

Bar Counsel Report

In Re: DONALD DENNIS BEURY
Bar No.: 151
Case No.: 83550
Filed: 01/06/2022

ORDER IMPOSING RECIPROCAL DISCIPLINE AND SUSPENDING ATTORNEY

This is a petition under SCR 114 to reciprocally discipline attorney Donald Dennis Beury based on his one-year stayed suspension, and two-year probation requiring a six-month actual suspension, in California for two violations of California Business and Professions Code § 6103 (failure to obey a court order) (West 2021) and one violation of § 6068(o)(3) (failure to report judicial sanctions) (West 2019). The State Bar Court of California Review Department found that Beury violated these rules by failing to pay a sanctions order and a fees and costs order entered against him, and by failing to report the sanctions order to the State Bar of California as required under California law. The discipline order requires, in addition to serving a one-year stayed suspension, that Beury serve a six month actual suspension as a condition of his two-year probationary period. The order also requires Beury to remain suspended beyond six months if he has not paid the specified restitution. Beury has not responded to the SCR 114 petition.

Under SCR 114(4), 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.

We conclude that none of the four exceptions weighs against the imposition of identical reciprocal discipline in this case. While Beury was found to have violated a California rule that has no Nevada counterpart,¹ see SCR 114(4)(d) (indicating that if the misconduct established in the other jurisdiction does not constitute misconduct under Nevada's ethical rules, identical discipline may not be appropriate), the remaining, and arguably more egregious ethical violations, constitute ethical violations in Nevada. Furthermore, the discipline imposed in California is commensurate with discipline Nevada imposes for the other violations. Thus, we grant the petition for reciprocal discipline.

Accordingly, we hereby suspend Donald Dennis Beury from the practice of law in Nevada for one year starting from the date of this order. That suspension is stayed, and Beury shall serve a two-year probation. As a condition of probation, Beury shall serve a six-month actual suspension.² If Beury remains suspended in California after serving his six-month actual suspension,

Beury shall notify the Nevada State Bar of the same, and the suspension from the practice of law in Nevada will continue to match the duration of the California suspension, subject to the conditions set forth in the California order.³

It is so ORDERED.

In Re: RYAN CANN
Bar No.: 11073
Case Nos.: OBC21-0289 & OBC21-0353
Filed: 12/16/2021

PUBLIC REPRIMAND

To Ryan Cann:

You were retained by two separate clients to prepare and help them file patent applications. You failed to prepare each of the applications timely, and the clients terminated the respective representations. When you accepted advance payment of half of the flat fee for the respective legal services, you did not deposit those fees into a Client Trust Account. Thus, the fees were unavailable for immediate return when the clients terminated the representations.

On July 13, 2020, Mr. and Ms. Acquistapace and you first met to discuss the filing of a patent application. The clients provided 50% of the agreed-upon flat fee for the representation. In early September 2020, Acquistapace provided additional information necessary to prepare the patent application.

You did not prepare the patent application in the following three months. On December 28, 2020, you told Acquistapace that you would complete a draft of the patent application for review the following week. You did not meet the promised deadline. This pattern repeated several times until the end of January 2021. Between February 2, 2021, and March 16, 2021, you failed to answer any emails or phone calls from Acquistapace. You never filed a patent application for Acquistapace.

Acquistapace filed a grievance with the State Bar detailing your failure to perform the agreed-upon services and failure to return the fee already paid.

You did return \$2,100 (the entire sum you had received) to Acquistapace. However, the return of this fee was significantly delayed because you failed to deposit the fee into a Client Trust Account for safekeeping until it was earned, and had difficulty getting PayPal to issue the refund.

In early October 2020, Ms. B. retained you to prepare a patent application. The contract required payment of 50% of the fee before starting the work. B. paid the 50% fee via PayPal. You did not deposit the advance payment into a Client Trust Account.

On December 13, 2020, B. provide [sic] a requested sketch for your use in the patent application. You failed to respond to B.'s communications between December

28, 2020, and February 1, 2021. You never filed a patent application on her behalf.

On February 1, 2021, B. emailed requesting a return of her deposit, stating she viewed the contract for services void. You offered to refund B. the fees she had paid for the patent application. However, as with Acquistapace, because you failed to deposit the fees into a Client Trust Account for safekeeping, and had difficulties with PayPal the refund to B. was delayed.

