

Bar Counsel Report

In Re: STEVEN L. YARMY
Bar No.: 8733
Case No.: 88758
Filed: 12/05/2024

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, under SCR 113(1), a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Steven L. Yarmy. Under this agreement, Yarmy admitted to multiple violations of RPC 1.3 (diligence), RPC 3.2(a) (expediting litigation), RPC 3.4(c) (fairness to opposing party and counsel), and RPC 8.4(d) (misconduct) and agreed to an 18-month suspension for these violations. Yarmy also admitted to materially breaching the probationary terms set out in In the Matter of Discipline of Yarmy, No. 77095, 2018 WL 6818540 (Nev. Dec. 24, 2018) (Order Approving Conditional Guilty Plea Agreement). In that matter, Yarmy was suspended for 18 months, with the suspension stayed if Yarmy complied with the terms of probation. In admitting a breach of the probationary terms, Yarmy has agreed that the stayed 18-month suspension be imposed and run consecutively to the 18-month suspension for the current rule violations. Thus, Yarmy has agreed to an aggregate 36-month suspension.

Yarmy has admitted to the facts and violations alleged in the complaint. The record therefore establishes that Yarmy violated the above-listed rules by failing to diligently pursue an appeal and communicate with the court after a settlement conference and by failing to appear for a calendar call, a firm trial setting, and an order to show cause. The record further establishes that Yarmy breached the terms of probation in Docket No. 77095.

Because Yarmy admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. See *In re Discipline of Arabia*, 137 Nev. 568, 571, 495 P.3d 1013, 1109 (2021) (explaining purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Yarmy admitted to knowingly violating duties owed to clients (diligence), the legal system (expediting litigation, fairness to opposing party and counsel), and the profession (misconduct). The misconduct resulted in injury or potential injury to the clients and the legal

system. The baseline sanction before considering aggravating or mitigating factors is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2023) (providing that suspension is appropriate when "a lawyer knowingly fails to perform services for a client and causes serious or potentially serious 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 finding of four aggravating factors (prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and three mitigating factors (absence of a dishonest or selfish motive, personal, or emotional problems, and remorse). Considering all four factors, we conclude that the agreed-upon 18-month suspension for the underlying misconduct, to run consecutive to the 18-month suspension that had been stayed in Docket No. 77095, sufficiently protects the public, the courts, and the legal profession.

Accordingly, we suspend attorney Steven L. Yarmy from the practice of law in Nevada for 36 months commencing from the date of this order. Yarmy shall fully comply with the terms and conditions of all prior disciplinary orders as a criterion for reinstatement, including paying \$34,023.97 in restitution. Yarmy shall remit payment of this restitution to the Clients Security Fund under RPC 1.15(f) and attach the proof of payment to any application for reinstatement. Yarmy shall also pay the actual costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 60 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

Case No.: SBN24-00243
Filed: 10/31/2024

ADMONITION

To [Attorney]:

A Northern Nevada Disciplinary Board Screening Panel convened on October 24, 2024, to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct ("NRPC") and admonished you for your handling of your client's matter. This letter constitutes delivery of the Panel's admonition.

In June 2022, your client sought your assistance in recovering from her neighbor for damage caused by the neighbor's tree's roots. Initially, your client sought

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compensation for damage to her sewer line. You agreed to assist her and, on August 1, 2022, sent a letter to her neighbors, making them aware of the damage caused by their tree's roots. The neighbors were presented with the options of filing a claim with their insurance company or directly compensating Westwood in the amount of \$2,415. The neighbors chose to submit the matter to insurance, and you began communicating with the neighbor's insurance company, Farmer's. Your communications included providing Farmer's with a video of the damage to the sewer line.

You also subsequently provided Farmer's with a claim that your client's driveway was damaged by the neighbor's tree roots as well.

In August 2023, a check from Farmer's was remitted to you in the amount of \$2,415 for repair of the damage to your client's sewer line. Farmer's disputed that the [sic] claim for driveway damage. Farmer's letter includes the phrase "[a]ccepting this payment does not represent an acknowledgement or agreement that the claim is settled and is not a release of future liabilities."

You failed to inform your client of the insurance check until October 2023, when she contacted you again because her home was flooded as a result of the unrepaired sewer line. Your client's request for damages increased significantly. You immediately sent Farmer's a new demand letter which, incorrectly, stated that you had not received any communication from it since June 2023.

