Bar Counsel Report

In Re: TORY D. ALLEN
Bar No.: 12680
Case No.: 81794
Filed: 11/06/2020

ORDER APPROVING CONDITIONAL GUILTY PLEA

This is an automatic review of a Northern 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 Tory D. Allen. Under the agreement, Allen admitted to violating RPC 1.15 (safekeeping property) and RPC 1.16 (declining or terminating representation) and agreed to a one-year suspension to run concurrent with the 30-month suspension in In re Discipline of Allen, Docket No. 80319 (Order Approving Conditional Guilty Plea Agreement, Apr. 23, 2020).

Allen has admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes that Allen violated the above-listed rules by depositing a divorce client's $4,000 retainer into his operating account, misappropriating those funds, and then failing to promptly return the undisputedly unearned portion of the fees when the client reconciled with her husband three days later.

The issue for this court is whether the agreed-upon discipline is sufficient to protect the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Allen admitted to knowingly violating a duty owed to his clients (safekeeping property) and a duty owed to the profession (terminating representation). His client suffered actual or potential injury because the client did not timely receive her funds. As the panel found, the baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is disbarment. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 4.11 (Am. Bar Ass'n 2017) ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). The record supports the panel's finding of one aggravating circumstance (prior discipline) and four mitigating circumstances (personal or emotional problems, full and free disclosure to the disciplinary authority and cooperative attitude towards the proceeding, inexperience in the practice of law, and remorse). Considering all four factors, and especially Allen's personal or emotional problems, we agree with the panel that a downward deviation from the baseline sanction is warranted and conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Tory D. Allen from the practice of law for one year commencing from the date of this order and to run concurrent with the suspension imposed in Docket No. 80319. During the suspension, Allen shall continue treatment with a licensed drug and alcohol counselor and/or mental health provider; attend Alcohol Anonymous and/or Alanon meetings at the direction of his treatment provider, but no less than twice weekly; and provide quarterly reports to the State Bar, countersigned by his treatment provider, regarding his treatment, attendance at the requisite meetings, and payment of restitution. Allen shall also pay $3,400 in restitution to the client identified in the conditional guilty plea agreement. Lastly, Allen shall pay the costs of the disciplinary proceedings, including $2,500 under SCR 120, within 30 days from the date of this order.

It is so ORDERED.

In Re: MARK E. PEPLOWSKI
Bar No.: 7133
Case No.: 79476
Filed: 11/13/2020

ORDER REGARDING DISABILITY INACTIVE STATUS

The State Bar and attorney Mark Peplowski filed a joint petition alleging that Peplowski is suffering from a disability due to physical infirmity, illness, or addiction that makes it impossible for him to defend a pending disciplinary proceeding or to continue the practice of law. Based on the petition, this court transferred him to disability inactive status and referred the matter to a disciplinary board to determine Peplowski's capacity to practice law. Thereafter, a hearing panel of the Southern Nevada Disciplinary Board concluded Peplowski is incapacitated for the purposes of practicing law because of mental infirmity, illness, or addiction and recommends Peplowski remain on disability inactive status. Having reviewed the record, we agree with the hearing panel's recommendation.

Accordingly, attorney Mark Peplowski shall remain on disability inactive status and the pending disciplinary proceeding against him is suspended. SCR 117(2).

It is so ORDERED.[1]

In Re: ERIC G. JORGENSON
Bar No.: 1802
Case No.: OBC20-0451
Dated: 11/05/2020

PUBLIC REPRIMAND

To Eric G. Jorgenson:

In 2016, you were appointed to represent Rosemary Vandecar to appeal a post-conviction order related to her 2012

conviction for second-degree murder. Vandecar has been incarcerated during the entire representation.

November 8, 2019 was the first deadline by which you could have reasonably filed the Opening Brief.[2] You filed the Appendix on November 8, 2019 but did not file the Opening Brief or request an extension of time in which to file the brief.

On November 26, 2019, the Court issued an Order to File Opening Brief directing you to file the brief by December 3, 2019.

