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, that one of four exceptions applies. Bergstrom did not oppose the petition for reciprocal discipline and we conclude that none of the four exceptions apply in this case.⁷ Thus, we grant the petition for reciprocal discipline.

Accordingly, attorney Jeremy T. Bergstrom is hereby suspended from the practice of law in Nevada for two years from the date of this order.⁸ The State Bar shall comply with SCR 121.1.

It is so ORDERED.

HARDESTY, C.J., with whom SILVER, J. and HERNDON, J., agree, concurring in part and dissenting in part: I concur with the majority's decision to impose a two-year suspension as reciprocal discipline. However, instead of having that suspension commence from the date of this court's order, I would have the suspension run consecutive with the suspension imposed by this court in *In re Discipline of Bergstrom*, Docket No. 82359.

In Re: THOMAS S. SHADDIX

Bar No.: 7905

Case No.: 82632

Filed: 05/14/2021

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 Thomas S. Shaddix. Under the agreement, Shaddix admitted to violating professional conduct rules 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 5.3 (responsibilities regarding non-lawyer assistants), and 8.1 (disciplinary matters), and agreed to a 6-month-and-1-day suspension, stayed for 18 months subject to certain conditions.

As part of his guilty plea agreement, Shaddix admitted to the facts and violations. The record therefore establishes that he violated the above-referenced rules by failing to complete services for which a client retained him, including failing to pay the client's traffic tickets, as agreed; failing to communicate with the client about the status of the case; having his office assistant complete the initial consultation, including completing the retainer agreement; and failing to respond to the State Bar's inquiries regarding the client's grievance and another matter that had been referred to the State Bar.

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) (stating 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).

Based on the duties Shaddix knowingly violated, and because his conduct harmed or potentially harmed his clients and the legal profession, 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 2017) (providing that suspension is appropriate when "a lawyer engages in a pattern of neglect 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 panel's findings of four aggravating circumstances (prior disciplinary record, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law), and one mitigating circumstance (absence of dishonest or selfish motive). Under the *Lerner* factors, we conclude that the recommended discipline is appropriate and serves the purpose of attorney discipline.

Accordingly, commencing from the date of this order, we hereby suspend attorney Thomas S. Shaddix from the practice of law in Nevada for 6 months and 1 day, stayed for 18 months subject to the following conditions. Shaddix must: (1) pay \$3,250 in restitution to his client in the traffic matter; (2) engage in binding fee dispute resolution with the client at his own expense within the first 90 days of his probation period; (3) complete, in addition to required continuing legal education, an additional 1.5 hours of education related to diligence, 1.5 hours addressing communication, and 3 hours pertinent to his duty to respond to the State Bar; (4) obtain a mentor approved by the State Bar, who agrees to provide the Bar with quarterly reports as outlined in the conditional guilty plea agreement; (5) not receive any new disciplinary cases during his probation period that result in a screening panel recommending a letter of reprimand or a formal hearing; and (6) comply with any court orders issued in the two district court cases identified in the conditional guilty plea agreement. Additionally, Shaddix must pay \$2,500 in administrative costs pursuant to SCR 120 and the actual costs of the disciplinary proceeding within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: LIBORIUS AGWARA
Bar No.: 7576
Case No.: 82707
Filed: 06/07/2021

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to reinstate suspended attorney Liborius Agwara with certain conditions. As no briefs have been filed, this matter stands submitted for decision. SCR 116(2).

This court suspended Agwara from the practice of law for three years, with two of those years deferred, for violating RPC 1.4 (communication), RPC 1.8 (conflict of interest: current clients: specific rules), RPC 1.15 (safekeeping of property), and RPC 8.4 (misconduct). *In re Discipline of Agwara*, Docket No. 77121 (Order Approving Conditional Guilty Plea Agreement, Oct. 21, 2019). Agwara petitioned for reinstatement on November 3, 2020, after his one year of actual suspension ended. Following a hearing, the panel unanimously recommended that he be reinstated to the practice of law with certain conditions.

