

Bar Counsel Report

In Re: STEPHEN COMPAN
Bar No.: 3044
Case No.: 83235
Filed: 09/17/2021

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 Stephen Compan. Under the agreement, Compan admitted to violating RPC 3.2(a) (expediting litigation), RPC 3.2(c) (fairness to opposing party and counsel), and RPC 1.16(a) (declining or terminating representation), and agreed to a six-month-and-one-day suspension, stayed subject to certain conditions to be completed during a one-year probation.

As part of his guilty plea agreement, Compan admitted to the facts and violations. The record therefore establishes that he violated the above-listed rules by failing to abide by Nevada Rules of Appellate Procedure and court orders in representing appellants in Docket No. 79192, including not providing opposing counsel with a stipulation for an extended briefing schedule, not timely filing a case appeal statement and opening brief, and failing to file a docketing statement. Additionally, Compan failed to withdraw his representation when warranted by physical and/or mental limitations.

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 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).

Based on the duties Compan knowingly violated, and because his conduct potentially harmed his client and harmed the legal profession, the baseline sanction before considering aggravating and mitigating circumstances is suspension. See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards, Standard 4.42 (Am. Bar Ass'n 2017) (providing that suspension is appropriate when "a lawyer engages in a pattern of neglect 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 findings of two aggravating circumstances (multiple offenses

and substantial experience in the practice of law), and six mitigating circumstances (absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to disciplinary authority/cooperative attitude, character or reputation, imposition of other penalties or sanctions, and remorse). Under the *Lerner* factors, we conclude that the agreed-upon and recommended discipline is appropriate and serves the purpose of attorney discipline.

Accordingly, commencing from the date of this order, we hereby suspend attorney Stephen Compan from the practice of law in Nevada for 6 months and 1 day, stayed for 12 months subject to completion of the following conditions within the stayed period. Compan must (1) undergo an evaluation with the Nevada Lawyers Assistance Program and actively participate in any resulting recommendations, (2) provide the State Bar with a law practice succession plan, and (3) not receive any grievance for misconduct that results in a disciplinary screening panel recommending a formal hearing.¹ Additionally, Compan must pay \$2,500 in administrative costs pursuant to SCR 120 and the actual costs of the disciplinary proceeding within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.²

In Re: BRET O. WHIPPLE
Bar No.: 6168
Case No.: 82963
Filed: 09/17/2021

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 Bret O. Whipple. Under the agreement, Whipple admitted to violating RPC 1.15 (safekeeping property), RPC 5.3 (responsibilities regarding nonlawyer assistants), and RPC 8.1 (disciplinary matters). He agreed to a one-year suspension stayed for 18 months subject to certain conditions.

Whipple 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 failing to keep accurate client ledgers or accounting records; failing to supervise an employee resulting in the misappropriation of \$110,000 of client funds; commingling personal, business, and client funds in his accounts; permitting a nonlawyer employee to negotiate a contract settlement on behalf of a client; and failing to timely provide the State Bar with records upon request. The record also demonstrates that to the best of his knowledge, Whipple has repaid all the missing client funds.

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) (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).

Whipple admitted to knowingly violating duties owed to his clients (safekeeping property) and the profession (disciplinary matters). His clients were injured or potentially injured when their funds were misappropriated. The baseline sanction for such misconduct, before considering 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”); Standard 7.2 (explaining that suspension is 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 findings of four aggravating circumstances (prior discipline, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and four mitigating circumstances (character and reputation, good faith effort to make restitution, acceptance of responsibility, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Brett O. Whipple from the practice of law for one year from the date of this order, stayed for 18 months subject to the conditions outlined in the conditional guilty plea agreement. Those conditions include the requirement that Whipple retain a CPA to manage his trust account and conduct a forensic audit of his trust accounts. Within 30 days of the audit report, Whipple shall pay restitution to all clients owed funds as identified in the forensic audit. During the stayed suspension, the CPA will provide the State Bar quarterly reports regarding Whipple’s trust account and Whipple shall provide any additional documents requested by the State Bar, within 15 days of the request. Whipple shall also complete, in addition to his annual requirement, 10 CLE credits on RPC 5.3 or supervision of nonlawyer assistants, 10 CLE credits on trust account management, and 6 CLE credits on RPC 8.1 or the duty to respond to the State Bar’s inquiries. Lastly, Whipple shall 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.³

In Re: PHILIP SINGER
Bar No.: 7914
Case No.: 82992
Filed: 09/14/2021

ORDER OF CONDITIONAL REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel’s recommendation to reinstate attorney Philip Singer with certain conditions. The parties waived briefing and oral argument by stipulation, which we approved. SCR 116(2).

