Bar Counsel Report

In Re: JOHN SCOTT MACDONALD
Bar No.: 511
Case No.: 86248
Filed: 03/17/2023

ORDER OF DISBARMENT

The Southern Nevada Disciplinary Board has filed, under SCR 112, a petition for attorney John Scott MacDonald's disbarment by consent. SCR 112 provides that an attorney who is the subject of a proceeding involving allegations of misconduct may consent to disbarment by delivering an affidavit to bar counsel, who must file it with this court.

MacDonald's affidavit meets the requirements of SCR 112(1). In particular, MacDonald's affidavit states that he freely and voluntarily consents to disbarment, after having had the opportunity to consult with counsel. MacDonald acknowledges that the State Bar is investigating allegations that he violated RPC 1.1 (competence), RPC 1.2 (scope of representation), RPC 1.15 (safekeeping property), RPC 3.1 (meritorious claims and contentions), RPC 3.3 (candor toward the tribunal), RPC 7.3(a) (communication with prospective clients; direct contact with prospective clients), and RPC 8.4(a)-(d) (misconduct). He further acknowledges that the material facts supporting those RPC violations are true and states that he could not successfully defend against those charges.

Accordingly, we grant the petition and disbar John Scott MacDonald. Such disbarment is irrevocable. SCR 102(1). The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: SCOTT MICHAEL CANTOR
Bar No.: 1713
Case No.: 86374
Filed: 03/13/2023

ORDER OF DISBARMENT

The Southern Nevada Disciplinary Board has filed, under SCR 112, a petition for attorney Scott Michael Cantor's disbarment by consent. SCR 112 provides that an attorney who is the subject of a proceeding involving allegations of misconduct may consent to disbarment by delivering an affidavit to bar counsel, who must file it with this court.

Cantor's affidavit meets the requirements of SCR 112(1). In particular, Cantor's affidavit states that he freely and voluntarily consents to disbarment, after having had the opportunity to consult with counsel. Cantor acknowledges that the State Bar is investigating allegations that he violated RPC 1.3 (diligence), RPC 1.15 (safekeeping property), RPC 3.4(c) (fairness to opposing party and counsel), RPC 8.1(a), (b) (disciplinary matters), and RPC 8.4(b)-(d) (misconduct). He further acknowledges that the material facts supporting those RPC violations are true and states that he could not successfully defend against those charges.

Accordingly, we grant the petition and disbar Scott Michael Cantor. Such disbarment is irrevocable. SCR 102(1). The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: BRENT A. BLANCHARD
Bar No.: 7605
Case No.: 85666
Filed: 03/13/2023

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Brent A. Blanchard be suspended for six months and one day based on violations of RPC 1.2(a) (scope of representation), RPC 1.3 (diligence), RPC 1.4(a)(4) (communication), RPC 3.4(c) and (d) (fairness to opposing party and counsel), and RPC 8.1 (Bar disciplinary matters). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(6).

The State Bar has the burden of showing by clear and convincing evidence that Blanchard committed the violations charged. *See In re Discipline of Drakulich,* 111 Nev.1556, 1566, 908 P.2d 709,715 (1995). Here, the record contains clear and convincing evidence that Blanchard violated the above-referenced rules by failing to comply with the conditions placed on his reinstatement to the practice of law in *In re Reinstatement of Blanchard,* No. 80627, 2020 WL 2319996 (Nev. May 8, 2020) (Order of Reinstatement). That order required Blanchard to obtain a legal mentor for three years, who would provide quarterly reports to the State Bar, and to continue treating with a medical provider for three years who would similarly provide quarterly reports regarding Blanchard's mental health. *See id.* Even after reminders from the State Bar, Blanchard failed to comply with these conditions. Furthermore, Blanchard committed violations during the representation of a client. After asking the client to waive a conflict with a realtor, the realtor and the client became adverse parties, and Blanchard stopped doing any work on the client's case but did not move to withdraw his representation. Blanchard did not appear

at court hearings, even after the State Bar contacted him regarding the client, and the district court granted summary judgment against the client.

