Bar Counsel Report

In Re: JOHN P. PARRIS
Bar No.: 7479
Case No.: 83790
Filed: 02/16/2022

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney John P. Parris be suspended for six months and one day, to run consecutive to the suspension imposed in In re Discipline of Parris, *No. 83370, 2021 WL 5176743 (Nev. Nov. 5, 2021) (Order of Suspension). This matter concerns violations of RPC 3.4(c) (fairness to opposing party and counsel: knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b) (disciplinary matters), and RPC 8.4(d) (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).*

The State Bar has the burden of showing by clear and convincing evidence that Parris 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 Parris failed to answer the complaint and a default was entered.[1] SCR 105(2). The record therefore establishes that Parris violated RPC 8.1(b) (disciplinary matters) and RPC 8.4(d) (misconduct) by failing to comply with conditions he agreed to in exchange for a public discipline in a separate disciplinary matter and by failing to respond to the State Bar's inquiries. Specifically, Parris agreed to complete 10 additional CLEs and pay the costs of the disciplinary proceedings leading to the public reprimand by the end of 2020. When the State Bar contacted Parris regarding his compliance with those conditions, he failed to respond. In contrast, the facts alleged in the complaint and admitted as true because of the default, are not sufficient to establish a violation of RPC 3.4(c) (fairness to opposing party and counsel). Thus, we strike that charge.

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).

Parris knowingly violated duties owed to the legal system (disobeying an obligation under the rules of a tribunal) and the profession (failure to respond to lawful requests for information from the State Bar).[2] Parris's failure to cooperate with the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system. The baseline sanction for Parris's misconduct, before consideration of aggravating or mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards,* Standard 6.22 (Am. Bar Ass'n 2017) (recommending suspension "when a lawyer knows that he or she is violating a court order or rule, and … causes interference or potential interference with a legal proceeding"); Standard 7.2 ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."). The panel found and the record supports five aggravating circumstances (prior discipline, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law) and no mitigating circumstances.

Accordingly, we hereby suspend attorney John P. Parris from the practice of law in Nevada for six months and one day to run consecutive to his suspension in *In re Discipline of Parris,* No. 83370, 2021 WL 5176743 (Nev. Nov. 5, 2021) (Order of Suspension). Parris shall also pay the costs of the disciplinary proceeding, 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: SCOTT MICHAEL CANTOR
Bar No.: 1713
Case No.: 83736
Filed: 02/10/2022

ORDER DENYING PETITION FOR RECIPROCAL DISCIPLINE AND SUSPENDING ATTORNEY

This is a petition for reciprocal discipline of attorney Scott Michael Cantor pursuant to SCR 114. Cantor has been disbarred from the practice of law in California. He did not self-report the disbarment to the Nevada State Bar but has filed a response with this court opposing the petition.

Cantor's misconduct arises from his failure to comply with previous disciplinary orders in California including: failing to file an affidavit that he complied with the duties of suspended attorneys, failing to attest to reading professional conduct rules and business and professions codes, failing to timely schedule and/or participate in a meeting with a probation specialist, and failing to submit a timely report to the Office of Probation. These actions violated California Rule of Court 9.20(c), which requires the filing of an affidavit attesting that an attorney complied with the duties of suspended attorneys, and Cal. Bus. & Prof. Code § 6068(k) (West 2021), which requires

attorneys "[t]o comply with all conditions attached to any disciplinary probation." As a result, Cantor was disbarred.

Having considered the petition for reciprocal discipline and Cantor's response, we conclude that discipline is warranted but that "the misconduct established warrants substantially different discipline in this state," SCR 114(4)(c), and thus deny the petition for reciprocal discipline. In particular, we conclude that disbarment is not warranted because disbarment in Nevada is not equivalent to the discipline imposed in California, as disbarment in Nevada is irrevocable while in California a disbarred attorney may seek reinstatement after five years. Compare SCR 102(1), with Cal. State Bar R. Proc. 5.442(B). Furthermore, Nevada does not require disbarment when an attorney fails to comply with previous disciplinary orders. Thus, we conclude that a five-year-and-one-day suspension is more appropriate than disbarment based on the "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, 124-6, 197 P.3d 1067, 1077 (2008) (setting out the factors to consider to determine appropriate discipline).

