Bar Counsel Report

In Re: KELLY DUFORD WILLIAMS
Bar No.: 12657
Case No.: 87757
Filed: 04/26/2024

ORDER IMPOSING RECIPROCAL DISCIPLINE AND DISBARRING ATTORNEY

This is a petition to reciprocally discipline attorney Kelly Duford Williams pursuant to SCR 114. Williams has been disbarred from the practice of law in California. Williams did not self-report the California discipline as required by SCR 114(1) and did not respond to the State Bar's petition for reciprocal discipline. Williams is currently administratively suspended from the practice of law in Nevada.

Williams failed to safekeep funds, wrongfully withheld and misappropriated over $40,000 in client settlement funds and failed to provide an accounting when requested for two separate clients. Williams also assisted an employee in the unauthorized practice of law and filed a false police report that a young child was in danger. Finally, Williams failed to meaningfully respond to the California State Bar's letters investigating grievances regarding the above-listed misconduct, including a letter of complaint from a judge. These actions violated (1) California Business and Professions Code (CBPC) § 6106 (moral turpitude -misappropriation and issuance of NSF checks), which is similar to RPC 1.15 (safekeeping property); (2) CBPC 6068(i) (failure to cooperate in State Bar investigation), which is similar to RPC 8.1(b) (bar admission and disciplinary matters); (3) California Rule of Professional Conduct (CRPC) 1.15(a), (d)(4), and (d)(7) (safekeeping funds and property of clients and other persons), which are the equivalent of RPC 1.15 (safekeeping property); (4) CRPC 5.5(a)(2) (aiding the unauthorized practice of law), which is the equivalent of RPC 5.5(a)(2) (aiding the unauthorized practice of law); (5) CRPC 8.4(a) (knowingly assisting a violation of the rules), which is the equivalent of RPC 8.4(a) (assisting another in violating the RPCs); and (6) CRPC 8.4(b) (criminal act of dishonesty), which is the equivalent of RPC 8.4(b) (criminal act that reflects adversely on fitness as a lawyer). As a result of these violations, the California Supreme Court entered an order disbarring Williams.

This court must impose identical reciprocal discipline unless the attorney demonstrates or this court determines that (1) the other jurisdiction failed to provide adequate notice, (2) the other jurisdiction imposed discipline despite a lack of proof of misconduct, (3) the established misconduct warrants substantially different discipline in this jurisdiction, or (4) the established misconduct does not constitute misconduct under Nevada's professional conduct rules. SCR 114(4). We conclude that none of the exceptions apply.

Based on the third exception in SCR 114(4), we have on occasion declined to impose disbarment as reciprocal discipline when disbarment in the other jurisdiction is not permanent. We are convinced, however, that Williams' misconduct does not warrant substantially different discipline even though disbarment in Nevada is permanent. In particular, Williams' misconduct displays a pattern of dishonesty that makes disbarment an appropriate sanction. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass'n 2023) ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."); id., Standard 5.11(b) (providing that disbarment is generally appropriate when "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously reflects on the lawyer's fitness to practice"). That pattern of dishonesty continued during the California bar proceedings when Williams created and presented a falsified document to impeach a witness.

Accordingly, we grant the petition for reciprocal discipline and hereby disbar Kelly Duford Williams from the practice of law in Nevada. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: NICKOLAS S. GIORGIONE
Bar No.: 14370
Case No.: 88038
Filed: 04/19/2024

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, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Nickolas S. Giorgione. Under the agreement, Giorgione admitted to violating RPC 1.15(a) (safekeeping property) and RPC 8.4(b), (c) (misconduct). He agreed to an 18-month suspension, stayed for 36 months subject to certain conditions.

Giorgione admitted to the facts and violations as part of his guilty plea agreement. In addition to his work as an associate at a law firm, Giorgione accepted a small number of clients through his solo practice. The record establishes that in that solo practice, Giorgione violated the above-listed rules by misappropriating about $18,000 from his trust account through about 40 separate bank transfers to his operating account that were not related to earned fees or costs. He has repaid all the misappropriated funds.

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) (stating 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).