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 Blanchard owed to his client, the legal system, and the profession. His mental state was knowing, and his actions caused actual injury to his client as well as minimal injury to the legal system and profession. As to the client, Blanchard's actions forced the client to represent himself and to find new counsel mid-litigation. Opposing counsel in the client's case also testified that Blanchard failed to respond to discovery, filed procedurally improper motions, and failed to appear at hearings even after they were rescheduled so that Blanchard could appear. The baseline sanction for Blanchard'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) & 7.2 (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" and 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, six aggravating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, vulnerability of victim, and substantial experience in the practice of law) and five mitigating circumstances (absence of a dishonest or selfish motive, personal or emotional problems, cooperative attitude towards the proceeding, remorse, and remoteness of prior offenses). Especially concerning is Blanchard's disciplinary history. We previously suspended him for three years in 2015 for multiple violations based on his continued practice of law while CLE suspended and a business agreement he entered into with a client. *In re Discipline of Blanchard,* No. 68889, 2015 WL 9480324 (Nev. Dec. 23, 2015) (Order Approving Conditional Guilty Plea Agreement). This began a pattern of failing to respond to the State Bar, which continued in this case in regard to both the reinstatement violation and the client violations. Considering all the factors. We conclude the recommended suspension is insufficient to serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 219, 756 P.2d 464, 531-32 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession). Instead, we conclude that an 18-month suspension is appropriate.

Accordingly, we hereby suspend attorney Brent A. Blanchard from the practice of law in Nevada for a period of 18 months. Blanchard 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.

In Re: STEVEN J. SZOSTEK
Bar No.: 3904
Case No.: 86109
Filed: 03/18/2023

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 for attorney Steven J. Szostek. Under the agreement, Szostek admitted to violating RPC 1.3 (diligence), RPC 3.1 (meritorious claims and contentions), RPC 3.3 (candor toward tribunal), and RPC 5.4 (professional independence of a lawyer). He agreed to a public reprimand. He also stipulated and agreed that such a public reprimand would violate the terms of his probation as laid out in In re Discipline of Szostek, *No. 82237, 2021 WL 553890 (Nev. Feb. 12, 2021) (Order Approving Conditional Guilty Plea Agreement), resulting in the imposition of the stayed one-year suspension from that matter. Szostek further agreed to waive any probation breach hearing requirements and to the imposition of the one-year suspension through this matter.*

Szostek has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated the above-listed rules by drafting· declarations in six probate matters; providing them to a non-attorney real estate agent so that the real estate agent could obtain the heirs' or administrators' signatures; receiving the declarations back from the agent, allegedly signed by the heirs or administrators but without confirming the signatures were true; and filing them in their respective actions even though they contained falsified signatures and information or requests to which the heirs/administrators did not agree.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and

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the legal profession. *See In re Discipline of Arabia,* 137 Nev. 568, 570, 495 P.3d 1103, 1109 (2021) (explaining the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Szostek admitted to negligently violating duties owed to the legal system (meritorious claims and contentions and candor toward the tribunal) and to the profession (professional independence of a lawyer). The parties and the legal system were potentially injured. The baseline sanction for Szostek's conduct, before consideration of aggravating and mitigating circumstances, is reprimand. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 6.13 (Am. Bar Ass'n 2017) ("Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false … and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."); 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."). The record supports the panel's findings of two aggravating circumstances (prior discipline and substantial experience in the practice of law) and two mitigating circumstances (absence of dishonest or selfish motive and full and free disclosure to disciplinary authority or cooperative attitude toward disciplinary proceeding). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby publicly reprimand attorney Steven J. Szostek for violations of RPC 1.3, RPC .3.1, RPC 3.3, and RPC 5.4. Because, as stipulated, this public reprimand violates the terms of Szostek's probation outlined in *In re Discipline of Szostek,* No. 82237, 2021 WL 553890, we hereby suspend Szostek from the practice of law for one year commencing from the date of this order. Additionally, Szostek shall pay the actual costs of the disciplinary proceedings, including $1,500, within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

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CADISH, PICKERING, and BELL, JJ., dissenting:

We dissent because we do not think a public reprimand is sufficient given the prior disciplinary history and violations involved.

In Re: RANDAL R. LEONARD
Bar No.: 6716
Case No.: 86084
Filed: 03/18/2023

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, an amended conditional guilty plea agreement in exchange for a stated form of discipline for attorney Randal R. Leonard. Leonard admitted to violating RPC 1.3 (diligence) and RPC 3.2 (expediting litigation), and further admitted that his misconduct violated the probation terms this court imposed in a prior disciplinary action.[1] Under the amended agreement, Leonard agreed to a public reprimand and to serve the stayed portion of his suspension from the prior discipline matter (one day) such that he will be required to petition for reinstatement.

