

Bar Counsel Report

In Re: KEVIN DENNIS HOLTMAN
Bar No.: 11603
Case No.: 86300
Filed: 05/16/2023

ORDER OF DISBARMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Kevin D. Holtman be disbarred based on violations of RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct).

The State Bar has the burden of showing by clear and convincing evidence that Holtman 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 Holtman failed to answer the complaint and a default was entered. SCR 105(2). The record therefore establishes that Holtman violated the above-referenced rules by receiving settlement funds on behalf of two clients and failing to inform them of the settlement or pay any of the funds to the clients or to the medical liens associated with their case. Holtman also failed to pay medical liens on behalf of other clients. And a review of Holtman's trust account revealed that Holtman made numerous unexplained withdrawals and wrote large checks to himself, some of which Holtman deposited in his firm's operating account. Holtman also failed to respond to the Bar's requests for information.

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).

Holtman knowingly violated duties owed to his clients, the legal system, and the profession. Holtman's clients and their lienholders suffered actual injury because Holtman did not pay them the funds to which they were entitled. And Holtman's failure to cooperate with the State Bar's investigation 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 five aggravating circumstances (prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and that no mitigating circumstances applied. Holtman's prior discipline is particularly relevant. In

particular, we suspended Holtman for three years in 2021, *In re Discipline of Holtman*, No. 82993, 2021 WL 4399344 (Nev. Sept. 24, 2021) (Order of Suspension), based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 8.1 (bar disciplinary matters), and for two years and one day in 2022, *In re Discipline of Holtman*, No. 83770, 2022 WL 278368 (Nev. Jan. 28, 2022) (Order of Suspension), based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.2 (expediting litigation), and RPC 8.1 (bar disciplinary matters). Having considered the four factors, we agree with the panel that disbarment is appropriate.

Accordingly, we disbar attorney Kevin D. Holtman from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Holtman 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.

In Re: MICHAEL MORRISON
Bar No.: 1665
Case No.: 86444
Filed: 04/27/2023

ORDER TRANSFERRING ATTORNEY TO DISABILITY INACTIVE

The State Bar and attorney Michael Morrison have filed a joint petition asking this court to transfer Morrison to disability inactive status because Morrison currently is incapable of continuing the practice of law or defending against a pending disciplinary proceeding due to a medical condition for which Morrison is receiving treatment. Having reviewed the petition and supporting documentation, we conclude that Morrison is incapacitated for the purpose of practicing law or defending against a pending disciplinary proceeding.

Accordingly, we transfer attorney Michael Morrison to disability inactive status commencing from the date of this order. See SCR 117(2). Any pending disciplinary proceeding or investigation against Morrison is suspended. *Id.* Morrison must comply with SCR 117(4) in seeking reinstatement and may resume active status only upon reinstatement by order of this court. The parties shall comply with SCR 115 and SCR 121.1. See SCR 117(7).

It is so ORDERED.¹

In Re: THOMAS J. GIBSON
Bar No.: 3995
Case No.: SBN21-99196
Filed: 04/13/2023

PUBLIC REPRIMAND

To Thomas J. Gibson:

On March 16, 2023, a Formal Hearing Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel unanimously accepted the Conditional Guilty Plea and concluded that you should

be issued a Public Reprimand for violations of Rule of Professional Conduct (“RPC”) 1.3 (Diligence), 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), and RPC 8.4 (Misconduct).

On or about March 7, 2018, R.S. (hereinafter “Grievant”) went to your office and met with your nonlawyer assistant, Dawn Mayer (hereinafter “Ms. Mayer”), seeking assistance in clearing up the titles of several of his properties and to prepare them for sale. Ms. Mayer is a paralegal who does business as Legal Services of Pahump, LLC and/or Cahlan-West Legal Services, and is an independent contractor for you. You were not present during the initial consultation when Grievant retained your services. Records indicate that Grievant paid Ms. Mayer directly with two (2) checks in the amount of \$2,000.00 each, totaling \$4,000.00. You did not receive any of the \$4,000.00 Grievant paid to Ms. Mayer.