Accordingly, we deny the petition for reciprocal discipline but suspend Scott Michael Cantor from the practice of law in Nevada for five years and one day from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: TERRY L. WIKE
Bar No.: 7211
Case No.: 83296
Filed: 02/24/2022

ORDER OF CONDITIONAL REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to reinstate suspended attorney Terry L. Wike with certain conditions.[3]

In October 2020, this court suspended Wike from the practice of law for six months and one day. *In re Discipline of Wike (Wike II),* No. 81340, 2020 WL 5988543 (Nev. Oct. 8, 2020) (Order of Suspension). The discipline order also required that Wike pay the disciplinary proceeding costs by November 7, 2020, and provided that upon his reinstatement, in addition to any other conditions recommended by the hearing panel, Wike would be subject to the remainder of the stayed portion of his suspension and the corresponding conditions set forth in *In re Discipline of Wike (Wike I),* No. 79305, 2020 WL 970354 (Nev. Feb. 27, 2020) (Order of Suspension) (suspending Wike for 24 months with all but the first 3 months stayed). *Wike II,* 2020 WL 5988543 at *4. Wike petitioned for reinstatement after completing his suspension and having complied with nearly all of the requirements in the disciplinary order.

Based on our de novo review, we agree with the panel's conclusions that Wike has satisfied his burden in seeking reinstatement by clear and convincing evidence. SCR 116(2) (providing that an attorney seeking reinstatement must demonstrate compliance with reinstatement criteria "by clear and convincing evidence"); *Application of Wright,* 75 Nev. 111, 112-13, 335 P.2d 609, 610 (1959) (reviewing a petition for reinstatement de novo). As to Wike's failure to comply with the suspension order's requirement that he pay the disciplinary proceedings costs, we agree with the panel that he has "present[ed] good and sufficient reason why [he] should nevertheless be reinstated." SCR 116(2); see SCR 116(2)(a) (requiring full compliance with the terms of all prior disciplinary orders for reinstatement). In particular, the record supports the panel's finding that Wike had financial difficulties since his suspension and was unable to pay the cost assessments during his suspension.

Wike has agreed to reinstatement on a probationary status but disputed below and continues to dispute in his briefing in this court, the requirement that he pay the costs for the disciplinary proceedings as a condition of his reinstatement. In particular, he argues that his debt to the State Bar for the cost assessment was discharged in bankruptcy. The panel disagreed with Wike's argument, concluding that SCR 120 costs owed to the State Bar are excepted from discharge in bankruptcy under 11 U.S.C. § 523 because they constitute fines, penalties, or forfeitures payable to a governmental agency, and are punitive, deterrent, and rehabilitative in nature.

Wike provided no evidence that the bankruptcy court discharged the cost assessment,[4] but the issue here is whether his reinstatement may be conditioned on the payment of those costs. We conclude that it may regardless of whether the cost assessment in the discipline order was discharged in bankruptcy. The primary purposes of attorney discipline are to promote an attorney's rehabilitation, deter misconduct, and protect the public. E.g., *State Bar of Nevada v. Claiborne,* 104 Nev. 115, 756 P.2d 464 (1988); *In re Findley,* 593 F.3d 1048, 1052-54 (9th Cir. 2010); *In re Feingold,* 730 P.3d 1268, 1275 (11th Cir. 2013); *Brookman v. State Bar of California,* 760 P.2d 1023, 1026 (Cal. 1988). As such, the recommended condition of reinstatement does not run afoul of 11 USC § 525 because its purpose is not to penalize Wike for having obtained a discharge of his debt. The California Supreme Court reasoned similarly when it rejected an attorney's argument that 11 USC § 525 prohibited requiring him to repay the client security fund for restitution the fund paid to the attorney's client after the attorney obtained a discharge of the restitution order. *Brookman,* 760 P.2d at 1025. In so doing, the court observed that "the purpose of attorney discipline is not to penalize petitioner merely for having obtained a discharge of his debt in bankruptcy. Instead, it is to protect the public from specified professional misconduct … and at the same time to rehabilitate the errant attorney." Id. at 1025-26; see also *Hippard*

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v. State Bar, 782 P.2d 1140, 114-5 (Cal. 1989 (extending Brookman's reasoning to petitions for reinstatement).[5]

We therefore approve the panel's recommendation to reinstate Wike to the practice of law with a 24-month probation supervised by the State Bar, subject to the conditions set forth by the panel, summarized as follows:

Wike will be subject to the conditions imposed in *Wike I*.