Giorgione admitted to knowingly violating duties owed to his clients (safekeeping property) and the profession (misconduct). The baseline sanction for such misconduct, before considering the aggravating or mitigating circumstances, is suspension. *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) (providing that suspension is 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'). The record supports the panel's findings of two aggravating circumstances (pattern of misconduct and illegal conduct) and six mitigating circumstances (absence of prior discipline, full and free disclosure to the disciplinary authority or cooperative attitude toward the proceeding, inexperience in the practice of law, chemical dependency, interim rehabilitation, and remorse). We agree with the panel's conclusion that the mitigating circumstances warrant a downward deviation from an actual suspension to a stayed suspension. Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Nickolas S. Giorgione from the practice of law for 18 months, with the suspension stayed for 36 months from the date of this order subject to the conditions outlined in the conditional guilty plea agreement. Those conditions include the requirement that Giorgione (1) continue active participation in the medical treatment regimen prescribed by Alexander Imas, MD, or his successor; (2) continue active participation in the mental health treatment regimen prescribed by Mark Chase, Ph.D., or his successor; (3) continue active participation in the AA/NA program; (4) obtain an attorney mentor; (5) have no direct handling or management authority of any client funds; and (6) engage in no professional misconduct. Giorgione 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 State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: REINSTATEMENT OF CURTIS W. CANNON
Bar No.: 10535
Case No.: 87767
Filed: 04/26/2024

ORDER REMOVING ATTORNEY FROM DISABILITY INACTIVE STATUS

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court grant attorney Curtis W. Cannon's petition for reinstatement from disability inactive status pursuant to SCR 117. In 2014, we transferred Cannon to disability inactive status and ordered that any pending disciplinary proceedings against Cannon be suspended.[1] In re Disability of Cannon, *No. 62540 (Sept. 24, 2014) (Order of Transfer to Disability Inactive Status and Referral for Examination by Qualified Medical Expert).*

Having considered the record, we conclude that Cannon has met his burden of demonstrating by clear and convincing evidence that his disability has been removed. SCR 117(4). However, we also temporarily suspended Cannon in 2017 pursuant to SCR 111 based on a conviction for a serious crime. *In re Discipline of Cannon,* No. 73723, 2017 WL 4158148 (Nev. Sept. 19, 2017) (Order Imposing Temporary Suspension Under SCR 111). Because a disciplinary panel and this court have not yet had the opportunity to consider the appropriate discipline, if any, for the conduct underlying Cannon's conviction, Cannon remains temporarily suspended from the practice of law in Nevada.

Accordingly, we grant the petition as to Cannon's request to be removed from disability inactive status but deny the petition as to Cannon's request to be reinstated to the active practice of law. Cannon thus remains suspended from the active practice of law in Nevada. We further direct the State Bar to resume any disciplinary proceedings that were suspended when we transferred Cannon to disability inactive status. SCR 117(4).

It is so ORDERED.

In Re: REINSTATEMENT OF JONATHAN B. GOLDSMITH
Bar No.: 11805
Case No.: 88005
Filed: 05/13/2024

ORDER OF CONDITIONAL REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to reinstate attorney Jonathan B. Goldsmith to the practice of law in Nevada. As no briefs have been filed, this matter stands submitted for decision on the record. SCR 116(6).

In 2016, we suspended Goldsmith for two years, with all but the first nine months of the suspension stayed pending compliance with specified conditions. *In re Discipline of Goldsmith*, No. 67013, 2016 WL 115760 (Nev. Jan. 7, 2016) (Order Approving Conditional Guilty Plea). Thereafter, the State Bar brought additional disciplinary proceedings against Goldsmith. As a result of those proceedings, we suspended Goldsmith for five years and one day commencing from August 23, 2018. *In re Matter of Goldsmith*, No. 77461, 2019 WL 495103 (Nev. Feb. 7, 2019) (Order of Suspension). The latter discipline order required Goldsmith to pay restitution in the amount of $18,841.20 within two years, and to pay the costs of the disciplinary proceedings. Id. Goldsmith petitioned for reinstatement after waiting the minimum period of time and having paid the ordered restitution and costs.

Based on our de novo review, we agree with the panel's conclusions that Goldsmith has satisfied his burden in seeking reinstatement by clear and convincing evidence. SCR 116(5) (providing that an attorney seeking reinstatement must demonstrate the reinstatement criteria "by clear and convincing evidence"); *Application of Wright*, 75 Nev. 111, 112-13, 335 P.3d 609, 610 (1959) (reviewing a petition of reinstatement de novo).

Because Goldsmith has been suspended for more than five years, Goldsmith must pass the Nevada Bar Examination as a condition of reinstatement. SCR 116(9). Relatedly, the hearing panel recommends that Goldsmith also be required to complete 13 hours of continuing legal education as a condition of reinstatement. Given that Goldsmith has not taken any continuing legal education during the suspension, we agree that this is an appropriate condition of reinstatement. See *116(9)* (allowing "any further conditions deemed appropriate by the panel").