Leonard has admitted to the facts and violations as part of the guilty plea agreement. The record therefore establishes that he violated the above-referenced rules by failing to file a certificate of service with the bankruptcy court, resulting in a delay of nearly a year before the clients' bankruptcy case was closed with an order of discharge; and that he breached the conditions of his prior probation by violating rules of professional conduct.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (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). The record supports the panel's conclusions that Leonard acted negligently by violating his duties to diligently represent his clients and to expedite litigation.[2] And Leonard's conduct potentially injured his clients due to the delay in discharging their bankruptcy petition. The baseline discipline for such misconduct, before considering aggravating and mitigating circumstances, is a reprimand. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 4.43 (Am. Bar Ass'n 2017) (providing that a reprimand is "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 record supports the panel's finding of three aggravating factors (multiple prior disciplinary offenses, a pattern of misconduct, and

substantial experience in the practice of the law) and two mitigating factors (absence of a dishonest or selfish motive and full and free disclosure to disciplinary authority or cooperative attitude toward the proceeding).

Considering all the factors, we agree with the panel that a public reprimand is appropriate and sufficient to serve the purpose of attorney discipline with respect to the violations of RPC 1.3 and 3.2. We further agree that Leonard must pay restitution to his clients in the amount of $84, which represents out-of-pocket costs the clients bore while their bankruptcy case lingered due to Leonard's misconduct. Finally, because the previous disciplinary order stayed one day of his suspension contingent upon Leonard not violating any rules of professional conduct during the probationary period, imposing the one-day suspension is also appropriate. Leonard will therefore be required to seek reinstatement in order to resume the practice of law. See SCR 116(1) (requiring an attorney who has been suspended for more than six months to receive supreme court approval to be reinstated to the practice of law); *see also In re Discipline of Leonard,* No. 78632, 2019 WL 4391208 (Nev. Sept. 12, 2019) (Order Approving Conditional Guilty Plea Agreement).

Accordingly, we hereby publicly reprimand attorney Randal L. Leonard for violating RPC 1.3 (diligence) and RPC 3.2 (expediting litigation). Additionally, Leonard shall pay his clients restitution of $84. We further suspend Randal R. Leonard from the practice of law in Nevada for one (1) day, commencing from the date of this order, which with the prior discipline will require that he petition for reinstatement. Leonard shall also pay the costs of the disciplinary proceedings, including $1,500 under SCR 120, within 30 days from the date of this court's order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: ELAINE A. DOWLING
Bar No.: 8051
Case No.: 85767
Filed: 03/22/2023

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to approve a conditional guilty plea agreement pursuant to SCR 113 in exchange for a stated form of discipline for attorney Elaine A. Dowling. Under the agreement, Dowling admitted to violations of RPC 5.5 (unauthorized practice of law), RPC 1.3 (diligence), RPC 1.15 (safekeeping property), and RPC 8.1 (bar admission and disciplinary matters). She agreed to a one-year suspension, completion of 39 CLE hours during that suspension, and payment of the disciplinary proceeding costs.

Dowling admitted to the facts and violations as part of her guilty plea agreement. The record thus establishes that she violated the above-listed rules by (1) assisting an attorney who had been disbarred in Nevada and suspended from practicing before the Securities and Exchange Commission (SEC) in representing clients and appearing before the SEC; (2) lacking diligence in representing a client in a civil matter, thus contributing to a monetary sanction against the client; (3) failing to properly manage her trust accounts, including overdrawing one account, comingling client funds with personal and firm operating funds, and failing to keep sufficient records for transfers and distributions; and (4) failing to adequately respond to the State Bar's inquiries about the misconduct, including failing to provide client and trust account ledgers.

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., Adv. Op. 59, 495 P.3d 1103, 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).