When you spoke with your client about the settlement check you incorrectly advised her that the check would be a final settlement of her claims. Because of the new flood damage, she felt the amount from Farmer's was now inadequate to cover the extensive repairs and accepted your advice to decline the settlement offer.

Between mid-October 2023 and the end of January 2024, your client attempted to communicate with you regarding her new damages and the status of negotiations with Farmer's. You failed to respond to any of the client's efforts. You have asserted that your failure to communicate was due to the client failing to sign a fee agreement for a more comprehensive retention and pay an advance on fees. However, your assertion is belied by the dates of the proposed fee agreements (May and June 2023) and your October 2023 letter to Farmer's on her behalf. There is no evidence that you communicated to your client after October 2023 that you would not represent her further on the matter unless she signed the fee agreement and paid the fee advance.

At your client's request in January 2024, you provided her with your complete file from the matter. At that point she had repaired the flooding in her home through her own insurance company and, finding the Farmer's check in the file, cashed it, and received \$2,415 in compensation for her damages.

Violation of the Nevada Rules of Professional Conduct

NRPC 1.3 (Diligence) states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Here, you did not promptly inform your client of the settlement offer for the full amount requested for the sewer damage. You also failed to respond to numerous email and phone message inquiries from your client sent over three months.

NRPC 1.4 (Communication) states, in relevant part, that a lawyer is required to:

- 1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- 2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- 3) Keep the client reasonably informed about the status of the matter;
- 4) Promptly comply with reasonable requests for information; and
- 5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

It also requires that "[a] lawyer [] explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

In this instance, you failed to promptly and/or reasonably inform your client of the Farmer's payment and the related parameters. You also failed to reasonably and/or adequately inform your client of the necessary steps to have you continue to pursue remedies on her behalf, such as the need to execute the fee agreement and pay a retainer.

Application of the ABA Standards for Imposing Lawyer Sanctions

ABA Standard 4.43 states "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 ABA Standards define "negligence" as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." Your failure to communicate promptly and thoroughly with your client in the two months after you received the check from the insurance company and in the three months after you sent the supplemental demand letter to the insurance company exhibits a failure to heed a substantial risk that your delay and lack of communication would result in injury or other issues for your client.

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Your lack of diligence in advancing your client's matter and communicating with her caused her injury, albeit minor, because she was ultimately compensated for her damages.

Consistent with Standard 4.43, the baseline sanction for your conduct is a reprimand.

You have no discipline history in 46 years of practicing law, lacked a dishonest or selfish motive, and cooperated with the bar investigation. Thus, it is appropriate to deviate downward from the baseline sanction and issue an admonition for your misconduct.

Based on the foregoing, you are hereby **ADMONISHED** for violations of NRPC 1.3 (Diligence) and 1.4 (Communication). Please promptly conclude this matter by remitting the cost of \$750 within 30 days of the issuance of this sanction. SCR 120(3).

Please allow this Admonition 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.

Case No.: SBN24-00031
Filed: 10/17/2024

ADMONITION

To [Attorney]:

A Screening Panel of the Southern Nevada Disciplinary Board reviewed the above-referenced grievance and voted to issue you an **ADMONITION** for violating rules 1.4(a), 1.5(a), 1.15(a), 1.15(c), and 1.16(d) of the Nevada Rules of Professional Conduct ("RPC").

UNDERLYING FACTS

A client retained you to represent him in a domestic matter. The client agreed to pay a flat fee and made a down payment. While not contained in the retainer, you and the client agreed to pay the remainder of the flat fee plus costs after you drafted a complaint for divorce. The client claims you stated the complaint would be ready the following month. During the State Bar's investigation, you provided a draft copy of the complaint but claimed the client had not provided a narrative for you to file a temporary order alongside the complaint. Around or about this time, however, you also began experiencing health problems and were in and out of the office while you obtained medical care.

The following month, the client called your office and spoke with your legal assistant. The client asked you to return his call, but you did not reply. Around or about this time, you were admitted to the emergency room as your health declined.

Later that month, the client called your office again and spoke with your legal assistant. The client asked you to return his call, but you did not reply.

The following month, the client called your office and left a voicemail. The client asked you to return his call, but you did not reply. Around or about this time, your health worsened and you sought additional medical care.