We hereby reinstate attorney Jonathan B. Goldsmith to the practice of law in Nevada effective upon proof that Goldsmith has successfully completed the Nevada Bar

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Examination and completed 13 hours of continuing legal education, consisting of 10 general credits, 2 ethics credits, and 1 substance abuse or mental health credit. Upon Goldsmith's reinstatement to the practice of law, he shall be subject to a two-year probationary period. During that probationary period, Goldsmith must:

1) submit quarterly reports to the State Bar regarding all trust accounts in Goldsmith's name or in the name of any other person on behalf of any of Goldsmith's business entities in which client funds are placed;
2) submit all proposed advertisements through the Standing Lawyer Advisory Committee's predissemination process to ensure compliance with the applicable Rules of Professional Conduct;
3) meet with a State Bar-approved mentor twice a month to discuss his calendar, workload, stress levels and how he is managing them, his goals, and any other issues pertaining to Goldsmith's legal practice and obtain the mentor's guidance in maintaining a law practice;
4) work under the supervision of another attorney or the State Bar-approved mentor;
5) provide the State Bar with proof, on a quarterly basis, of participation in sobriety programs and create a program with a substance abuse counselor; and
6) abstain from drugs and alcohol. If Goldsmith uses drugs or alcohol, he must notify the State Bar within 24 hours of any relapse.

Goldsmith shall pay the costs of the reinstatement proceeding, if he has not already done so, within 30 days from the date of this order. See SCR 120(5).

It is so ORDERED.

Case No.: SBN23-00799
Filed: 02/22/2024

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 4.3 of the Nevada Rules of Professional Conduct ("RPC").

UNDERLYING FACTS

You serve as the president of your Homeowner's Association ("HOA"). Between May 2023 and as recently as January 2024, you sent letters to homeowners on behalf of the HOA using your law firm's letterhead. The header of your letterhead unambiguously states your full name and "Attorney at Law," further listing the jurisdictions you are admitted to practice, including Nevada. The footer of the letterhead unambiguously states your law firm's address, phone number, and fax number. Letters sent in this capacity therefore appear to be sent from your law firm, which you admit to sending to homeowners. Notably, when signing these letters on your law firm's letterhead, you sign them as "Esq." not as president of the HOA. You have engaged in this practice since at least 2013.

By your own admissions, the HOA has never retained your law firm. You instead provide "no cost counsel" and "do not bill" for your services beyond reimbursement for postage and other expenses. You further claim that obtaining "engraved letterhead" on behalf of the HOA is an "unnecessary expense," which is why you use your law firm's letterhead.

The contents of these letters would state you were writing "on behalf of" the HOA, made formal "demands," ordered persons to "cease" conduct, and reminded at least one recipient that the HOA is entitled to "attorney's fees" for having to enforce CCRs. In all letters on your law firm's letterhead, you signed the letter as "Esq." not as president of the HOA. Just recently in January 2024, you sent all "Neighbors" a letter about a garage sale but disposed of the "Esq." signature line. However, the same day, you sent all "Homeowners" a letter requesting payment of HOA dues but signed the letter as an attorney, not as president of the HOA. Also on the same day, you issued a demand to a fellow homeowner and signed the letter as both "Esq." and as president of the HOA. While you claim that "all of the residents know I'm an attorney," your blurring of relationships and roles as both an active attorney in the State of Nevada and president of the HOA have confused more than one homeowner, especially where no admitted attorney-client relationship exists between your law firm and the HOA.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

RPC 8.4(c) states that you do not engage in conduct that involves "dishonesty, fraud, deceit or misrepresentation …" However, Rule 102(f) of the Nevada Supreme Court Rules (revised October 26, 2023) states that "[a] screening panel may not issue an admonition if the respondent … [e]ngaged in dishonesty, deceit, fraud, or misrepresentation." The Screening Panel therefore concludes that you violated the following rules but also reminds you of your ethical obligations under RPC 8.4(c):

> RPC 4.3 states in relevant part that "[w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding."