Based on our de novo review, we agree with the panel's conclusion that Agwara has satisfied his burden in seeking reinstatement by clear and convincing evidence. SCR 116(2) (providing that an attorney seeking reinstatement must demonstrate compliance with certain criteria "by clear and convincing evidence"); *Application of Wright*, 75 Nev. 111, 112- 13, 335 P.2d 609, 610 (1959) (reviewing a petition for reinstatement de novo). We therefore approve the panel's recommendation that Agwara be reinstated to the practice of law. We also approve the conditions on reinstatement recommended by the panel, as set forth below:

- (1) Agwara shall be placed on probation through October 2022 and enter into a mentoring agreement with a mentor approved by the State Bar, who must meet with Agwara at least once per month and submit quarterly reports to bar counsel during the period of probation;
- (2) Agwara shall provide to the State Bar an affidavit of due diligence detailing his efforts over a 120-day period to locate his nine (9) missing clients⁹;
- (3) Agwara shall provide the State Bar with documentation of all settlement payments made to client J. Monterroso, to the extent he has not already done so;
- (4) Agwara shall transfer all remaining client funds in his Nevada State Bank trust account to his Wells Fargo Bank trust account;
- (5) Agwara shall close his Nevada State Bank trust account;
- (6) Agwara shall open a new client trust account for processing all future client funds;
- (7) Agwara shall complete 6 CLE credits in the area of fiduciary duties, which may include education in client trust accounts, IOLTA duties or "earmarking" funds, as part of his 2021 CLE requirement; and
- (8) Agwara shall pay the costs of the reinstatement proceeding, including \$2,500 under SCR 120, within 90 days from the date of this order, if he has not done so already.

With these conditions, we hereby reinstate Liborius I. Agwara to the practice of law in Nevada effective on the

CONTINUED ON PAGE 44

Bar Counsel Report

date of this order. See SCR 116(5) (allowing for conditions on reinstatement).

It is so ORDERED.

In Re: JANICE E. SMITH
Bar No.: 3816
Case No.: 81945
Filed: 04/16/2021

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS

The Southern Nevada Disciplinary Board filed a petition alleging that attorney Janice E. Smith is suffering from a disability due to mental infirmity or illness that makes it impossible for her to defend a pending disciplinary proceeding or to continue the practice of law. Because Smith did not join in the petition, we construed the petition as one to determine Smith's competency under SCR 117(2) and referred the matter for a hearing. Thereafter, a hearing panel of the disciplinary board concluded that Smith is incapacitated for purposes of practicing law because of mental and/or physical infirmity or illness and recommends that Smith be transferred to disability inactive status. Having reviewed the record, we agree with the hearing panel's recommendation.

Accordingly, attorney Janice E. Smith is transferred to disability inactive status and the pending disciplinary proceeding against her is suspended pending further order of this court. As required by SCR 117(7), Smith shall comply with SCR 115, but if she is unable to do so, the State Bar shall proceed under SCR 118. The State Bar shall comply with SCR 121.1 and provide this court with proof that notice has been served.

It is so ORDERED.

In Re: BYRON A. BERGERON
Bar No.: 7598
Case No.: OBC21-0096
Dated: 04/30/2021

LETTER OF REPRIMAND

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 violating the Nevada Rules of Professional Conduct.

To Byron A. Bergeron:

GRIEVANCE

You were a party to a Fee Dispute filed by a former client with the State Bar's Fee Dispute Arbitration

Committee. Kathleen Breckenridge, Esq. was assigned to mediate the dispute.

In the Fee Dispute process, Ms. Breckenridge asked you to engage in mediation using the Zoom platform. You responded in multiple emails that you would not agree to use Zoom because "it is a Chinese Communist application and sends all our Confidential information to China." You sent repeated emails to Ms. Breckenridge and/or her office email address even though she did not reply.

You also sent no fewer than 25 emails to Ms. Breckenridge arguing how to return any fee that you received for the underlying representation. These emails were sent over the course of two days, including evenings, usually on the same string and without any replies. In at least one email, you referred to Ms. Breckenridge using an offensive and derogatory term. Ms. Breckenridge replied to one of your emails proposing a solution to the refund dilemma you presented and asking you to deliver the refund check to her office.