After having not received a response for approximately ninety days, the client filed a grievance with the State Bar. During the State Bar's investigation, you stated the flat fee agreement was earned upon receipt. You also admitted that you deposited the down payment directly into your operating account. You apologized to the State Bar if your representation "fell below the standard" you set for your office. You later refunded the client his down payment in full.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

The Screening Panel concludes that you violated the following rules:

RPC 1.4(a) (Communication) states that "a lawyer shall ... (3) [k]eep the client reasonably informed about the status of the matter; [and] (4) [p]romptly comply with reasonable requests for information ..." You violated RPC 1.4(a) after you failed to keep your client reasonably informed about the status of his matter and comply with his reasonable requests for information. Your client contacted your office several times over three (3) months to ascertain the status of his matter, but you did not reply.

RPC 1.5(a) (Fees) states that "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." While you titled your flat fee retainer as "non-refundable," that fee is unreasonable if you demonstrate little to no work on behalf of the client. While you provided a copy of a complaint for divorce to the State Bar, you violated RPC 1.5(a) after you failed to demonstrate how you earned even the down payment before the client terminated your services.

RPC 1.15(a) (Safekeeping Property) states that "[a] lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person." You violated RPC 1.15(a) after you failed to hold client funds in connection with representation separate from your own property. By your own

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admission to the State Bar, you deposited the client's down payment directly into your operating account. While you claimed to the State Bar that the "flat fee retainer agreement specified that the fee would be earned upon receipt," this is an act of comingling until you can demonstrate you earned the fee. Consistent with the Nevada Supreme Court's recent decision in *In re Sull*, 140 Nev. Adv. Op. 54 (2024), we take this opportunity to remind you that an advance fee must always be placed in a client trust account and only disbursed to the lawyer after a fee is earned, an expense incurred, or upon achieving pre-set "milestones" in your retainer.

RPC 1.15(c) (Safekeeping Property) states that "[a] lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." You violated RPC 1.15(c) after you did not deposit the down payment towards the advance fee into a client trust account until you earned the fee. You instead deposited the advance fee into your operating account and claimed the fee was "fully-earned" even though you completed little to no work on Grievant's behalf and failed to communicate with him for three (3) months.

RPC 1.16(d) (Declining or Terminating Representation) states that "[u]pon termination of 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. The lawyer may retain papers relating to the client to the extent permitted by other law." You violated RPC 1.16(d) after you failed to refund any unused portion of the advance fee. Your retainer provided a calculation for how fees were to be calculated upon termination of representation, but you still claimed the fee was "fully earned" without justification. Your client retained you to draft and file a complaint for divorce. While you provided a copy of the complaint to the State Bar, you did not demonstrate when you completed this work to justify keeping the totality of the down payment before failing to respond to your client for several months.

APPLICATION OF ABA STANDARDS

Pursuant to Annotated Standards for Imposing Lawyer Sanctions (2019 ed.) (hereinafter "ABA Standard") 3.0, when imposing a sanction after a finding of lawyer misconduct, the Screening Panel should consider the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating circumstances.

ABA Standard 4.13 (Failure to Preserve the Client's Property) states that a Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

ABA Standard 4.43 (Lack of Diligence) states that a 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.

ABA Standard 7.3 (Violations of Duties Owed as a Professional) states that a 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.

Rule 102.5(1) of the Nevada Supreme Court Rules defines aggravating circumstances as any considerations or factors that may justify an increase in the degree of discipline to be imposed. SCR 102.5(2) defines mitigating circumstances as any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

CONCLUSION

While prior disciplinary offenses, multiple offenses, and substantial experience in the practice of law are aggravating circumstances, timely good faith effort to make restitution, full and free disclosure to disciplinary authority, physical disability, remorse, and remoteness of prior offenses are mitigating circumstances. We appreciate your participation with the Office of Bar Counsel to improve the language of your flat fee retainers and therefore find the totality of these mitigating circumstances persuasive to justify a decrease to the ABA baseline sanction. That said, you or your office should have contacted the client and advised him of your condition or unavailability. Alternatively, you should have withdrawn from representation pursuant to RPC 1.16(a)(2) and refunded the advance fee to the client.

Based on the foregoing, you are hereby **ADMONISHED** for violating RPC 1.4(a) (Communication), RPC 1.5(a) (Fees), RPC 1.15(a) (Safekeeping Property), RPC 1.15(c) (Safekeeping Property), and RPC 1.16(d) (Declining or Terminating Representation). Please conclude this matter by remitting the cost of \$750 within thirty (30) days of the issuance of this Admonition. SCR 120(3).