Dowling admitted to knowingly engaging in conduct that violated duties owed to her clients, the profession, and the legal system. Dowling's misconduct harmed her client who was sanctioned and had the potential to harm other clients through her poor accounting practices. By assisting a disbarred attorney and failing to timely respond to the State Bar, Dowling also harmed the profession 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 2018) ("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 record supports the panel's finding that Dowling's substantial experience in the practice of law (roughly 20 years) is the sole aggravating factor in this matter.[3] The record also supports the three mitigating factors found by the panel: (1) the imposition of other penalties in that the SEC has prohibited her from appearing before or practicing in SEC matters; (2) Dowling maintained a cooperative attitude toward the proceedings once the State Bar filed a formal disciplinary complaint; and (3) Dowling disassociated with the disbarred attorney,

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consistent with an earlier disciplinary order.[4] Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Elaine A. Dowling from the practice of law for one year. Additionally, Dowling must complete 39 CLE hours during her suspension, including 13 credits in ethics, mental health, or substance abuse. Finally, Dowling must pay the costs of the disciplinary proceedings, including $2,500 under SCR 120, within 30 days of this order's date. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

ENDNOTES:

1. This court previously suspended Leonard for six months and one day, with one day of the suspension stayed pending Leonard's successful completion of a two-year term of probation. *See In re Discipline of Leonard,* No. 78632, 2019 WL 4391208 (Nev. Sept. 12, 2019) (Order Approving Conditional Guilty Plea Agreement).
2. Although Leonard previously stipulated that he "knowingly" violated these duties, we conclude that the record in this matter supports that he violated these duties "negligently." At the most recent disciplinary hearing, Leonard testified that his failure to timely file the certificate of service was the result of his organizational failures. In contrast, at his prior disciplinary hearing, Leonard did not testify and the only thing reflecting his mental state in that record was an email in which he admitted that he was required to file the certificate but failed to do so.
3. Dowling has a recent discipline history. *See In re Discipline of Dowling,* No. 83817, 2022 WL 141817 (Nev. Jan. 14, 2022) (Order Approving Conditional Guilty Plea Agreement). The parties agreed that matter would not be considered an aggravating factor for prior discipline because the conduct at issue here predated that matter.
4. Although the record establishes that Dowling has ended her business relationship with the disbarred attorney, we question whether that fact is mitigating, given that the prior disciplinary order required Dowling to end her business relationship with the disbarred attorney. Regardless, the recommended discipline is consistent with the Standards for Imposing Lawyer Sanctions and consistent with discipline we have imposed for similar misconduct. Thus, we do not further address the issue.

TIP FROM THE BAR COUNSEL

Clients Decide Whether to Settle, Not the Attorney

Sometimes it is tough to track down a client, especially when important decisions need to be made. Ethics rules allow lawyers to plan strategy and take actions without constant input from clients. That is what we do.

But a missing client does not vest the lawyer with *carte blanche* to make final decisions which, by Supreme Court Rules, belong to the client.

In criminal cases, pursuant to Rule of Professional Conduct (RPC) 1.2 (Scope of Representation), a lawyer must abide by the defendant's decision as to the plea entered and whether to testify or waive a jury trial.

In civil matters, RPC 1.2 gives the decision of whether to settle a matter to the client, not the attorney.

However, some personal injury (PI) attorneys have inserted language in their retainer agreements that purport to transfer settlement decisions away from the client in some – and sometimes many – circumstances.

Such language recently emerged in retainer agreements which brought a few PI attorneys close to the ethics cliff.

One such agreement stated that if a client became "unavailable for any reason," and the client's interests would be served by "timely settlement," then the attorney could potentially negotiate a final disposition.

Such a scenario, of course, begs the question of how to finalize a settlement when the missing client is not around to sign release forms? Conveniently, some retainer agreements cover that contingency, too.

One retainer agreement recently reviewed by a disciplinary board contained Power of Attorney language that purported to give attorneys "full authority to sign on behalf of clients for authorizations, checks, drafts, litigation documents *and releases*." Emphasis added.

Such language designed to thwart a client's ability to decide whether to settle a legal dispute is unenforceable and, if enforced, could violate RPC 1.2.

Some PI practitioners have argued that retainer language allowing automatic acceptance of a policy limits offer should be allowed. However, a client cannot give adequate informed consent when many vitally important details – finalized medical liens, costs, etc. – are almost always unknown at the beginning of representation.

Of course, attorneys want to settle cases and get frustrated with missing-in-action clients. Maintaining above-average communication with the client might cut down on the problem.

But when the client goes completely radio silent, RPC 1.2 does not allow an attorney to step into the client's shoes and unilaterally resolve a case.