On December 4, 2019, you filed an untimely motion for an extension of time stating that you had "miscalculated the time that was required to draft and file the opening brief." The Court denied your request for an extension of time and directed that a brief must be filed by January 2, 2020.

You failed to file the Opening Brief by the January 2, 2020 deadline or to request an extension of time.

On February 4, 2020, the Court entered an Order Conditionally Imposing Sanctions and directing you to file the brief by February 18, 2020. The Order imposed a sanction of $250, which would be waived if the brief was filed by the new deadline. The Court cautioned that a failure to comply with the Court's order would result in removal as counsel and referral to the State Bar.

You did not file the Opening Brief by the February 18, 2020 deadline. On February 24, 2020, you filed proof of paying the $250 fine. On February 28, 2020, you filed another untimely request to extend the time to submit the Opening Brief. The Court denied the motion and directed you to file the brief on or before March 17, 2020.

You did not file the Opening Brief on or before March 17, 2020. On April 9, 2020, the Court entered an order removing you as counsel and referring you to the State Bar.

Violations of the Rules of Professional Conduct

You had a duty to diligently and promptly represent your client in her criminal appellate matter, pursuant to RPC 1.3 (Diligence). You knowingly violated RPC 1.3 (Diligence) when you failed to timely file the Opening Brief in this matter, despite multiple directives from the Nevada Supreme Court.

RPC 3.4 (Fairness to Opposing Party and Counsel) prohibits a lawyer from "knowingly disobey[ing] an obligation under the rules of a tribunal except for an open refusal based on as assertion that no valid obligation exists." You knowingly violated RPC 3.4 (Fairness to Opposing Party and Counsel) when you failed to file the appellate brief after the Court issued four separate order [sic] directing you to file the brief.

Your client, the efficiency of the judiciary and the integrity of the profession was injured by your misconduct, particularly since the Court removed you as counsel in the matter and new counsel had to be appointed.

Application of ABA Standards for Imposing Lawyer Sanctions

Pursuant to Standard 4.42 of the ABA Standards for Imposing Lawyer Sanctions, the appropriate baseline sanction for Respondent's misconduct is suspension.

The Panel has considered the aggravating factor of your substantial experience in the practice of law (SCR 102.5(1)(i)) and the mitigating factors of (i) your absence of prior discipline (SCR 102.5(2)(a)), (ii) the absence of dishonest or selfish motive (SCR 102.5(2)(b)), (iii) your personal or emotional problems (SCR 102.5(2)(c)), (iv) cooperative attitude towards the disciplinary proceeding (SCR 102.5(2)(e)), and (v) your expressed remorse for your misconduct (SCR 102.5(2)(m)).

In light of the mitigating factors it is appropriate to deviate downward from the baseline sanction of suspension to the sanction of a Public Reprimand.

Therefore, you are hereby PUBLICLY REPRIMAND [sic] for violation of Rule of Professional Conduct ("RPC") 1.3 (Diligence) and RPC 3.4 (Opposing Party and Counsel) and required to pay SCR 120 Costs of $1,500 plus hard costs of the proceeding.

In Re: PRESTON P. REZAEE
Bar No.: 10729
Case No.: OBC19-0679
Dated: 12/10/2020

PUBLIC REPRIMAND

To Preston P. Rezaee:

On January 17, 2013, your client was injured in a car accident. The accident happened while he was working; his co-worker was driving the vehicle. The client had a worker's compensation claim that was closed in May 2013. On October 10, 2013, the client retained your firm to recover damages for his injuries via a personal injury claim.

When the representation began the client disclosed the following to you and/or your office:

i. The accident happened in Medford, Oregon.
ii. The accident happened in a work van that your client's co-worker was driving.
iii. Your client believed that his co-worker lived in California.

Between October 2013 and December 2014, the client's medical providers regularly provided your office with updates regarding his medical treatment. By virtue of a letter dated January 2, 2014, the insurer for the accident vehicle communicated to your office that it declined coverage for the accident because of the worker's compensation and the fact that your client's injuries were the result of a fellow employee.