On the day scheduled for the mediation, you caused a check to be delivered to Ms. Breckenridge's office. The payee identified on the check was decidedly improper – a derogatory reference to Ms. Breckenridge.

Ms. Breckenridge submitted a grievance to the State Bar regarding your conduct in the Fee Dispute mediation. The Office of Bar Counsel emailed you a letter of investigation. After you received the Bar Counsel's email, you responded with eight emails in nine minutes.

With the Fee Dispute Arbitration Committee coordinator, you ultimately caused a cashier's check to be issued to the original payee of the fee in resolution of the Fee Dispute matter.

VIOLATION OF THE NEVADA RULES OF PROFESSIONAL CONDUCT AND NEVADA SUPREME COURT RULES

Your conduct in the Fee Dispute mediation and this grievance violated the rules governing lawyers in Nevada as follows:

RPC 8.4 (Misconduct): This rule prohibits conduct that is prejudicial to the administration of justice. In this instance, your repeated, unsolicited, unprofessional emails and disparaging conduct towards the Fee Dispute mediator were intended to, and did, disrupt the Fee Dispute mediation without a legitimate purpose, and highly prejudiced the administration of that proceeding.

SCR 73 (Attorney's oath): This rule requires an attorney conduct himself in a civil and professional manner and promote the administrative of justice. In this instance, your repeated, unsolicited, disparaging emails and conduct towards the Fee Dispute mediator was neither civil nor professional, and failed to promote the administration of justice.

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 6.22 of the ABA Standards for Imposing Lawyer Sanctions provides that "suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference

with a legal proceeding." In this instance, you knew that your communication with the Fee Dispute mediator was inappropriate and unprofessional, and caused (i) delay in the resolution of the fee dispute and (ii) injury to the integrity of the profession.

Considering the absence of prior discipline and the apparent isolation of this instance, the Panel finds that it is appropriate to deviate down to the issuance of a reprimand from the baseline sanction of suspension of your license to practice law in Nevada. The Panel cautions that additional instances of similar conduct may result in suspension under the policy of progressive discipline.

REPRIMAND

Based upon the foregoing, you are hereby **REPRIMANDED** for your knowing violation of RPC 8.4(d) (Misconduct-prejudicial to the administration of justice) and SCR 73 (Attorney's oath).

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

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.	FILE DATE
Edward Bernard	2113	82953	06/02/2021
Mary Rose A. Zigale	469	82957	06/02/2021
Douglas H. Seelicke	6489	82659	06/02/2021
Janice M. Dwyer	2557	829550	6/02/2021
Deborah E. Broom	5886	82594	06/02/2021
J. Phillip Moorhead	1139	82982	06/08/2021
Paulette Durand Barkley	5948	29790	6/08/2021
Kevin A. Hedden	9057	82980	06/08/2021
Karen C. Winckler	2809	82985	06/08/2021
Michael E. Rowe	2464	82983	06/08/2021

ENDNOTES:

