

Bar Counsel Report

In Re: DOUGLAS W. NICHOLSON
Bar No.: 3654
Case No.: 85659
Filed: 09/22/2023

ORDER OF DISBARMENT

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Douglas W. Nicholson be disbarred from the practice of law in Nevada based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 5.5 (unauthorized practice of law), and SCR 115 (notice of change in license status; winding down of practice). 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 Nicholson committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's factual findings that Nicholson violated the above-referenced rules as those findings are supported by substantial evidence and are not clearly erroneous. See SCR 105(3)(b); *In re Discipline of Colin*, 135 Nev. 325, 330, 448 P.3d 556, 560 (2019). In particular, the record supports the panel's findings that Nicholson violated RPC 1.3 and RPC 1.4 by knowingly failing to promptly and diligently advance his clients' respective personal injury matters while his license was still active, resulting in the statute of limitations running on one of the client's claims, and by failing to communicate with his clients about the statuses of their claims, including failing to inform the client whose claim later expired of a \$5,324 settlement offer from an insurance company. The record likewise supports the panel's findings that Nicholson intentionally violated RPC 5.5 and SCR 115 by failing to inform his clients and others when he was suspended from the practice of law and engaging in the unauthorized practice of law by continuing to represent clients after being suspended and keeping their cost retainers despite incurring no costs on behalf of the clients.¹

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

Nicholson knowingly violated duties owed to his clients (diligence and communication) and intentionally violated a duty owed to both his clients and the profession (unauthorized practice of law). Nicholson's clients suffered actual injury as Nicholson kept their \$500 retainers and his lack of diligence and communication resulted in their matters being either delayed or time-barred, such that one client was unable to pursue his claim. Nicholson has been disciplined at least three other times for failing to communicate and diligently litigate

his clients' cases while being disciplined two other times for intentionally keeping his clients' monies despite his ethical violations. The baseline sanction for Nicholson's misconduct, before considering aggravating and mitigating circumstances, is disbarment. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 7.1 (Am. Bar Ass'n 2017) (recommending disbarment "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public or the legal system"); Standard 8.1(b) (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").

The record supports the panel's findings of no mitigating circumstances and three aggravating circumstances (prior disciplinary offenses, substantial experience in the practice of law, and retention of cost advances). Notably, Nicholson was disciplined eight other times between 1993 and 2020, including multiple public reprimands and suspensions. Considering all the factors, we agree with the panel that there is no basis to depart from the baseline sanction of disbarment. See *In re Discipline of Arabia*, 137 Nev., Adv. Op. 59, 495 P.3d 1103 (2021) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession).

Accordingly, we hereby disbar attorney Douglas W. Nicholson from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1).² Further, Nicholson shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, 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: DAVID B. SANDERS
Bar No. 7895
Case No.: 87031
Filed: 10/09/2023

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney David B. Sanders be suspended from the practice of law for five years and one day for multiple violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (declining or terminating representation), RPC 3.2 (expediting litigation), RPC 3.4 (fairness to opposing counsel), and RPC 8.1 (disciplinary matters).³ Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b). We agree that suspension is warranted but conclude that a two-year suspension, consecutive to the one-year suspension imposed in Case No. 85114, is appropriate.

The facts and charges in the complaint are deemed admitted because Sanders failed to answer the complaint and a default was entered.⁴ SCR 105(2). Based on the default,

Sanders violated the above-referenced rules by failing to (1) communicate with three separate clients; (2) diligently pursue negotiations on behalf of one client, requiring the client to restart the process on her own after a significant delay; (3) respond to discovery on behalf of a second client, causing the client to pay over \$7,000 to avoid case-ending sanctions; and (4) file a claim on behalf of a third client, resulting in her forfeiting her claim as time-barred and thus losing her chance to recoup her potential share of a significant commission. Lastly, Sanders failed to respond to the State Bar's multiple requests for information regarding the grievances.

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).