Violations of the Rules of Professional Conduct

You had a duty, pursuant to RPC 1.3 (Diligence), to act with reasonable diligence and promptness in representing your clients. You knowingly violated this duty when you failed to prepare Acquistapace's patent application for over six months. You knowingly violated this duty when you failed to prepare B.'s patent application or communicate with B. for two months. Your misconduct injured these clients because neither client had a patent application filed and both experienced great anxiety in trying to obtain the application from you.

In addition, RPC 1.15 (Safekeeping Property) requires you to (i) deposit all fees paid in advance of work performed into a Client Trust Account and (ii) only withdraw fees from the Client Trust Account once they are earned. You knowingly violated RPC 1.15 when you failed to deposit the fees paid by Acquistapace and B. into a Client Trust Account for safekeeping until you earned them. Your misconduct injured your clients because the funds were not readily available for return to them when your representation was terminated before you had performed any legal services.

Application of the ABA Standards for Imposing Lawyer Sanctions

Standard 4.42 of the ABA Standards for Imposing Lawyer Sanctions provides that the appropriate sanction for your misconduct is a suspension, particularly in light of the Letter of Reprimand the State Bar issued to you for similar conduct in 2019. Nonetheless, the Panel finds that your personal problems during the time period, your cooperation in the disciplinary process, and the imposition of additional penalties warrants a downward deviation from suspension.

PUBLIC REPRIMAND

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.3 (Diligence), RPC 1.15 (Safekeeping Property) and are hereby PUBLICLY REPRIMANDED.

You are required to provide the State Bar with proof of (i) an opened Client Trust Account (i.e. IOLTA) and (ii) the completion of four additional Continuing Legal Education credits no later than the 90th day after the filing of the Findings of Fact, Conclusions of Law, and Order in this matter.

You are also required to pay SCR 120 Costs of \$1,500 plus the hard costs of the disciplinary proceedings to the State Bar no later than the 30th day after the issuance of this Public Reprimand.

In Re: CARL E. G. ARNOLD
Bar No.: 8358
Case No.: SBN21-99070
Filed: 12/16/2021

LETTER OF REPRIMAND

To Carl E. G. Arnold:

On December 14, 2021, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel unanimously 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.

On May 1, 2018, R.R. appeared in the Las Vegas Justice Court for an initial appearance and was appointed a Public Defender. After R.R. left the courtroom, you introduced yourself to him in the hallway and suggested that you could get his case dismissed. Following this conversation, R.R. went to your office, signed a fee agreement, and paid a [sic] \$500.00 for your services.

R.R. claimed that "weeks passed with no word" from you. As R.R.'s next court appearance was set for May 15, 2018, he decided to stick with his appointed Public Defender. On May 14, 2018, you were informed of the same. You informed the State Bar that this was the only conversation you had with R.R. after your initial meeting in the hallway.

There is no evidence of you taking any action on behalf of R.R. between May 1, 2018, and May 15, 2018. Further, your name does not appear anywhere in R.R.'s court documents and/or court docket. In your response to the State Bar, you explained that you were working for the now-defunct Law Office of Joshua L. Harmon (hereinafter "Firm") throughout 2018, and that you "could not any [sic] file for Mr. Ross on the computer system" because the Firm "no longer exists."

On May 30, 2018, R.R. sent you a text message following up on several unanswered calls and/or text messages regarding a refund. There is no evidence of you returning any of R.R.'s calls and/or text messages. On or about July 23, 2021, R.R. filed a fee dispute against you. On September 9, 2021, you sent the State Bar a check for R.R.'s refund.

RPC 1.4 (Communication) states, in pertinent part, that a lawyer shall "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished," "[k]eep the client reasonably informed about the status of a matter," and "promptly comply with reasonable requests for information." You negligently failed to reasonably communicate with R.R. and confirmed that you only had one conversation with him following your initial meeting in the hallway. Further, if there were issues with filing on behalf of R.R., you should have notified him of the same. This type of ethical breach caused potential injury to your client.

RPC 1.5 (Fees) states, in pertinent part, that a lawyer "shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount

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for expenses.” You negligently collected \$500.00 from R.R. without performing any work on his behalf. This type of ethical breach caused injury to your client.

RPC 1.16 (Declining or Terminating Representation) states, in pertinent part, that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.” You negligently failed to promptly provide R.R. with a \$500.00 refund. It was only after R.R. filed a fee dispute against you that he received his money back. This type of ethical breach caused injury to your client.