On January 15, 2015, you realized the statute of limitations was about to run on the client's potential claims. Prior to this point, the representation had been solely managed by your former business partner who was the only other attorney in your office. You took direct responsibility for the representation once that other attorney stopped working with you.

The same day you filed a complaint on behalf of your client in the Eighth Judicial District Court naming a "doe" defendant that is a resident of Clark County, Nevada. The Complaint does not mention that the accident happened in Oregon.

On May 27, 2015, you filed an Amended Complaint, naming your client's co-worker as the defendant. The Amended Complaint alleges "on information and belief" that the co-worker is a resident of Clark County, Nevada.

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The Amended Complaint still failed to identify that the vehicle accident happened in Oregon.

You retained the services of an independent company to locate an address for the co-worker. The company conducted a nationwide search. The company was not able to locate an address for the co-worker. You then served the defendant by publication in Nevada. On February 4, 2016, you had a Default entered against the co-worker defendant.

Ten months later, you filed an Application for Default Judgment. The default prove-up hearing was set for February 7, 2017. On February 7, 2017, you appeared late at Court and requested that the matter be continued. After you continued the default prove-up hearing a second time, the hearing was set for a third date – May 2, 2017.

The hearing was held on May 2, 2017 and your client testified. You provided the court with testimony regarding the underlying case, including the fact that the crash happened in Medford, Oregon. The Court took the matter under advisement and stated a decision would be issued. On May 3, 2017, the Court issued a Minute Order requiring you and your client to appear for a status check on May 16, 2017 to provide evidence establishing jurisdiction. You received the Minute Order via email. But no one appeared for the May 16, 2017 status hearing. The Court ordered you to re-notice the hearing.

On August 30, 2017, you filed a Notice of Hearing in your client's case, setting the status hearing for September 19, 2017. However, the September 19, 2017 Hearing was vacated. No further filings were made in your client's matter and the case was deemed statistically closed.

Violations of the Rules of Professional Conduct

RPC 1.3 (Diligence) requires a lawyer to "act with reasonable diligence and promptness in representing a client." You knowingly violated RPC 1.3 when you (i) failed to diligently and/or promptly identify the jurisdictional issues with pursuing your client's claims in the Eighth Judicial District Court, (ii) took over one year to enter the Default in the lawsuit, (iii) failed to seek a Default Judgment for 10 months after entering the Default, (iv) failed to diligently and/or promptly respond to the Court's notice of a status hearing, and (v) failed to diligently and/or promptly re-notice the status hearing.

RPC 1.16 (Declining or Terminating Representation) requires a lawyer to comply with applicable law requiring notice to or permission of a tribunal when terminating representation. RPC 1.16 also requires that, upon termination of representation, you 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, and surrendering papers to which the client is entitled. You negligently violated RPC 1.16 when you intended to, but ultimately failed to, (i) seek permission of the Court to terminate representation of your client in the pending underlying lawsuit; (ii) give your client reasonable notice that you were terminating the representation; and (iii) take any steps to protect your client's interest when you decided to terminate representation.

Your client was injured by your lack of diligence and failure to engage in the appropriate steps to terminate the representation. Your misconduct also injured the efficiency of the judiciary and the integrity of the profession.

RPC 8.4 (c) (Misconduct) requires a lawyer to refrain from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. You negligently violated RPC 8.4 (c) when you filed pleadings that did not accurately disclose (i) the residency of the defendant in your client's lawsuit and (ii) the location of the accident which led to the lawsuit.

Your client was injured by your misconduct because he did not pursue his claim in an appropriate jurisdiction instead. Your misconduct also injured the efficiency of the judiciary and the integrity of the profession.

ABA Standards for Imposing Lawyer Sanctions

Standard 4.42 of the ABA Standards for Imposing Lawyer Sanctions states Suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect [and] causes injury or potential injury to a client.