You directed Ms. Mayer to draft four (4) Complaints to Quiet Title regarding Grievant’s properties. On October 13, 2019, three (3) of the complaints, which noted that Grievant was representing himself “in Proper Person,” were filed. The filing fees for the complaints were paid via check(s) issued by Cahlan-West Legal Services. The fourth complaint was filed on November 13, 2020. The filing fee for this complaint was also paid via a check issued by Cahlan-West Legal Services. On September 17, 2021, the Court entered a judgment in favor of Grievant regarding his fourth case. You have taken no action in Grievant’s three (3) remaining cases since January 30, 2020, when Notices of Lis Pendens were “submitted by plaintiff Ron Sharp, in proper person.” The filing fees for the Notices of Lis Pendens were also paid via check(s) issued by Cahlan-West Legal Services. Lastly, a review of your client ledger and the Court’s documented fees and costs to date revealed that while you “wrote off” \$107.50 owed by Grievant, you overbilled for his costs and/or failed to account for \$809.00 in filing and recording fees Ms. Mayer paid in connection with Grievant’s matters.

RPC 1.3 (Diligence) states that a lawyer “shall act with reasonable diligence and promptness in representing a client.” You failed to act with reasonable diligence and promptness while representing Grievant. Over seventeen (17) months elapsed between the date Grievant retained you and the date the first set of complaints were filed. Moreover, you failed to take any action on Grievant’s remaining cases since Notices of Lis Pendens were filed on January 30, 2020. Under ABA Standard 7.3, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. This type of ethical breach caused injury to Grievant.

RPC 1.15 (Safekeeping Property) states, in pertinent part, 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.” The Rule further states that “[c]omplete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.” You failed to keep complete records of funds received from Grievant and/or failed to preserve the same. Under ABA Standard 7.3, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation

of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. This type of ethical breach caused injury to Grievant.

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) states, in pertinent part, that a lawyer “having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” You failed to adequately supervise Ms. Mayer and/or ensure that the services provided by Ms. Mayer were compatible with your professional obligations. Under ABA Standard 7.3, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. This type of ethical breach caused injury to Grievant.

RPC 5.4 (Professional Independence of a Lawyer) states, in pertinent part, that unless one of five narrow exceptions are applicable, a lawyer or law firm “shall not share legal fees with a nonlawyer.” The Rule further states that a lawyer “shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.” You allowed Ms. Mayer to provide legal advice on Grievant’s quiet title claims. Under ABA Standard 7.3, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. This type of ethical breach caused injury to the public and/or the legal system.

RPC 8.4 (Misconduct) states that “[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate the RPC, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (e) state or simply imply an ability to influence improperly a government agency or official or to achieve results by means that violate the RPC or other law; or (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or law. “The State Bar’s Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 34 (revised June 24, 2009), states that “‘ghost-lawyering’ is unethical unless the ‘ghost-lawyer’ under Rule 11 upon every paper filed with the court for which the ‘ghost-lawyer’ gave ‘substantial assistance’ to the prose litigant by drafting or otherwise.” (emphasis in original). You engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by directing Ms. Mayer to draft three (3) complaints that identified Grievant was proceeding “in Proper Person.” Under ABA Standard 5.13, reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation that adversely reflects on the lawyer’s fitness to practice law. This type of ethical breach caused injury to the public and/or the legal system.

In light of the foregoing, you are hereby PUBLICLY REPRIMANDED for violating RPC 1.3 (Diligence), RPC 1.15 (Safekeeping Property), RPC 5.3 (Responsibilities Regarding

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Nonlawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct). In addition, pursuant to SCR 120(3), you shall pay a \$1,500 fee plus the hard costs of the instant proceedings. You shall make such payment no later than thirty (30) days after receiving a billing from the State Bar.