RPC 7.3 (Solicitation of Clients) states, in pertinent part, that “a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. The term ‘solicit’ includes contact in person, by telephone, telegraph or facsimile, by letter or other writing, or by other communication directed to a specific recipient.” Since you have no family or prior professional relationship with R.R., your solicitation of him in the hallway was negligent.

Under ABA Standard 4.14, admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual 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 a client. 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.

Accordingly, you are hereby REPRIMANDED for violating RPC 1.3 (Diligence). In addition, pursuant to Supreme Court Rule 120, you are required to remit to the State Bar of Nevada the amount of \$1,500.00, plus the hard costs of these proceedings, **no later than 30 days** after receiving a billing from the State Bar. 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: GARRETT T. OGATA
Bar No.: 7469
Case No.: SBN21-99077
Filed: 11/19/2021

LETTER OF REPRIMAND

To Garrett T. Ogata:

A Southern Nevada Disciplinary Board Screening Panel convened on November 16, 2021, to consider the above-

referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct and that you should be reprimanded for your handling of that matter. This letter constitutes delivery of the Panel’s reprimand.

On March 25, 2021, your office assistant took a phone inquiry from potential client Connor Higgins involving the defense of a traffic ticket. At her request, Mr. Higgins texted your assistant a screen shot of his citation. Your office’s reply text stated: “Received. I will have Candy give you a call on Monday morning. The Law Offices of Garrett T. Ogata.” Your office call entry note stated: “[h]e wants to know what we can do to help him out, he has a return date of 4/15/21 and wants to know how much, I told him I will have Candy call him back on Monday morning, he said that is okay.” Mr. Higgins received no return phone call from your staff, or you, so he “moved on.”

On April 12, Mr. Higgins contacted the court and obtained an initial appearance extension to June 17. After an initial date mix-up with the court, the court sent him a corrected notice of appearance for June 17. Meanwhile, you had appeared in court on May 13 and negotiated Mr. Higgins’s traffic ticket charges, fees and points and entered a guilty plea on his behalf. While he did not notify you of his recent address change, your office staff did not reach out to him using the phone number he maintained.

On or about August 4, Mr. Higgins learned that he was placed in warrant status due to his non-payment of fines for traffic charges that you negotiated without his authorization. On August 12, he texted you asking you to phone him, to which you only replied via text. On August 17, you took corrective action by filing an ultimately successful motion to withdraw his plea.

RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) states: “... [A] lawyer shall abide by a client’s decision concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”

Here, you never spoke to Mr. Higgins, nor did your staff consult with Higgins. Your office received no authorization from him to carry out representation. You appeared in a criminal traffic proceeding and entered a plea on his behalf without his knowledge.

RPC 5.3(b) (Responsibilities Regarding Nonlawyer Assistants) states: “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.” Likewise, RPC 5.3(c)(1) states: “A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; ...”

Here, your office staff took a phone call inquiry from a prospective client. No return call was made to the prospective client by yourself or your staff, as your staff stated they would do. There was no client engagement. Your staff opened a file and scheduled an attorney

session with the Court without approval from Mr. Higgins. You permitted this event or practice to occur under your supervisory authority. When you negotiated a plea agreement in his case, you should have known your staff had no follow-up communication with him. You ratified the conduct of your staff by entering into a plea agreement before the court.

RPC 5.5(a)(2) (Unauthorized Practice of Law) states: "A lawyer shall not: ... (2) assist another person in the unauthorized practice of law." Here, your staff was operating under your policies and procedures when they opened a formal office file for a prospective client. They sought to arrange a prospective client interview without your apparent knowledge. They thereafter scheduled an attorney session with the court without prospective client authorization. You thereafter assisted them by attending this session and entered a plea.

As to RPC 1.2, Standard 4.43 of the ABA Standards for Imposing Lawyer Sanctions, states: "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." As to RPC 5.3 & 5.5, Standard 7.3 states: "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." Here, the Screening Panel found potential injury was present even though you corrected the actual injury.