Wike must obtain a mentor who practices in personal injury law and has experience and training in firm accounting and client trust accounts.

Wike must submit quarterly reports to his mentor and the State Bar and be subject to periodic audits by the State Bar.

Wike must pay $21,138.15 in fees and costs for the previous disciplinary proceedings.[6]

In addition to the probation conditions, Wike must pay the costs of the reinstatement proceeding, including $2,500 under SCR 1.20, within 30 days of this order, if he has not done so already. With these conditions, we hereby reinstate Terry L. Wike to the practice of law in Nevada effective on the date of this order. See SCR 116(5) (allowing conditions to reinstatement).

It is so ORDERED.

In Re: BRENT HARSH
Bar No.: 8814
Case No.: 83834
Filed: 02/18/2022

ORDER OF PUBLIC REPRIMAND

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation to publicly reprimand attorney Brent Harsh for violating RPC 4.2 (communication with persons represented by counsel). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Harsh committed the violation charged. *In re Discipline of Drakulich,* 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's factual findings that Harsh violated RPC 4.2 as those findings are supported by substantial evidence and are not clearly erroneous. SCR 105(3)(b); *In re Discipline of Colin,* 135 Nev. 325, 330, 448 P.3d 556, 560 (2019). In particular, the record shows that an attorney sent Harsh a letter stating that he represented the party adverse to Harsh's client and that, thereafter, Harsh sent a letter directly to that adverse party. Both letters were admitted into evidence, and the attorney who sent Harsh the letter regarding his representation of the adverse party testified about his other communications with Harsh regarding the case. This evidence supports the complaint's allegations concerning Harsh's professional misconduct. SCR 105(2).

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). Here, Harsh negligently violated duties owed to the legal system. His misconduct had the potential for injury by interfering with the outcome of the underlying legal proceeding.

The baseline sanction for Harsh's misconduct, before consideration of aggravating and mitigating circumstances, is a public reprimand. See *Standards for Imposing Lawyer Sanctions,* Compendium of Professional Responsibility Rules and Standards, Standard 6.33 (Am. Bar Ass'n 2018) (providing that a reprimand is appropriate when "a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding"). The panel found and the record supports one aggravating circumstance (substantial experience in the practice of law) and one mitigating circumstance (lack of prior discipline). Considering all the factors, we agree with the panel that a public reprimand is appropriate to serve the purpose of attorney discipline. See *State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby publicly reprimand attorney Brent Harsh for violating RPC 4.2 (communication with persons represented by counsel). Harsh shall pay the actual costs of the disciplinary proceedings as provided in the State Bar's memorandum of costs, including $1,500 under SCR 120(3), within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.[7]

In Re: KENNETH S. FRIEDMAN
Bar No.: 5311
Case No.: OBC21-0282
Filed: 02/15/2022

LETTER OF REPRIMAND

To Kenneth S. Friedman:

A Southern Nevada Disciplinary Board Screening Panel convened on September 21, 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 your client's personal injury matter. This letter constitutes delivery of the Panel's reprimand.

On September 24, 2018, your client Cally Schooley retained you to represent her for injuries she sustained in a motor vehicle collision on September 17, 2018. During the course of representation, you did not respond to her inquiries relevant to the status of her matter.

On March 11, 2021, your client reported a grievance to the Nevada State Bar. She expressed concern that you had collected her settlement money without paying her and/or closed her case without allowing her a meaningful opportunity to retain another attorney to handle the matter. The State Bar's investigation revealed that you also failed to timely file a complaint to preserve her claims for personal injuries, allowing the statute of limitations to expire. You readily acknowledged your negligent handling of her case in your response to the State Bar.

NRPC 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Here, you negligently failed to act with reasonable diligence and promptness by not properly calendaring the personal injury action deadline and thereafter filing a complaint to preserve your client's claim for damages. Your client suffered actual injury by having her claim foreclosed in the courts.