In Re: REUBEN JORDAN GARDNER
Bar No.: 13337
Case No.: 86227
Filed: 04/21/2023

ORDER IMPOSING RECIPROCAL DISCIPLINE

This is a petition under SCR 114 for reciprocal discipline of attorney Reuben Jordan Gardner based on his reprimand in Arizona. Gardner self-reported his Arizona discipline as required by SCR 114(1) but has not responded to the petition. See SCR 114(3).

Gardner was reprimanded in Arizona on December 5, 2022. Gardner represented to the Arizona district court in a divorce proceeding that the wife was his client when he actually represented both the husband and wife, who had conflicting interests. Gardner did not obtain a conflict waiver. Based on Gardner's representation that the wife was his client, the district court entered a consent decree that was favorable to the husband without questioning the wife. On the wife's later petition, the district court vacated the decree. Based on these facts, Gardner admitted to having violated Arizona rules of professional conduct equivalent to Nevada's RPC 1.5 (fee agreements); RPC 1.7 (conflict of interest: current clients); and RPC 8.4(d) (misconduct prejudicial to the administration of justice). The Arizona court found six mitigating factors (absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure in responding to the State Bar, inexperience in the practice of law, character or reputation, and remorse) and one aggravating factor (vulnerability of victim). The Arizona court further found that Gardner acted knowingly and that there was potential harm to the client.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that at least one of four factors is present: (1) the procedure in the other jurisdiction denied the attorney due process; (2) there is such an infirmity of proof of the misconduct in the other jurisdiction that this court cannot accept the other court's decision; (3) substantially different discipline is warranted in this state; or (4) the established misconduct does not constitute misconduct under the rules of this state. None of the exceptions apply to this case and so we grant the petition for reciprocal discipline. Accordingly, we hereby publicly reprimand Gardner for his violations of the rules of professional conduct. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: GARY M. SEGAL
Bar No.: 3220
Case No.: SBN22-00332
Filed: 04/07/2023

LETTER OF REPRIMAND

To Gary M. Segal:

On March 14, 2023, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct ("RPC") and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

Cory Dacy hired you to represent him in his divorce proceedings. On September 14, 2020, you filed a complaint for divorce. On October 26, 2020, the court held a hearing and ordered the parties to file updated Financial Disclosure Forms. On February 10, 2021, the court entered an order setting evidentiary hearing and ordered the parties to complete discovery by April 10, 2021. You failed to complete your discovery requirements prior to the deadline. Opposing counsel sent three letters to you inquiring about your response to discovery requests and extending deadlines. Opposing counsel called and spoke with you regarding discovery and you failed to provide discovery. Opposing counsel was forced to file a motion to compel discovery. You opposed the motion. The Discovery Commissioner heard the matter and set new deadlines for discovery. Although your client provided you with the needed information you failed to provide it to opposing counsel. On October 7, 2021, the District Court held a hearing and Ordered that you pay \$4,500.00 in attorney fees and \$355.00 in costs on or before January 10, 2022. You personally paid opposing counsel \$4,855.50. Your new deadline for discovery was September 21, 2021. You did not send discovery, and opposing counsel requested a meet and confer to cure the failure to comply. You met with opposing counsel via telephone on September 23, 2021, and agreed to provide discovery by September 28, 2021. You failed to submit discovery. Opposing counsel was forced to file a motion to enforce discovery. You advised the court that you forgot to calendar the opposition and failed to respond. You also told the court that your office has been very busy and that everything would be provided. The Court entered an order and awarded additional attorneys fees in the amount of \$5,505.00. On May 3, 2022, the parties entered a Stipulated Decree of Divorce and there was no need for the evidentiary hearing. You agreed to and paid the additional attorney's fees.

RPC 1.1 (Competence) states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." You violated RPC 1.1 (Competence) by failing to comply with court rules regarding discovery.

Your failure to review and follow court rules also violated RPC 1.3. RPC 1.3 (Diligence) states, "A lawyer shall act with reasonable diligence and promptness in representing a client." You failed to diligently respond to discovery requests, resulting in the award of attorney fees against you. Your lack of diligence

also violated RPC 3.2 (Expediting Litigation), which states in pertinent part, “A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.” Your failure to comply with the discovery requests forced the court to hold two hearings on the discovery issues and kept the matter from moving forward.