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

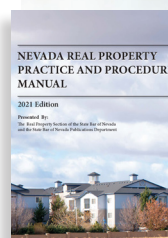
ENDNOTES:

1. Beury failed to notify the California State Bar of the sanctions order entered against him, violating Cal. Bus. & Prof. Code § 6068(o)(3) (failure to report judicial sanctions).
2. We note that there was a delay of approximately ten months between Beury notifying the State Bar of the California suspension and the State Bar's petition for reciprocal discipline to this court. We decline to address this delay further, however, as Beury did not file a brief in this case.
3. The California order requires Beury to pay restitution during his six month actual suspension as a condition of probation. If he does not, the suspension continues. If the suspension extends beyond two years, Beury must provide proof of his rehabilitation, fitness to practice, and present learning and ability in the general law to the California State Bar. Other conditions of Beury's probation include providing a declaration that he has reviewed the California Rules of Professional Conduct; complying with State Bar Rules, Professional Conduct Rules, and probation conditions; maintaining valid official addresses and other contact information with the State Bar; meeting and cooperating with the Office of Probation; submitting to the State Bar's jurisdiction and cooperating with the State Bar court; filing reports with the State Bar as directed; attending the State Bar ethics school and passing the associated test; passing the Multistate Professional Responsibility Examination; notifying clients of his suspension as required by California law; and paying the costs associated with the disciplinary proceedings.

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.



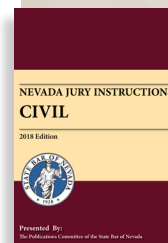
Nevada Real Property Practice and Procedure Manual - 2021 Edition



Nevada Appellate Practice Manual, 2021 Edition



Contract Templates for Nevada Attorneys



Nevada Jury Instructions: Civil - 2018 EDITION

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FROM THE BAR COUNSEL

ETHICS

Consistent Application of RPCs Earns Public Trust

Self-regulation is a product of attorney independence. An attorney’s role is to provide legal advice to a client, sometimes in disputes with the government. The public wants their attorney to be independent of the government. Consequently, the Nevada Supreme Court empowered the State Bar of Nevada to police its own membership.

Consistency garners public confidence. Consistent application of the Rules of Professional Conduct earns the public’s trust. Consistent sanctions earn the public’s trust. For more than a decade, the Supreme Court has employed the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions as a guide for consistency.

These standards first group the misconduct by duty owed. A lawyer owes a duty to the client, to the profession, to the judicial system, and to the public. The Rules of Professional Conduct define these duties. If a lawyer violates a duty owed, then the court uses the ABA standards to determine a presumptive sanction. Each presumptive sanction is a product of the lawyer’s mental state and the degree of harm caused. Although not as rigid as sentencing guidelines, the ABA framework provides a simple matrix to promote consistency. An oversimplified version of the matrix is below.

	Serious Injury	Injury	Little or No Injury
Intentional	Disbarment	Disbarment	Suspension
Knowing	Disbarment	Suspension	Reprimand
Negligent	Suspension	Reprimand	Admonition

For example, consider two cases involving the duty of loyalty owed to a client, specifically to protect client property.

In the first case, assume the client gave the lawyer \$1,000 as an advance against the costs of investigation. The lawyer deposited the money in a personal checking account and used it for personal purposes. In this case, the lawyer acted intentionally, and the client suffered an injury. The presumptive sanction would be the most severe—disbarment.

Contrast this with the case of a second lawyer, whose client also gave the lawyer \$1,000 as an advance. The lawyer, in a hurry to get to court, neglected to direct the secretary on what to do with these funds and the secretary erroneously deposited them into the lawyer’s general office account. The lawyer discovered the mistake later the same day and quickly replaced the money. In this case, the lawyer acted negligently and caused little or no injury to the client. Such misconduct would warrant a less serious sanction—admonition. Note that Nevada has no admonition. The disciplinary board or court would either dismiss with a Letter of Caution or issue a Letter of Reprimand.

In each case, the disciplinary board or court would then consider any relevant aggravating or mitigating factors. For example, aggravating factors such as a vulnerable victim or refusal to cooperate with bar counsel’s investigation could increase the sanction. Mitigating factors such as a clean disciplinary history or inexperience could reduce a sanction.

Each case is unique of course. It may seem like each sanction is unique, and the ABA Standards do not address each of the myriad of fact patterns in cases of lawyer misconduct. They allow flexibility in sanctions. But the theoretical framework promotes consistency. Now that you know the framework, perhaps you will see the pattern in the published discipline decisions.

“The paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole.”

—*State Bar v. Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988).