Standard 6.13 of the ABA Standards for Imposing Lawyer Sanctions states reprimand is generally appropriate when a lawyer is negligent in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

It is appropriate to refer to Standard 4.42 as the baseline for the sanction for your knowing violations of the Nevada Rules of Professional Conduct. However, the Panel has considered your lack of recent, related prior discipline, your cooperation with the disciplinary authority, and your expressed remorse for the misconduct as reason to deviate downward from the sanction of a suspension to the issuance of a Public Reprimand. It is also appropriate to refer to Standard 6.13 as the baseline sanction for your negligent violations of the Nevada Rules of Professional Conduct.

PUBLIC REPRIMAND

In light of the foregoing, you violated RPC 1.3 (Diligence), RPC 1.16 (Declining or Terminating Representation), and RPC 8.4 (Misconduct) and are hereby PUBLICLY REPRIMANDED. SCR 120 requires you to pay the costs of this proceeding. Such costs are due no later than the 30th day after the issuance of this reprimand.

In Re: PAUL D. POWELL
Bar No.: 7488
Case No.: OBC19-0078 & OBC19-1183
Dated: 11/12/2020

LETTER OF REPRIMAND

To Paul D. Powell:

A Hearing Panel of the Southern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued

for violations of Rules of Professional Conduct (RPC) in two personal injury matters.

FACTUAL BACKGROUND

Your boilerplate Retainer Agreement provided that you might rent a car on behalf of your client and deduct the cost of the rental car from the client's settlement. It also provided that the client was ultimately responsible for the cost of the rental car and would be required to reimburse you that cost if the client terminated the representation.

In these two matters that came before a Hearing Panel of the Southern Nevada Disciplinary Board, you arranged, and paid for, the clients to rent cars. You then deducted the cost of the rental car from your clients' respective settlement proceeds and reimbursed yourself for the cost.

APPLICABLE RULE OF PROFESSIONAL CONDUCT

RPC 1.8 (e) (Conflicts of Interest: Current Clients: Specific Rules) mandates that a lawyer refrain from providing financial assistance to a client in connection with pending or contemplated litigation except for court costs and expenses of litigation. Your advance payment for your clients' rental cars, which cost was then deducted from their respective settlement proceeds, was impermissible financial assistance.

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

ABA Standard 4.32 states that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible side effect of that conflict and causes injury or potential injury to a client.

In this instance, a conflict was created when you advanced your clients funds to rent cars because such costs were not allowable litigation expenses. You knew and/or should have known that RPC 1.8(e) prohibited such advances to a client. There was no injury to the clients because of the advances; there were sufficient settlement funds to cover the costs. However, there was injury to the integrity of the profession because of these prohibited advances.

In mitigation, you have no recent discipline, no discipline for the same specific issues, no selfish motive, a good reputation, and you were cooperative with the disciplinary process. Under the circumstances, it is appropriate to deviate downward from suspension to a reprimand for your violation of RPC 1.8(e).

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to your representation of the clients involved in these grievances, which conduct violated RPC 1.8(e) (Conflict of Interest: Current Clients: Specific Rules) when you advanced money to your clients for the non-litigation expense of a rental car.

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

In Re: STEVEN K. DIMOPOULOS
Bar No.: 12729
Case No.: OBC20-0519
Dated: 11/20/2020

LETTER OF REPRIMAND

To Steven K. Dimopoulos:

A Screening Panel of the Southern Nevada Disciplinary Board reviewed the above-referenced grievance and unanimously determined to issue you a Letter of Reprimand for violations of Rules of Professional Conduct (RPC) set forth below regarding your handling of Ms. William's Case.

GRIEVANCE

On June 9, 2019, Kiara Williams (Williams), and other members of her family were in a car accident. On June 10, 2019, they retained your office to represent them.

On October 7, 2019, Yoselyn Segundo (Segundo), your nonlawyer case manager, communicated with the opposing insurance company, Farmers Insurance, about the property damage claim. On January 7, 2020, Deanna Kope (Kope), Farmers' adjustor, sent Segundo an email that she did not have a demand letter on Williams. On January 27, 2020, a demand letter signed by your associate attorney, Jennifer Tang (Tang), was sent to Farmers.