1. The State Bar received receipts for the certified mailings, confirming delivery to Padgett's SCR 79 address.
2. As noted above, Padgett does not dispute receiving the complaint.
3. In his reply brief, Padgett asks this court to set aside the panel's findings of fact, conclusions of law, and recommendation under NRCP 60(b), on the basis that the State Bar failed to provide proper notice of the disciplinary proceedings and he lacked an opportunity to defend against the charges. This court is not the appropriate forum in which to raise this claim, as NRCP 60(b) provides parties with a mechanism to seek relief from a decision in the court, or in this case, disciplinary board panel, that issued the decision based upon a reason justifying relief. NRCP 60(b) (stating that on a motion and just cause, the court may relieve a party from the court's order or proceedings); see SCR 105(2) (allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is "attributable to mistake, inadvertence, surprise, or excusable neglect"); SCR 119(3) (stating that the Nevada Rules of Civil Procedure generally apply in disciplinary cases); see also *Yochum v. Davis*, 98 Nev. 484, 653 P.2d 1215 (1982) (observing that the decision to grant or deny NRCP 60(b) relief is fact-based), overruled on other grounds by *Willard v. Berry-Hinkley Indus.*, 136 Nev., Adv. Op 53, 469 P.3d 176 (2020); *Zugel v. Miller*, 99 Nev. 100, 659 P.2d 296 (1983) (recognizing that appellate courts are not suited to address disputes that raise factual issues).
4. In reaching this disposition, we considered Padgett's other arguments, including that the State Bar failed to disclose a conflict of interest with a panel member, that it failed to update Padgett's mailing address, and that it violated Padgett's due process rights by holding one hearing for two separate grievances. We conclude that Padgett either waived these arguments by failing to raise them to the hearing panel in a post-decision motion or they otherwise are unsupported and lack merit.
5. Bergstrom had notice of the State Bar's investigation as he did respond to it when it was in the grievance stage. In addition to serving the underlying disciplinary pleadings on Bergstrom at his SCR 79 address, the State Bar attempted personal service on Bergstrom at multiple addresses.
6. The order in Docket No. 79205 required that Bergstrom petition for reinstatement at the end of the actual suspension in that matter. He has never done so. Because the suspension imposed in this matter runs consecutive to the suspension in Docket No. 79205, the suspension herein will be completed on May 15, 2022.
7. While it appears the Arizona Disciplinary Judge concluded Bergstrom violated Ariz. Sup. Ct. Rule 57(b) in relation to his prior disciplines from this court, we recognize that this court cannot impose reciprocal discipline for that rule violation. However, because the other rule violations would warrant a two-year suspension, we conclude the SCR 114(4)(d) exception does not preclude reciprocal discipline here.
8. To the extent Bergstrom is currently suspended through a different matter on this court's docket, the suspension here will run concurrent with such a suspension, but the concurrence of the suspensions does not affect the date this suspension commences or concludes.
9. If Agwara cannot locate his missing clients after a 120-day period of due diligence, he shall forfeit any funds belonging to those clients to the State Bar of Nevada's Client Security Fund.

Taking Care of Your Mental Health and Wellness

The World Health Organization (WHO) defines mental health as a “state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community.”¹ We all can agree that being a lawyer can be stressful. In fact, a recent article by *U.S. News & World Report* categorized lawyers as being one of the top 25 most stressful jobs in America.²

There are so many different aspects of our profession that make us susceptible to stress. From hitting your quarterly billable quota to dealing with difficult clients, the list goes on and on. If you are like most people, your job is probably not your only source of stress. Therefore, it is even more important for lawyers to take care of their mental health and wellness.

The WHO encourages getting involved in actions that improve psychological well-being and promote mental health.³ Actions that promote mental health may include spending time with your friends or family, joining a club or organization, or picking up a new hobby. Other actions that promote mental health may include creating an environment that supports mental health and respects and protects basic civil, political, socioeconomic, and cultural rights.⁴ Whatever action you decide to take, just make sure that you are happy doing it and that promotes your mental health.

If, however, you or another attorney you know may need support or encouragement promoting your/their mental health, there are lawyer wellness programs that can help. Supreme Court Rule (SCR) 106.5 establishes

programs such as Lawyers Concerned for Lawyers (LCL) and the Nevada Lawyer Assistance Program (NLAP) to assist lawyers who are suffering from a psychological disorder or impairment; a drug, alcohol, gambling, or other addictive or compulsive disorder; or issues related to mental health. Proactive participation in these programs is confidential and protected by SCR 106.5. All information obtained by the LCL program or as a result of voluntary services sought from NLAP, including the initial report and any subsequent information provided to the program, is confidential and inadmissible in any state bar disciplinary, admission, administrative, or other state bar proceeding.⁵

If you would like to learn more about these lawyer wellness programs, and other resources promoting your mental health and wellbeing, please visit <https://nvbar.org/for-lawyers/resources/lawyer-wellbeing/>.

ENDNOTES:

1. *Mental health: strengthening our response*, World Health Organization, <https://www.who.int/en/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (Mar. 30, 2018).
2. Geoff Williams, “The 25 Most Stressful Jobs”, *U.S. News & World Report*, <https://money.usnews.com/careers/company-culture/slideshows/the-most-stressful-jobs> (last updated Mar. 15, 2021).
3. *Ibid.*
4. *Id.*
5. SCR 106.5(4).