Sanders knowingly violated multiple duties owed to his clients, the public, the legal system, and the legal profession. The baseline sanction for the misconduct, before consideration of 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 generally appropriate when "a lawyer knowingly fails to perform services for a client," or "engages in a pattern of neglect and causes serious or potential injury to a client"). The panel found and the record supports four aggravating circumstances: prior disciplinary offense pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The panel also found the aggravating circumstance of bad faith obstruction of the disciplinary proceedings, but we conclude the circumstances here do not support that aggravating circumstance, particularly given that Sanders did not affirmatively act to obstruct or delay the disciplinary proceedings and appeared at the disciplinary hearing. The hearing panel also found and the record supports three mitigating circumstances: absence of a prior disciplinary record, absence of dishonest or selfish motive, and personal or emotional problems. The finding of both a prior-discipline aggravating circumstance and an absence-of-a-prior-disciplinary-record mitigating circumstance is unusual. But we conclude it is appropriate in this case where the events underlying the misconduct at issue occurred at roughly the same time as the events which led to Sanders' prior discipline and until that time, Sanders had no disciplinary record over more than 20 years of practicing law in Nevada. For the same reasons, the hearing panel gave little weight to the discipline-record aggravating and mitigating circumstances. We agree with the panel's balancing of these two circumstances.

Considering all of the factors, we agree with the panel that a suspension is warranted. However, we disagree with the length of the recommended suspension. Considering previous discipline imposed on attorneys who have committed similar misconduct and the fact that Sanders had no discipline before the time period in question, we conclude that a two-year suspension is sufficient to serve the purpose of attorney discipline. *State Bar of Nev. v. Claiborne*, 1.04 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining that the purpose

of attorney discipline "is not to punish the attorney but to ... [protect] the public, the courts and the legal profession." (quoting *Clancy v. State Bar*, 454 P.2d 329, 336 (Cal. 1969)).

Accordingly, we suspend attorney David B. Sanders from the practice of law in Nevada for two years commencing from the date of this order, to run consecutive to the one-year suspension in Case No. 85114. Sanders shall reimburse the Client Security Fund for any funds paid to his clients that were involved in this disciplinary matter and refund any unearned fees paid by those clients. Finally, Sanders 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.

PARRAGUIRE, J., dissenting:

With all due respect to my colleagues, I dissent. The disciplinary hearing panel, after review of this matter, recommends a five-year-and-one-day suspension. In my opinion, a two-year suspension is inadequate to serve the purpose of attorney discipline in this instance.

In Re: ALDA A. ANDERSON
Bar No. 8746
Case No.: SBN22-00251
Filed: 08/31/2023

PUBLIC REPRIMAND

To Alda A. Anderson:

On August 7, 2023, a Formal Hearing Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel unanimously accepted the Conditional Guilty Plea and concluded that you should be issued a Public Reprimand for a violation of Rule of Professional Conduct ("RPC") 1.16 (Declining or Terminating Representation).

On September 30, 2020, M.E. (hereinafter "Grievant") retained your services for assistance with her personal injury claims arising from a car accident that occurred on September 8, 2020. On or about April 11, 2022, Grievant terminated her attorney-client relationship with you. On April 25, 2022, you filed a Motion to Withdraw as Counsel, which was granted on June 1, 2022. Grievant is currently being represented by Laurence B. Springberg, Esq. (hereinafter "Mr. Springberg").

Since April 2022, Grievant has asked you for a copy of her case file. Grievant did not receive a copy of her case file from you. On May 20, 2022, Grievant filed a grievance with the State Bar alleging that you engaged in misconduct. On June 27, 2022, the State Bar emailed you a Letter of Investigation ("LOI"). In response to the State Bar's LOI, you stated that Mr. Springberg's office requested a copy of Grievant's file "but has not retrieved the same as of the date of this response." Mr. Springberg states that he was unaware of the material's availability until he was notified by the State Bar on August 19, 2022, and has since retrieved Grievant's case file.

RPC 1.16 (Declining or Terminating Representation) states, in pertinent part, that "[u]pon termination of

CONTINUED ON PAGE 38

representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred." You failed to take reasonable steps to provide Grievant and/or her attorney(s) with a copy of her case file upon termination. Under ABA Standard 7.3, reprimand is generally appropriate when a lawyer negligently 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. This type of ethical breach caused potential injury to Grievant.

In light of the foregoing, you are hereby PUBLICLY REPRIMANDED for violating RPC 1.16 (Declining or Terminating Representation). In addition, within thirty (30) days, you shall: (1) create and implement an office policy detailing the duties and responsibilities of her nonlawyer employees, specifically, what type of work they can and cannot perform; and (2) include language in her retainer agreements informing clients which members of her firm are allowed to discuss legal issues and provide legal advice and/or analysis.