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Please allow this Admonition 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.

Case No.: SBN23-01066
Filed: 12/02/2024

ADMONITION

To [Attorney]:

A disciplinary panel of the Southern Nevada Disciplinary Board reviewed this matter against you. We unanimously find that you violated rules 1.5(a), 1.15(a), and 1.16(d) of the Nevada Rules of Professional Conduct (“RPC”). This misconduct, your mental state, the degree of injury, and a balancing of aggravating and mitigating circumstances requires us to issue you an Admonition with some conditions. This discipline is to ensure your professionalism and adherence to our ethical standards as attorneys in the State of Nevada. We encourage you to take appropriate action to prevent similar misconduct in the future.

VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT

RPC 1.5(a) (Fees) states that “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” In this matter, we find you violated RPC 1.5(a) after you charged and/or collected from your client several fees that—when viewed together—are unreasonable. While you provided an invoice to the State Bar and demonstrated that you likely earned the totality of the flat fee retainer with your client, you still charged the client when he paid his retainer, when his payment failed, when he simply uploaded documents, and to review his email terminating the attorney-client relationship. We acknowledge that your client was sometimes difficult, uncooperative, and non-responsive during representation, but the actions of a client do not permit you to engage in bill-padding to justify your invoice should that client later terminate your services and demand a refund. Bill-padding, by its definition, is unreasonable.

RPC 1.15(a) (Safekeeping Property) states that “[a] lawyer shall hold funds or other property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client

or third person.” In this matter, we find you violated RPC 1.15(a) after you failed to hold client funds in connection with representation separate from your property by failing to deposit an advance fee and filing fee into a bank account designated as a client trust account. Consistent with the Nevada Supreme Court’s recent decision in *In re Sull*, 140 Nev. Adv. Op. 54 (2024), we take this opportunity to remind you that an advance fee must always be placed in a client trust account and only disbursed to the lawyer after a fee is earned, an expense incurred, or upon achieving pre-set “milestones” in your retainer.

RPC 1.16(d) (Declining or Terminating Representation) states that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as ... 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.” In this matter, we find you violated RPC 1.16(d) after you failed to refund your client’s filing fee for four (4) months. Your client terminated the attorney-client relationship on August 21, 2023 and requested a refund of his retainer. While you likely earned the advance fee as previously discussed, you still needed to refund the unaccrued filing fee. After the client filed a grievance and the State Bar sent a lawful demand for information on December 19, 2023, you immediately refunded the filing fee.

MENTAL STATE

In this matter, we find that you were negligent for your handling of a client’s advance fee and charging him several unreasonable fees. A respondent acts negligently if he fails “to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation.” ABA Standards for Imposing Lawyer Sanctions (2d ed. 2019), p. xxi (“ABA Standard”).

INJURY

An injury or potential injury can range from “serious or potentially serious” to “little or no actual or potential” injury. In this matter, we find that you caused an injury or potential injury to (1) your client by failing keep his advance fee separate from your own property, including the filing fee; and (2) the legal profession by charging unreasonable fees and failing [sic] refund the filing fee until the State Bar made a lawful demand for information. The degree of injury or potential injury to your client and the profession was moderate.

APPLICATION OF ABA STANDARDS

Pursuant to Annotated Standards for Imposing Lawyer Sanctions (2019 ed.) (hereinafter “ABA Standard”) 3.0, when imposing a sanction after a finding of lawyer misconduct, the Screening Panel should

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consider the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating circumstances.

Based upon the conduct above, your state of mind, and the injury, we find that the baseline sanction for this matter was a Reprimand.

ABA Standard 4.13 (Failure to Preserve the Client's Property) states that a Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

ABA Standard 7.3 (Violations of Duties Owed as a Professional) states a 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.

While prior disciplinary offenses, multiple offenses, and substantial experience in the practice of law are aggravating circumstances, timely good faith effort to make restitution or to rectify consequences of misconduct, and full and free disclosure to disciplinary authority are mitigating circumstances.

Additionally, your retainer previously included the following language:

"[Y]ou have agreed to pay a fully-earned, flat fee of [omitted], which includes your mandated [filing] fee ... [Y]ou agree flat fees and costs may be deposited into our operating account. However, you have the right to require flat fees be deposited in an identified trust account until the fees are earned. You are always entitled to a refund of any amount of the fees deposited that has not been earned in the event our representation is terminated or the services for which the fees have been paid are not completed. Please note though, we do the majority of the required work up front and thus making our fees earned."