RPC 3.4 (Fairness to Opposing Party and Counsel) states, in pertinent part, that a lawyer shall not “in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party.” You failed to calendar the discovery deadlines and produce the requested discovery.

Under ABA Standard 4.53, Reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.”

Under ABA Standard 4.43, 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 the client.

Under ABA Standard 6.23, Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

Accordingly, you are hereby REPRIMANDED for violating RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 3.2 (Expediting Litigation), and RPC 3.4 (Fairness to Opposing Party and Counsel). In addition, pursuant to Supreme Court Rule 120(3) you are required to remit to the State Bar of Nevada the amount of \$1,500 within 30 days of this Letter. I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

In Re: ROMEO R. PEREZ
Bar No.: 8223
Case No.: SBN22-00515
Filed: 04/20/2023

LETTER OF REPRIMAND

To Romeo R. Perez:

A Southern Nevada Disciplinary Board Screening Panel convened on April 11, 2023 to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct (“RPC”) 1.15 and Supreme Court Rule (“SCR”) 78 and that you should be reprimanded for your handling of your trust account and records in relationship to a client’s personal injury matter. This letter constitutes delivery of the Panel’s reprimand.

You represented a client in a matter related to an auto collision in December 2020. In August 2022, you negotiated a settlement on the client’s behalf, placed the settlement in your IOLTA and immediately issued a check to your client. Your IOLTA was still situated in Texas where you have not practiced in over a decade. A few days later, you wrote additional checks from your

IOLTA to settle claims by medical providers, vendors and to pay yourself. In September 2022, you wrote additional checks to your client and medical service providers from your IOLTA.

On October 14, 2022, medical provider Henderson Hospital tendered your IOLTA check #9085 for payment of \$5,794 based upon services they provided for your client. Chase Bank declined payment based upon that account having insufficient funds (\$4,773.52) to honor the third-party check amount. You did not maintain an office practice accounting ledger for sums involving your client’s case.

Rule of Professional Conduct (“RPC”) 1.15(a), (d) & (e) (Safekeeping Property) states: (a) “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.

Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of representation.”

- d) “Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”
- e) “When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.”

Supreme Court Rule (“SCR”) 78(1)(b) (Maintenance of trust funds ...; overdraft notification) states: “Every lawyer engaged in the practice of law in the State of Nevada shall maintain and preserve for a period for at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs ... ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds, or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or the property of a client, and make such records available to the state bar for inspection upon request.”

Here, you did not appropriately safeguard property, namely your client’s settlement funds to which he and third parties with

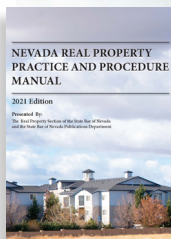
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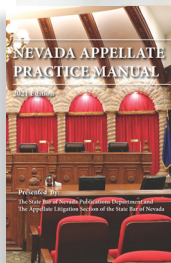
BOOKS FROM THE BAR



The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.



Nevada Real Property Practice and Procedure Manual - 2021 Edition



Nevada Appellate Practice Manual - 2021 Edition



Nevada Business Entities - 2022 Edition



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www.nvbar.org > News and Publications > Resources > Books and Manuals

an interest in. You did not keep the property separate until disputed sums with medical providers were resolved. Here, the fund sums were “upside down,” which put them in dispute. You withdrew monies for yourself before the disputed sums were resolved and paid. Thereafter, you paid out additional monies to your client and third parties. The dishonored check was part of your second disbursement.

Your knowing tender of a negotiated settlement to a medical provider to your client was dishonored as you did not maintain sufficient funds to honor your obligation. You made no attempt to verify the sums owed in relationship to the settlement funds received. You did not maintain a ledger or similar equivalent records “clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or the property of a client.” A client medical provider was injured. Your client and other providers suffered potential injury based upon the account insufficiency. Finally, your trust account was not maintained in the state of Nevada, where your practice office was situated.