ABA Standards for Imposing Lawyer Sanctions, (2nd Ed. 2019), section 4.43 (Violation of duties to clients) 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."

Based on the foregoing, you are hereby REPRIMANDED for a violation of RPC 1.3. Please promptly conclude this matter by remitting the minimum costs of $1,500 within 30 days of the issuance of this sanction. SCR 120(3).

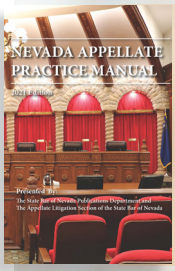
ENDNOTES:

1. The complaint was served on Parris through regular and certified mail at his SCR 79 address. The State Bar unsuccessfully attempted personal service of numerous disciplinary pleadings. The State Bar also emailed numerous disciplinary pleadings to Parris, including notice of the hearing. Further, the State Bar left messages with Parris's answering service and was informed he was receiving those messages.
2. While the hearing panel stated it could not determine Parris's mental state because he was not present at the disciplinary hearing, the panel, nevertheless, concluded that Standards 6.22 and 7.2 of the *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards* (Am. Bar Ass'n 2017) applied, which are both applicable only when a lawyer has a knowing mental state.
3. Pursuant to NRAP 34(f)(l), we have determined that oral argument is not warranted in this matter.
4. Wike's bankruptcy petition was pending when the reinstatement proceedings took place. In his briefing in this court, he claims that the bankruptcy court has since issued an order of discharge. He has not, however, provided a copy of any such order.
5. We are not persuaded by Wike's argument that *Brookman* is distinguishable because it dealt with restitution instead of disciplinary costs. Other courts have concluded that the reasoning in *Kelly v. Robinson,* 479 U.S. 36 (1986), that was central to *Brookman,* extends to disciplinary costs. E.g., *Feingold,* 730 F.3d at 1275; *Richmond v. New Hampshire Supreme Ct. Comm. on Pro. Conduct,* 542 F.3d 913 (1st Cir. 2008).
6. The record indicates that the panel contemplated that Wike would have the 24-month probationary period to pay the costs, and we agree that timeframe is reasonable under the circumstances.
7. The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

BOOKS FROM THE BAR

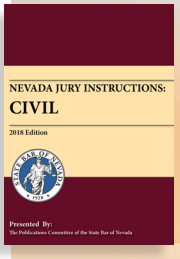
The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.

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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TIP FROM THE BAR COUNSEL

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Good Communication Relieves Stress in Client Relationships

Nevada Rule of Professional Conduct 1.4 addresses communication—an integral part of hospitality. You can make your reception area chic and your staff cheery, but your clients will not feel welcome and valued if they feel lost and alone.

The operative words throughout Rule 1.4 are "reasonably" and "promptly." What do either of those terms mean? Consider the following:

Prompt

Are there changes in a case that have the potential to affect the client? Has anything arisen that might require your client's consent, or quick action? Do you need to be the first to break the news so you can do damage control? Never be the reason your client misses a deadline, offer, or other important news. Whenever your client makes a reasonable request for information, find a five-to-10-minute gap and respond.

Reasonable

Sometimes clients can be unreasonable, but do not forget that these are not just cases. These are people's lives. The earlier in the process and more unfamiliar with the legal process your client is, the more often you should communicate. Prove early in the attorney-client relationship that you care about your client's peace of mind and will update them with the latest information. That trust will make the process easier on both of you. Clients who feel they must torture you for information will bring the thumb screws—and resentment—to the relationship. Don't let that happen. If you will be busy with other matters, on vacation, or you do not want to work on the weekend, contact clients you have not spoken with lately—especially the nervous types. Let them know you'll be out of reach for X number of days, but you haven't forgotten about them. Assure them that there haven't been any changes to their case (unless there have been, in which case, update them), and that you will be in touch once you have an update. Decreasing client stress also decreases the number of panicked voicemails you receive while you're trying to focus on other things.

Give clients options to contact you. Make sure they have your office address, phone number, and email. If you'll be out for more than a couple days, consider changing your voicemail greeting or setting up automatic email responses so that people can recalibrate their expectation timelines appropriately. Done right, communication will relieve stress for both sides of the attorney-client relationship.