

Bar Counsel Report

In Re: GIANNA M. ORLANDI
Bar No.: 5087
Case No.: 85346
Filed: 11/22/2022

ORDER OF DISBARMENT

This is an automatic review of a Southern Nevada Disciplinary hearing panel's recommendation that attorney Gianna M. Orlandi be disbarred based on violations of RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 5.3 (responsibilities regarding nonlawyer assistants), RPC 5.4 (professional independence of a lawyer), RPC 5.5 (unauthorized practice of law), RPC 8.1 (Bar admission and disciplinary matters), and SCR 78 (maintenance of trust funds in approved financial institutions; overdraft notification).

The State Bar has the burden of showing by clear and convincing evidence that Orlandi 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 amended complaint are deemed admitted because Orlandi failed to answer the amended complaint and a default was entered. SCR 105(2). The record therefore establishes that Orlandi violated the above-referenced rules by forming a law firm with a non-attorney who performed most of the legal work on the firm's cases. Orlandi failed to supervise the non-attorney, who held himself out as an attorney, met with clients, and provided legal advice. Orlandi also continued to bill a client for work performed by the non-attorney despite the client asking that the non-attorney not perform any further work on her case. Furthermore, Orlandi took over as lead counsel on a case without client approval, told opposing counsel she was no longer working on a case without informing the client, failed to file motion briefs or appear at a pretrial conference, and failed to acknowledge a client payment. Orlandi also began working on clients' cases who had hired the non-attorney under the belief that he was a practicing attorney without their permission and billed them for services after they terminated representation. In one instance, the non-attorney propositioned a client, implying that he would pay for or provide legal services in exchange for companionship. Orlandi also improperly claimed to the State Bar that she was exempt from maintaining a client trust account. And, while a State Bar investigator was able to contact Orlandi, who acknowledged the numerous grievances filed regarding her and the non-attorney, Orlandi never substantively responded to the investigator's requests for information regarding four grievances.

As for the appropriate discipline for these violations, we review the hearing panel's recommendation de novo, although the panel's recommendation is persuasive. SCR 105(3)(b); *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). To determine 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).

Orlandi knowingly violated duties owed to her clients, the legal system, and the profession. Orlandi's clients suffered actual injury because they unknowingly hired and paid a non-attorney to represent them, resulting in adverse consequences, with the potential for further serious injury. Orlandi also harmed the legal system as she aided the non-attorney in the unauthorized practice of law. Orlandi's failure to cooperate with the State Bar's investigation and her aiding in the unauthorized practice of law also harmed the integrity of the profession, which depends on a self-regulating disciplinary system.

The baseline sanction before considering aggravating or mitigating circumstances is disbarment. Standards for Imposing Lawyer Sanctions; *Compendium of Professional 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"). The record supports the panel's findings of one mitigating circumstance (absence of a prior disciplinary record) and five aggravating circumstances (dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders, and substantial experience in the practice of law). Having considered the four factors, we agree with the panel that disbarment is appropriate.

Accordingly, we disbar attorney Gianna M. Orlandi from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Orlandi shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.¹

In Re: MELISSA F. MACK
Bar No.: 8556
Case No.: 85326
Filed: 11/22/2022

ORDER IMPOSING RECIPROCAL DISCIPLINE AND DISBARRING ATTORNEY

This is a petition to reciprocally discipline attorney Melissa F. Mack pursuant to SCR 114. Mack has been disbarred from the practice of law in California. Mack did not self-report her California discipline as required by SCR 114(1), nor did she respond to this petition, SCR 114(3).