ABA Standards for Imposing Lawyer Sanctions (2nd Ed. 2019), section 4.12 states: “Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.” Applying a negligence mental state with injury or potential injury produces a Reprimand baseline under Standards 4.13 which states: “Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.”

Based on the foregoing, you are hereby **REPRIMANDED** for a violation of NRPC 1.15. Please promptly conclude this matter by remitting the cost of \$1,500 within 30 days of the issuance of this sanction. SCR 120(3).

The State Bar wishes you the very best in your practice. Please allow this reprimand to serve as a thoughtful reminder of your professional ethical obligations in handling trust funds.

ENDNOTE:

1. This order constitutes our final disposition of this matter. Consistent with SCR 121(7), this order is public but all other proceedings and documents in this matter shall remain confidential.

TIP

FROM THE BAR COUNSEL

“You should get a lawyer!”

The “Shalls” and “Shall Nots” of Dealing with an Unrepresented Person

The Nevada Rules of Professional Conduct (NRPCs) largely assume equal footing between the opposing sides of a case, because parties are frequently represented by legal counsel. What if a lawyer finds themselves in the uncomfortable position of being opposed to, or working with, someone who is unrepresented by counsel? Are there professional rules directing “special handling” for such persons?

NRPC 4.3 (Dealing With Unrepresented Person) offers general guidance for a lawyer-advocate in opposition to the interests of a pro se litigant. Rule 4.3 states: “In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.” The rule requires the lawyer to be proactive by making “reasonable efforts to correct [a] misunderstanding” when the lawyer “knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter.” Finally, the rule provides that “the lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.” This rule applies across all legal practice specialties and NRPC 3.8(b)-(c) contains additional directives for criminal prosecutors.

The American Bar Association (ABA) comments to the mirror-image Model Rule 4.3 offers some insight into the rule’s intent and its application for us. Comment 1 points out the rule’s intent is to anticipate and direct some remedy for a misunderstanding that the pro se litigant might have that the opposing lawyer is “disinterested in loyalties” or a “disinterested authority.” Comment 2 explains that the lawyer need not temper advocacy for their client provided they are not offering legal advice to the other person, and they take sensible efforts to correct a misunderstanding of their role as other than an advocate for only one side. Comment 2 states: “So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer’s client will enter into an agreement or settle a matter, prepare documents that require the person’s signature and explain the lawyer’s own view of the meaning of the document or the lawyer’s view of the underlying legal obligations.”

NRPC 2.4 (Lawyer Serving as Third-Party Neutral) offers directives for the lawyer who finds

themselves in a counselor role, rather than that of an advocate. Rule 2.4(a) provides a definition of a “third party neutral.” Thereafter, the rule provides a specific directive along with language and concerns similar to NRPC 4.3. NRPC 2.4(b) states: “A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer’s role in the matter, the lawyer shall explain the difference between the lawyer’s role as a third-party neutral and a lawyer’s role as one who represents a client.”

The ABA comment to the Model Rule 2.4 points out that the risk of pro se litigant confusion is higher when the lawyer serves in the role of a counselor. This role-confusion risk is enhanced with the popularity of Alternative Dispute Resolution and the prominent adjudicatory or neutral role that lawyers frequently serve in that forum. Comment 3 elaborates: “Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer’s role as third-party neutral and a lawyer’s role as a client representative, including the inapplicability of the attorney-client evidentiary privilege.”

No unrepresented member of the public should ever be confused about where a lawyer stands in relationship to their own interests. As a self-governing profession, we are in a unique position to demonstrate the integrity of our profession. The dearth of disciplinary cases involving these specific rules evidences that we, as Nevada lawyers, have done well here. But we must be vigilant in abiding by these particular rules because often impressions of lawyers are first imprinted on non-clients, the public that learns of our profession by reputation long before we encounter them. Properly and effectively communicating where our loyalties lie will go a long way toward defending our hard-earned positive reputation in the general community.