Lastly, pursuant to SCR 120(3), you shall pay a \$1,500.00 fee plus the hard costs of the instant proceedings.

You shall make such payment no later than thirty (30) days after receiving a billing from the State Bar.

ENDNOTES:

1. Nicholson was suspended for two years on July 24, 2020. *In re Discipline of Nicholson*, No. 81190, 2020 WL 4284480 (Nev. July 24, 2020) (Order of Suspension).
2. Although the hearing panel also recommended that we order Nicholson to pay restitution to his clients, SCR 102 does not provide for restitution in conjunction with disbarment and restitution cannot be said to further the purpose of attorney discipline when an attorney has been permanently disbarred, so we cannot order restitution in this matter. See *In re Discipline of Christopher*, No. 82110, 2021 WL 673469 (Nev. Feb. 19, 2021) (Order of Disbarment); *In re Discipline of Errico*, No. 73995, 2018 WL 5095817 (Nev. Oct. 10, 2018) (Order of Disbarment).
3. Sanders is currently suspended. *In re Discipline of Sanders*, No. 85114, 2022 WL 14225670 (Nev. Oct. 21, 2022) (Order of Suspension).
4. The State Bar served Sanders with the letters of investigation, complaint, and notice of intent to proceed on a default basis by regular and certified mail at his SCR 79 address. The State Bar also emailed Sanders those documents. Sanders did not file an answer to the complaint, but he appeared and testified at the disciplinary hearing which was limited to determining the appropriate discipline.



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TIP

FROM THE BAR COUNSEL

Rule 6.2 PUBLIC SERVICE (Accepting Appointments)

“You have not lived today until you have done something for someone who can never repay you.”

– John Bunyan

The Nevada Rules of Professional Conduct (NRPCs) contain five related rules concerning our duty to serve the public interest:

- 6.1 – Voluntary Pro Bono Public Service;
- 6.2 – Accepting Appointments;
- 6.3 – Membership in a Legal Services Organization;
- 6.4 – Law Reform Activities Affecting Client Interests; and
- 6.5 – Nonprofit and Court-Annexed Limited Legal Service Programs.

Of these five rules involving public service, one rule provides us with a unique and uncomfortable directive. Despite our community’s best efforts in providing pro bono services, there are some matters that reach our bench directly. In some of these rare matters, the bench is compelled to reach back to us individually for help. This is where Rule 6.2 comes in:

RPC 6.2 states: “A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as: (a) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law; (b) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or (c) The client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.”

Our public service duty and RPC 6.2 provides that when the court directs such a case to us, we accept that matter as a service that our profession requires. If there is any doubt, Comment 1 of Model Rule 6.2 tells us: “A lawyer ordinarily is not obligated to accept a client whose character or cause the lawyer regards as repugnant. The

lawyer’s freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or person unable to afford legal services.”

Rule 6.2 does offer us relief in extreme situations involving an appointed case. The rule grants us leave to pass on that that extreme case if we have “good cause.” Specifically, RPC 6.2 offers us a non-exhaustive short list of what bases could constitute good cause for us to take the next case that follows the initial appointed case that is problematic. The short list consists of three possibilities.

The first is if the appointed representation will result in a rule violation occurring. Examples might be if our practice ability and skill set is simply not competent to accept the type of case appointed (e.g., RPC 1.2) or the client or case presents an impermissible conflict of interest (RPC 1.7). The second example is if the representation would be unreasonably costly for us to accept. Sensibly, the rule allows us to not imperil the financial stability of a practice one has painstakingly sought to build. The third express exception is if our scruples are genuinely offended by the client or the case, we cannot serve the client meaningfully and fairly. The courts are expressly empowered to consider our personal and practice peculiarities to allow for grace to take the very next case in line.

The rules seek to serve not only us but the community. Wise policy encourages us to accept problematic clients and cases. RPC 6.2 is a wise policy as it offers express rule latitude and a case-by-case evaluative approach. RPC 6.2 is policy intelligent. It does not seek to exact consequences for practitioners who stand forward. Rather, it provides a flexible formula to allow us as a community to achieve justice for all.

“We make a living by what we get but we make a life by what we give.”

– Winston Churchill