This language does not alleviate you of your ethical duty to keep an advance fee or filing fee separate from your own property until the fee is earned or the filing fee incurred. See RPC 1.15(c) ("A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.") (emphasis added) Suggesting in your retainer that a client may request a refund but that you do "the majority of the required work up front and thus making our fees earned" is also misleading. Alongside immediately depositing all fees—including any filing fee—immediately into your operating account, your retainer confuses [sic] who any unearned attorney's fees or an unaccrued filing fee may

belong. That said, we find your participation with the Office of Bar Counsel to remove this language and adopt a new retainer persuasive.

Your retainer now includes the following language:

Client agrees to pay Attorney a fixed flat fee of [omitted], of which [omitted] is to be paid prior to the filing of the case and includes any initial court filing fee. The fees paid will be originally deposited into the Attorney's Trust Account.

The fees will be transferred to the Attorney's Operation Account upon completion of work by the Attorney in relation to Client's case. The Attorney fees are earned based upon time spent on Client's case ... Once fees are earned by the Attorney, they are non-refundable even if the Client ultimately chooses not to file the case, either by an active cancellation by the Client or by cancellation by the Attorney due to the Client becoming non-responsive and/or non-compliant for an unreasonable amount of time ... Client is always entitled to a refund of any amount of the fees deposited that has not been earned in the event the Attorney's representation is terminated or the services for which the fees have been paid are not completed.

As such, we find that a balancing of these aggravating and mitigating circumstances does justify a decrease to the ABA baseline sanction.

CONCLUSION

In light of the foregoing, you violated RPC 1.5(a) (Fees), RPC 1.15(a) (Safekeeping Property), and RPC 1.16(d) (Declining or Terminating Representation) and are hereby **ADMONISHED**.

You are ordered to participate in good faith with any fee dispute that arises for the next twelve (12) months. Based upon the facts and circumstances and your violation of RPC 1.5(a) and RPC 1.16(d), this condition is intended to create protection of the public and increase confidence in the integrity of the legal profession. See SCR 102(2); ABA Model Rule 1.5 (Fees), cmt. [9] ("If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar ... even when it is voluntary, the lawyer should conscientiously consider submitting to it.") (emphasis added).

You are ordered to pay costs, provided for in SCR 120, in the amount of \$750 plus the hard costs of these proceedings within thirty (30) days after the filing of an order accepting this Admonition.

TIP

FROM THE BAR COUNSEL

How do you know when a fee is earned?

The clearest answer is when the work has been performed. Determining when a fee is earned works well in a contingency fee case or a short transactional representation. It can become more cumbersome if the representation spans a lengthy period or involves multiple elements.

In those circumstances, it is not realistic to wait to be paid when the totality of the work has been performed—at the end of the representation. There are other ways to measure whether a fee is earned in those instances, as well as when it is not functional to wait to the end of the representation to be paid.

The second clearest answer to the question occurs when a lawyer charges their client an hourly rate for work performed and keeps contemporaneous records of time spent working on a client's matter. If the client pays according to an invoice sent only after the work is performed, then the payment is certainly earned. Often, lawyers who work on an hourly basis require a client to pay a lump sum in advance so that as the work is performed, the lawyer does not have to expend more time and energy trying to get paid for work already done. With advance payment, the lawyer performs the work, sends the client an invoice, and transfers the funds that are earned

according to the invoice. Occasionally, a client will dispute the fees charged on the invoice, but usually the process is smooth.

Another way to be clear on when a fee paid in advance is earned is when the lawyer and client agree that performing certain tasks equals earning a certain amount or portion of the total fee. This system works well if the lawyer and client are comfortable setting the total amount of the fee to be earned for a particular representation. This is often called a flat fee. Like an hourly fee, in this instance, the lawyer performs the work, informs the client that the task, such as filing a complaint or drafting a document, is complete, and transfers the funds that they agreed were due for performance of that task from the client trust account to the operating account. This method may result in fewer disputes over the amount earned because it is not dependent on a potentially subjective element like the amount of time a task should take to complete. Using milestones in a representation also allows a lawyer to be paid incrementally for work performed, instead of having to wait for the representation to be complete.

Ultimately, lawyers are paid for their time—there are many ways to fashion this payment arrangement. Regardless of which method you choose for calculating a fee, make sure that the work is performed before you take the funds from the client trust account.



FEES