In representing personal injury clients, Mack willfully (1) failed to file and serve documents, appear at case conferences and hearings, and negotiate medical liens; (2) misled a superior court judge by making false statements about the status of a case, including falsely claiming that the defendant had accepted liability and the case had settled; (3) impersonated another attorney in emails and letters and misrepresented that the attorney was acting as co-counsel on a case; (4) made false statements to the court clerk about another attorney handling a case and being unable to appear; (5) sent letters and emails purportedly signed by another attorney to an insurance company without the other attorney's knowledge and the letters and emails contained misrepresentations about the deadline for serving a summons and complaint; (6) failed to maintain client funds in a trust account and misappropriated funds owed to her clients and their medical providers; and (7) misrepresented to her clients that she had negotiated medical liens. These actions violated (1) former California Rule of Professional Conduct 3-1 10(A), similar to RPC 1.1 (competence); (2) California Business and Professions Code (CBPC) § 6068(d), similar to RPC 3.31 (candor toward the tribunal-making a false statement of fact or law to a judge); (3) CBPC § 6103, similar to RPC 3.4(c) (fairness to opposing party and counsel-knowingly disobeying an obligation under the rules of a tribunal); (4) CBPC § 6106, similar to RPC 8.4(c) (misconduct involving dishonesty, fraud, deceit or misrepresentation); and (5) former California Rule of Professional Conduct 4-100(A), similar to RPC 1.15 (safekeeping property). As a result of these violations and her failure to participate in the disciplinary proceedings, the California Supreme Court entered an order disbaring Mack.²

SCR 114(4) mandates the imposition of identical reciprocal discipline unless the attorney demonstrates, or this court finds, that one of four exceptions applies. None of the four exceptions apply in this case, and “[i]n all other respects 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). Accordingly, we grant the petition for reciprocal discipline and hereby disbar Melissa F. Mack from the practice of law in Nevada. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.³

In Re: DAVID B. SANDERS
Bar No.: 7895
Case No.: 85114
Filed: 10/21/2022

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 in Nevada for four years, based on violations of RPC 1.2 (scope of representation), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (declining or terminating representation), and RPC 8.1 (disciplinary matters).

The State Bar has the burden of demonstrating by clear and convincing evidence that Sanders 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 Sanders failed to answer the complaint and a default was entered.⁴ SCR 105(2). The record therefore establishes that Sanders violated the above-referenced rules by failing to (1) communicate with three separate clients; (2) pursue mediation on behalf of one client, despite informing the client he was doing so; (3) timely send a demand letter on behalf of a second client resulting in a waiver of the client's claims; (4) send discovery, appear at an arbitration, or file a trial de novo on behalf of a third client, resulting in the dismissal of the client's claim; and (5) 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). 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 duties owed to his clients. His conduct harmed his clients and the profession. Specifically, two of his clients' claims are now precluded because he did not timely pursue them. The baseline sanction for the misconduct, before consideration of aggravating and mitigating circumstances, is suspension. See Standards for

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Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when ... a lawyer knowingly fails to perform services for a client 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 two aggravating circumstances (multiple offenses and pattern of misconduct) and one mitigating circumstance (absence of a prior disciplinary record).⁵

Considering all of the factors, we agree with the panel that a suspension is warranted. However, we disagree on the length of the suspension. Considering previous discipline imposed on attorneys who have committed similar misconduct and the fact that Sanders has no prior discipline in his 20-year career, we conclude a one-year suspension would serve the purpose of attorney discipline. *In re Discipline of Reade*, 133 Nev. 711, 716, 405 P.3d 105, 109 (2017) (explaining that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney); *see also In re Discipline of Nelson*, No. 82642, 2021 WL 2328484 (Nev. June 7, 2021) (Order of Suspension) (suspending attorney for one year where the attorney failed to serve a complaint on the defendants, to advance the client's action before the statute of limitations expired, and to timely withdraw); *In re Discipline of Pandullo*, No. 79873, 2020 WL 1492131 (Nev. March 23, 2020) (Order of Suspension) (suspending attorney for six months and one day for knowingly failing to appear at court hearings for multiple clients, failing to respond to multiple clients' requests for information, and failing to respond to the State Bar's grievance inquiries). Nevertheless, we conclude that the panel's other recommendations are appropriate.

Accordingly, we suspend attorney David B. Sanders from the practice of law in Nevada for one year commencing from the date of this order. Sanders shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order. Further, before seeking reinstatement, Sanders shall (1) reimburse the Client Security Fund for any funds paid to his clients that were involved in this disciplinary matter and (2) refund any unearned fees to those same clients.