Subsequently, on February 4, 2020, Segundo sent an email to attorney Tang advising that Farmers offered $2,150.90 to settle Williams' case. You provided interoffice emails between David Torres (Torres) (your nonlawyer claims supervisor), Segundo and Tang discussing a counteroffer to Farmers and the range where the settlement should fall. Torres suggested that Segundo propose a counteroffer of $6,000 and that she try to resolve the case between $3,500-$4,000. Tang agreed. Segundo replied "*Okay, I will keep that in mind with negotiating*." Segundo had also exchanged emails with Kope in April and May with counteroffers for other members of the Williams family.

In your response to the State Bar, you stated that your office policy is that an attorney should be cc'd on all negotiation emails sent by your staff to an opposing insurance company. However, you admitted that this was not done in Williams' case.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to representation of the foregoing client(s), which conduct violated the Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) – for failing to make reasonable efforts to ensure that the conduct of your nonlawyer assistant, Yoselyn Segundo, complied with your obligations not to engage or assist in the unauthorized practice of law.

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RPC 5.5 (Unauthorized Practice of Law) – for assisting in the unauthorized practice of law by allowing nonlawyer, Yoselyn Segunda, to negotiate terms of a personal injury settlement with Farmers Insurance.

The Nevada Supreme Court and the American Bar Association Standards for Imposing Lawyer Sanctions adopted an analysis of four factors to consider for disciplinary sanctions: 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 Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (Nev. 2008).

You have a duty not engage or assist in the unauthorized practice of law as set forth in the RPCs listed above. You also have a duty to supervise your nonlawyer assistants to ensure that they comply with your professional obligations. The *In re Lerner* Court determined that negotiations with an opposing insurance company regarding a personal injury settlement is the practice of law. *In re Lerner*, 197 P.3d 1067 (Nev. 2008) (citing *Louisiana Claims Adj. Bureau v. State Farm*, 877 So.2d 294, 299 (La.Ct.App.2004); see also *People v. Stewart*, 892 P.2d 875, 876 (Colo. 1995); *Mays v. Neal*, 327 Ark. 302, 938 S.W.2d 830, 835-36 (1997); *In re Flack*, 272 Kan. 465, 33 P.3d 1281, 1287 (2001).

The evidence shows that you were negligent in allowing your nonlawyer assistant to conduct negotiations with an opposing insurance company, Farmers Insurance, regarding Ms. William's personal injury case. Therefore, your conduct is in direct violation of Nevada precedent. As a result, your conduct has injured the public, and the legal system.

Thus, weighing the rules violated, your mental state, the potential or actual injury caused, ABA Standard 7.4 provides the most appropriate discipline. It states that "Admonition is generally appropriate when a lawyer engages in an isolated instance or negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system."

The Supreme Court of Nevada has provided two types of reprimand: a Public Reprimand or a Letter of Reprimand. The latter is the lowest form of discipline available. Based upon the above factors, the Panel finds that the lesser of the two sanctions is appropriate.

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

In Re: ELAINE A. DOWLING
Bar No.: 8051
Case No.: OBC20-0383
Dated: 11/20/2020

LETTER OF REPRIMAND

To Elaine A. Dowling:

A Southern Nevada Disciplinary Board Screening Panel convened on November 17, 2020 to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct and that you should be reprimanded for your handling of that matter. This letter constitutes delivery of the Panel's reprimand.

You represented a client in a business matter in August 2019. Your client submitted a grievance on March 25, 2020 through new counsel, relating to your representation of them from November 2019 through the present.

You presented your client with a written fee agreement for signature on August 28. This agreement stated that the compensation was "fully earned and irrevocable" upon signature. That sum here was for $32,500 that your agreement characterized as "Flat Fees" for the prospective preparation of forms necessary for a company to be considered for public trading with the SEC. Your client signed your agreement on August 29 and tendered the entire sum the following day on August 30. On August 30, 2019, you placed the $32,500 fee into your business checking account rather than an IOLTA. The following day of August 31, you withdrew over $9,000 of that sum, prior to any work being performed or any immediate benefit being conferred to your client.