You state that the HOA has not retained your law firm, but you instead provide "no cost" legal services to the HOA and act "on their behalf." You then send demands to homeowners on your law firm's letterhead and sign your correspondence as an attorney, not as president of the HOA. Your excuse that obtaining "engraved letterhead" for the HOA is too expensive is unpersuasive considering reasonable, affordable alternatives other than engaging in misrepresentation (i.e., the misuse of the letterhead). Your neighbors, fellow homeowners, and future permanent or temporary additions to your community could easily mistake your letters as a demand from a law firm, not the HOA and/or in your capacity as HOA president only. Despite your claim that "all of the residents know I'm an attorney," you have engaged in behavior that you know or reasonably should know could result in an unrepresented person to misunderstand your role in this matter. You further made no effort to correct the misunderstanding. In fact, since the State Bar began its investigation, letters provided to the State Bar now suggest you

sign correspondence as an attorney, as president of the HOA, some combination thereof, or you dispose of signing the letter "Esq." entirely. You have nonetheless continued to use your law firm's letterhead when making demands.

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 5.13 states that REPRIMAND is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

ABA Standard 7.2 states that 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.

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 your substantial experience in the practice of law may justify an increase in degree of discipline to be imposed, the Screening Panel concludes that your absence of a prior disciplinary record justifies a reduction in the degree of discipline to be imposed.

Based on the foregoing, you are hereby ADMONISHED for violating RPC 4.3 (Dealing with Unrepresented Persons). Please promptly conclude this matter by remitting the cost of $750 within thirty (30) days of the issuance of this Admonition. SCR 120(3).

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

ENDNOTE:

1. Cannon was also suspended in 2012 for failure to comply with annual continuing legal education requirements. *See In re Board of Continuing Legal Educ.*, No. 61517, 2012 WL 6758040 (Nev. Dec. 28, 2012) (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys).

TIP FROM THE BAR COUNSEL

Who Decides to Settle?

Nevada Rule of Professional Conduct 1.2 provides essential guidance on the relationship between attorneys and clients. Clients determine the objectives. Attorneys control how they pursue those objectives. A critical aspect of this rule is the client's right to approve or reject settlement offers. Bar counsel often sees improper clauses in fee agreements that compromise this principle.

Under Rule 1.2, while an attorney may guide and advise a client, the ultimate decision regarding the objectives of representation, including whether to accept a settlement offer, rests with the client. This "objective" versus "means" dichotomy separates the ultimate resolution of a case from the procedural or tactical decisions. This ensures that the attorney prioritizes the client's preferences and interests.

However, problems arise when fee agreements include clauses that impede a client's decision-making ability. For instance, agreements that delegate settlement authority to the attorney, or those that create a financial disincentive for the client to reject a settlement recommended by the attorney, violate Rule 1.2.

Several cases underscore this point. In *In re Grievance Proceeding*, 171 F. Supp. 2d 81 (D. Conn. 2001), a federal court found that a written fee agreement delegating all settlement authority to the attorney violated Rule 1.2. These are common in Nevada and create an inherent conflict between an attorney's control and a client's autonomy. Similarly, in *Compton v. Kittleson*, 171 P.3d 172 (Alaska 2007), a contingency fee agreement that guaranteed the attorney an hourly rate if the client rejected an offer violated Rule 1.2 because it could strongarm the client into a settlement.

In *In re Lansky*, 678 N.E.2d 1114 (Ind. 1997), the fee agreement relinquished the client's right to determine whether to accept a settlement offer in violation of Rule 1.2. *In re Coleman*, 295 S.W.2d 857 (Mo. 2009), the fee agreement violated the same rule with a clause that gave the attorney "the exclusive right to determine when and for how much to settle this case."

Ethics opinions across various jurisdictions reaffirm client autonomy in fee agreements. For example, Arizona Ethics Opinion 06-07 warns that an attorney cannot settle a matter without the client's consent, even if the client vanishes. Colorado Ethics Opinion 134 emphasizes that an attorney representing joint clients cannot compel any client to join a majority decision in accepting or rejecting an aggregate settlement.

In Nevada, Ethics Opinion 35 warns that a fee agreement may not give the attorney authority to settle a matter without client consent. This aligns with the broader principle that economic pressure or legal maneuvering should not limit a client's right to decide on settlements.

Nevada Rule of Professional Conduct 1.2 champions the principle that clients hold the ultimate authority over the objectives of their representation. Attorneys should reflect this ethos in their fee agreements. Remove fee agreement clauses that coerce or limit a client's decision-making rights. Remove clauses that allow the attorney (1) to settle for "policy limits," (2) to settle if the client goes missing, (3) to settle for an amount the attorney deems reasonable, or (4) to charge the client for deciding not to settle. Such clauses violate ethical rules and undermine the trust and rapport essential to the attorney-client relationship.