It is so ORDERED.⁶

In Re: ANDREW WASIELEWSKI
Bar No.: 6161
Case No.: 85435 & 85436
Filed: 10/31/2022

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO SOUTHERN NEVADA DISCIPLINARY BOARD

Bar counsel has filed two petitions under SCR 111 (4) to inform this court that Nevada-licensed attorney Andrew Wasielewski has been convicted of misdemeanor offenses for theft and disorderly conduct.⁷ Wasielewski reported the convictions to the State Bar as required by SCR 111(2). Docket No. 85435 concerns Wasielewski's conviction for misdemeanor theft after he made unauthorized charges on a client's credit card over an eight-month period without having provided any legal services and despite having been removed as counsel by the court.⁸ Docket No. 85436 concerns his conviction for misdemeanor disorderly conduct after he transferred roughly \$17,000 from an elderly client's trust account into his own bank account.⁹

The crimes for which Wasielewski has been convicted are serious under SCR 111(6) because they involve theft, misappropriation, and improper conduct as an attorney. Therefore, a temporary suspension is required under SCR 111(7) and referral to a disciplinary board is required under SCR 111(8). Accordingly, we temporarily suspend Andrew Wasielewski from the practice of law in Nevada and refer this matter to the Southern Nevada Disciplinary Board for proceedings before a hearing panel in which the sole issue to be determined is the extent of the discipline to be imposed.¹⁰ See SCR 111(8).

It is so ORDERED.

In Re: ANDRAS F. BABERO
Bar No.: 1658
Case No.: 85192
Filed: 11/10/2022

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Andras F. Babero be suspended from the practice of law for four years based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation),

RPC 3.2 (expediting litigation), RPC 5.5 (unauthorized practice of law), and RPC 8.4 (misconduct). 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 Babero committed the violations charged. See *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's factual findings that Babero violated the abovereferenced 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 shows that, in representing a client and the client's business in two cases, Babero failed to diligently work on the cases and to keep the client informed as to their status. Babero also worked on one case while administratively suspended for not filing the required CLE report. Ultimately, Babero stopped working on the cases, resulting in the dismissal of the client's claims in one case and a substantial adverse default judgment of \$10 million (\$2.5 million in compensatory damages and \$7.5 million in punitive damages) in the other.

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).

The above actions violated the duties Babero owed to his client and the legal system. His mental state was knowing and his actions caused serious actual injury to his client, with the potential for further injury. The baseline sanction for Babero's misconduct, before considering aggravating and mitigating circumstances, is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standards 4.42(a) (Am. Bar Ass'n 2017) (recommending suspension when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client"). The panel found, and the record supports, one aggravating circumstance (substantial experience in the practice of law) and three mitigating circumstances (absence of a recent prior disciplinary record, absence of a dishonest or selfish motive, and personal or emotional problems). Considering all the factors, we conclude that a three-year suspension is sufficient to serve 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), rather than the four-year suspension recommended by the hearing panel.

Accordingly, we hereby suspend attorney Andras F. Babero from the practice of law in Nevada for a period of three years commencing from the date of this order. Babero shall also pay the costs of the disciplinary proceedings, including \$2,500 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.¹¹

ENDNOTES:

1. The Honorable Abbi Silver having retired, this matter was decided by a six-justice court.
2. The California State Bar filed disciplinary charges against Mack and served notice of such on her. Mack filed a response, and the disciplinary hearing was continued based on Mack's alleged health issues. After Mack failed to appear at a subsequent status check, the disciplinary court ordered her to provide medical documentation to support her claim that she was unable to participate in court proceedings. Mack failed to do so, and she failed to appear at the final status conference despite confirming that she would participate telephonically. The court scheduled the disciplinary hearing and Mack was served with notice of the hearing in accordance with California rules. She did not appear, resulting in a default and the factual allegations in the complaint being deemed admitted. Mack did not move to set the default aside and the State Bar filed and served a petition for disbarment. Mack did not respond to the petition.
3. The Honorable Abbi Silver having retired, this matter was decided by a six-justice court.
4. The State Bar served Sanders with the complaint and notice of intent to default by regular and certified mail at his SCR 79 address, his home address, and two other possible addresses the State Bar discovered for him. The State Bar also emailed the documents to Sanders.
5. The panel also found the aggravating circumstance of bad faith obstruction of the disciplinary proceedings, but there is no evidence in the record that Sanders obstructed the proceedings.
6. The Honorable Abbi Silver having retired, this matter was decided by a six-justice court.
7. Although both convictions were based on nolo contendere pleas, they constitute "convictions" for purposes of SCR 111. See SCR 111(1).
8. The offense was originally charged as a felony, but per negotiations, Wasielewski agreed to plead no contest to theft, less than \$650. He was convicted and ordered to pay \$20,000 in restitution, which he has since paid.
9. The offense was originally charged as felony exploitation of an elderly person but reduced to misdemeanor disorderly conduct. Wasielewski paid the court-ordered restitution.
10. This order constitutes our final disposition of these matters. Any future proceedings concerning Wasielewski shall be filed under a new docket number.
11. The Honorable Abbi Silver having retired, this matter was decided by a six-justice court.