On September 11, 2019, communication ceased between you and your client. On November 11, 2019, your client terminated your services and requested the return of the fees. On December 6, 2019, you responded to another client communication stating you would get back to them about a proposed refund although it was a "non-refundable fee agreement." Your client immediately responded seeking the return of the entire fee and stated they would seek counsel if necessary. Despite the client's renewed request and new counsel's attempts for over a year now, you have not returned the unearned fees.

Pursuant to NRPC 1.5(a) "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee …" NRPC 1.16(d) also provides "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as … refunding any advance payment of fee or expense that has not been earned or incurred." Here, you charged a $32,500 flat fee for a legal project. While flat fees are not inherently unethical, the fees charged cannot encumber a client's right to terminate the lawyer's service – which they do when unearned fees are not immediately made available to the client. Your fee for services rendered here, however labeled become unreasonable if it is unearned. Here, you immediately deposited the funds in a non-IOLTA account and spent over $9,000 of the fee within 48 hours of delivery and before any work was performed. You have retained unearned fees for over a year despite numerous requests.

ABA Standard 7.2 states that Suspension is the appropriate sanction because you acted knowingly and caused injury to your client. Based upon the totality of circumstances here, a downward deviation in discipline is warranted under ABA Standard 9.32(a) based upon your lack of discipline history.

Based on the foregoing, you are hereby REPRIMANDED for a violation of NRPC 1.5(a) and 1.16(d). Please move this matter

toward conclusion by promptly submitting to mandatory fee dispute through the Fee Dispute Arbitration Committee. Separate and apart from arbitration, please conclude this matter by remitting the minimum costs of $1,500 for this Reprimand action within 30 days of the issuance of this sanction (SCR 120(3).

Please allow this Reprimand to serve as a thoughtful reminder of your professional ethical obligations. We wish you well in your practice and trust that no similar problems will arise in the future.

In Re: SCOTT C. SYMMONS
Bar No.: 9917
Case No.: OBC20-0518
Dated: 10/30/2020

LETTER OF REPRIMAND

To Scott C. Symmons:

A Screening Panel of the Southern Nevada Disciplinary Board reviewed the above-referenced grievance and unanimously determined to issue you a Letter of Reprimand for violations of Rules of Professional Conduct (RPC) set forth below regarding your handling of Ms. Paccione's Case.

GRIEVANCE

On January 25, 2016, Desiree Paccione retained you to handle a personal injury case on her behalf. In March of 2017, Ms. Paccione accepted an offer to settle the case. On April 19, 2017, the settlement check was deposited into your trust account. You claimed that you attempted to negotiate liens on the case from 2017 into 2018, but none of the providers agreed to a reduction.

However, between April of 2017 and May of 2020, little to no action occurred on the case. During this time, you admitted that you were no longer in contact with Ms. Paccione. As a result, in May of 2020, after Ms. Paccione had not heard from you, she filed the instant grievance. Only after you were notified of the pending bar grievance did you file an interpleader action in Ms. Paccione's case to determine how the settlement funds should be disbursed. These facts indicate that you failed to maintain contact with Ms. Paccione and act on her case for over three years.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to representation of the foregoing client, which conduct violated the Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 1.3 (Diligence) – for failing to promptly negotiate medical liens on the case resulting in an extreme delay in disbursement of the funds.

RPC 1.4 (Communication) – for failing to keep your Ms. Paccione reasonably informed about the status of her case between April of 2017, and May of 2020.

RPC 3.2 – (Expediting litigation) for failing to file an interpleader action in the case to determine how the funds should be disbursed for over three years between April of 2017, and May of 2020.

The Nevada Supreme Court and the American Bar Association Standards for Imposing Lawyer Sanctions adopted an analysis of four factors to consider for disciplinary sanctions: 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 Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (Nev. 2008).

The evidence shows that you were negligent in negotiating the liens and filing the interpleader action on your client's case. You were also negligent in keeping your client informed of the status of her case between April 2017 and May 2020. Your conduct has injured your client by denying her access to her monies for approximately three years.

Thus, weighing the rules violated, your mental state, the potential or actual injury caused, ABA Standard 4.43 provides the most appropriate discipline. It states that "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client."

The Supreme Court of Nevada has provided two types of reprimand: a Public Reprimand or a Letter of Reprimand. The latter is the lowest form of discipline available. Based upon the above factors, the Panel finds that the lesser of the two sanctions is appropriate.

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

ENDNOTES:

1. This order shall be public but all other documents filed with this court in this matter shall remain confidential. SCR 117(2). This order constitutes our final disposition of this petition.
2. The deadline to file the Opening Brief in Vandecar's appeal was previously extended five times because the court reporter had not properly submitted the official transcript for the underlying proceeding.

FROM THE BAR COUNSEL

"Do I have to?"

Tat-tling, v., "Given to idle talk, apt to tell tales."

Nevada Rule of Professional Conduct 8.3 tells us: "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." While the wording raises questions and answers, a few points are clear: A lawyer who *knows* a professional colleague has violated certain rules, "shall" share that fact with your state bar. "Shall" means "shall," right? Likewise, the "have to" duty only applies if the rule violation meaningfully impacts one of three key aspects of legal character, namely honesty, trustworthiness or fitness as a lawyer. Interestingly, the American Bar Association (ABA) drafters and the Nevada Supreme Court determined that deficient legal character carries a greater risk of harm than all other deficiencies. So much so, that we as legal professionals must tell it when we know it. So, what happens next?

First, the State Bar of Nevada must investigate the allegation before any action is taken. If clear and convincing evidence is available, the state bar will move forward. Second, the State Bar does not hold offending attorneys accountable. You do. The lawyer involved receives a fair hearing by his or her peers because of your voluntary service on screening panels and formal disciplinary panels.Thereafter, your decision is reviewed *de novo* directly by your Supreme Court. Third, the goal of discipline is always protection of the public, the courts and the legal profession. Punishment is a function of another set of courts entirely.

It really isn't all about us. Take for example, the case of *Fla. Bar v. Norkin*, 132 So.3d 77 (Fla.2014). On a report by opposing counsel, a unanimous Florida Supreme Court suspended a 19-year practicing lawyer for two years, twice the suspension time sought by the Florida State Bar. The offending lawyer was reported for yelling, exhibiting rude and antagonistic behavior before the bench, insinuating collusion between opposing counsel and the bench and repeatedly disparaging opposing counsel in and out of the courtroom. Here, the Florida Supreme Court made some helpful observations in understanding how important professional behavior is – for effective representation of our clients, our courts and our profession in the eyes of the public.

The Court stated: "The Court and the Bar share the 'overarching objective of increasing the professionalism aspiration of all lawyers in Florida and ensuring that the practice of law remains a high calling with lawyers invested in not only the service of individual clients but also service to the public good as well.'" The *Norkin* court noted: "One can be professional and aggressive without being obnoxious. Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward opposing counsel." Finally, the court stated: "We do not take any pleasure in sanctioning Norkin, but if we are to have an honored and respected profession, we are required to hold ourselves to a higher standard … By his unprofessional behavior, he has denigrated lawyers in the eyes of the public … His unprofessional conduct is an embarrassment to all members of the Florida Bar."

The Florida Supreme Court was right. Reporting counsel was not "telling tales" or making "idle talk." The offending attorney's abusive behavior was costing the reporting attorney's client time and money. The reporting attorney stood up for an embarrassed bench that declined to report after personally witnessing repeated insulting and demeaning behavior. One wonders how the lay people and witnesses in that case felt about the fairness of our justice system? Do you take pride in your profession? Does "civility and professionalism" matter? Stand up and tell it when you know it. You must. Only you can make character count.