TIP

FROM THE BAR COUNSEL

How to Avoid a Bar Complaint

Bar counsel receives more than 1,200 complaints each year. These complaints launch most bar counsel investigations. Bar counsel may investigate a matter without a formal complaint but only when something else “calls” the misconduct “to bar counsel’s attention.”¹ Bar counsel initiates less than 10 of these investigations each year. Most are public interest matters that bar counsel discovers from news reports. By far, the best way to avoid discipline is to avoid complaints.

Receiving a complaint is traumatic. Ethical or not, when a lawyer receives a letter or email from bar counsel, heart palpitations begin, sweat breaks out, and cold chills dominate. But lawyers can minimize or eliminate complaints against them. After reviewing thousands of complaints, bar counsel has developed a list of five simple rules that, if followed, will minimize – or eliminate – complaints.

- 1. COMMUNICATE WITH YOUR CLIENTS REGULARLY!** Sit down and discuss their objectives with them. Call them to discuss significant developments. Return their call, text, or email within 48 hours, and then document the communication. Email is efficient and creates an automatic record, but face time with a lawyer is crucial. A secretary, legal assistant, or paralegal can help you communicate. But, again, time with a lawyer is crucial.
- 2. SEND A STATUS REPORT EVERY MONTH.** Develop a form letter to address recurring questions and issues. Advise the client of their case status in two or three sentences. Include the client’s account balance and invoice. A monthly report will remind the client that you are working diligently on their case. An informed client is a happy client.

- 3. UNDER-PROMISE AND OVERPERFORM.** Promising the moon will never end well. Give conservative estimates for timelines and outcomes, and then work hard to overachieve. Clients love a lawyer who performs better than expected. And word-of-mouth is valuable marketing.
- 4. DISBURSE CLIENT FUNDS WITHOUT DELAY.** Clients and lienholders complain when lawyers prolong disbursement. Make sure your client trust account is in order. Under RPC 1.15(d),(e) a lawyer must disburse the funds promptly. If the funds are upside down, then the lawyer must act diligently to resolve the dispute. This process often means negotiating with lienholders. If the lienholders refuse or take too long to negotiate, then the lawyer must file an interpleader action. The lawyer should not disburse to the client or to themselves before the lienholders without court approval.
- 5. DO NOT ACCEPT DIFFICULT CLIENTS, BUT IF YOU DO, TERMINATE THEM PROPERLY.** Your gut instincts are always right. Never take a difficult client for the money. You will only resent them as time passes, especially after their calls and demands grow unreasonable. Trust your intuition. If you accept a client and later find them problematic, then get rid of them! RPC 1.16 allows you to terminate a troubled relationship. You do not need the headache. But remember to protect the client from foreseeable injury. Don’t dump the client before an important hearing or trial. Help the client find substitute counsel if possible. Return the client’s property and file. Remember, the client owns the case and the file. Even if the client has not paid for the expert report or the deposition transcripts, they belong to the client. Emails belong to the client. And don’t puff hours to keep the retainer; return the unearned portion. Make a clean break.

The most important thing lawyers can do to avoid a state bar complaint is to make their clients happy. A dissatisfied or confused client will contact the lawyer for an explanation or redress first before lodging a state bar complaint. Regular communication and fair dealing are the best ways to avoid a complaint.

ENDNOTE:

1. SCR 104(1)(a).