In December 2011, this court disbarred Singer from the practice of law under former SCR 102(1), requiring that he wait a minimum of five years before seeking reinstatement.⁴ *In re Discipline of Singer*, Docket No. 57548 (Order Approving Revised Conditional Guilty Plea Agreement, Dec. 21, 2011). The discipline order also required that, before seeking reinstatement, Singer pay \$67,334.42 in restitution to clients and their lienholders, pay additional restitution to three other clients as ordered in binding fee dispute arbitration, complete 15 hours of continuing legal education, pass the Nevada bar exam and multi-state professional responsibility exam, and pay the costs of the disciplinary proceedings. *Id.* Singer petitioned for reinstatement on October 12, 2020, after waiting the minimum five years, 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 Singer 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 Singer’s failure to strictly comply with the suspension order’s requirement that he pay the disciplinary proceeding costs and restitution established through binding fee dispute arbitration, we conclude 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, Singer stated that he had not received a bill of costs from the State Bar, he has paid the required restitution, and he has agreed to reinstatement on a probationary status with the requirement that he pay the remaining balance owed for the disciplinary proceedings and repay the Client Security Fund for payments it made to clients and lienholders without Singer’s knowledge. We therefore approve the panel’s recommendation to reinstate Singer to the practice of law with a one-year probation subject to the conditions set forth in his reinstatement agreement with the State Bar, summarized as follows:

CONTINUED ON PAGE 40

Bar Counsel Report

- (1) All work performed by Singer must be supervised by another attorney. During the first six months of his probationary term, Singer must not be in solo practice and must be employed by a law firm at which he will have no access to bank or trust accounts. During the remaining six months of his probationary term, Singer must obtain an attorney mentor approved by the State Bar, who will continue to supervise his work.
- (2) Singer must repay \$27,871.73 to the Client Security Fund before the probationary term expires.
- (3) Singer must pay \$7,226.13 in outstanding administrative costs to the State Bar within the first six months of the probationary term, with payments of \$1,204.35 due on the first of each month following entry of this order.
- (4) Singer must complete 5 CLE credits (2 ethics and 3 general) in addition to the credits required by SCR 210.
- (5) Singer must submit monthly reports to the State Bar confirming his compliance with the probation conditions.

Providing that Singer passes the multi-state professional responsibility exam⁵ and meets all other qualifications for bar admission, he shall be reinstated to the practice of law in Nevada, subject to the above conditions. See SCR 116(5) (allowing conditions to reinstatement). Also, Singer must pay the costs of the reinstatement proceeding, including \$2,500 under SCR 120, within 30 days of this order, if he has not done so already.

It is so ORDERED.

RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following member resigned pursuant to this rule:

MICHAEL B. SPRINGER Bar No. 1948
Order No. 83298 Filed 09/02/2021

ENDNOTES:

1. The guilty plea agreement also required that Compan withdraw his representation as appellants' counsel in Docket No. 79192, but that matter has since been resolved and the remittitur issued.
2. The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.
3. The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.
4. When the State Bar filed its disciplinary complaint against Singer, SCR 102(1) and 116 permitted a disbarred attorney to seek reinstatement after waiting at least three years. See In the Matter of Amendments to Procedural Rules Governing Professional Misconduct, ADKT No. 392 (Order Amending Nevada Supreme Court Rules 98-123 and 212-213 and Adopting Rule 102.5, December 29, 2006) (amending SCR 102(1) and SCR 116, effective March 1, 2007, to make disbarment irrevocable).
5. At the time of the reinstatement hearing, Singer was awaiting the results of the March 2021 exam.

ETHICS HOTLINE FOR ATTORNEYS

Call now:
1-800-254-2797



Attorneys with questions about ethics and the Rules of Professional Conduct may reach out to the Office of Bar Counsel for informal guidance during any business day.

Each day, a State Bar of Nevada attorney is assigned to take calls from lawyers with questions about the legal profession in our state.

TIP

FROM THE BAR COUNSEL

Protection of the Struggling Practitioner and the Public

It is no wonder that the practice of law is a high-stress profession. We must uphold the trust of our clients. We do not disclose our clients' confidential statements unless the law compels us. We separate client money from our personal and business finances.

We pursue our clients' objectives with zeal. Perhaps these pressures contribute to a higher-than-average level of alcohol and substance abuse. What happens when our struggle spills out into the public square? Most criminal convictions against lawyers are related to alcohol or substance abuse. Hopefully, it will never happen to you. But if it does, knowing the rules can help.

Supreme Court Rule 111 provides respite that we might not fully appreciate or think we need at the time. The Nevada Supreme Court has repeatedly stated "... the purpose of attorney discipline is to protect the public, the courts, the public and the legal profession, not to punish the attorney." *In re Colin*, 135 Nev. Adv. Rep. 43, 448 P.3d 556 (2019), citing *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). Here's how Rule 111 works:

SCR 111(2) requires the lawyer to self-report a criminal conviction—other than a misdemeanor traffic offense not involving alcohol or drugs. But it also directs the clerk of court to report the conviction to the state bar. The rule requires a self-report quicker than you might think. A lawyer must report a "conviction" within 30 days of an initial finding of guilt, whether by plea or trial, irrespective of sentence deferral, absence of a written judgment, or pending appeal. SCR 111(1). Court clerks must report the written judgment¹ to the state bar and Supreme Court within 10 days of judgment entry.

Upon report, the Office of Bar Counsel files a petition with the Supreme Court with proof of the conviction, reporting any such crime other than i) a misdemeanor traffic offense, or ii) a first-time conviction for a misdemeanor traffic violation involving alcohol or controlled substances.² For a practitioner's second-or-more traffic offense conviction involving alcohol or controlled substances, bar counsel must obtain a disciplinary panel's recommendation to attach with the mandatory Petition. SCR 111(4). The Supreme Court's actions on the petition depends upon the nature of the crime reported.

A conviction of a serious crime³ will result in a temporary suspension, pending referral to a disciplinary panel proceeding. SCR 111(8). The court may set aside this temporary suspension for good cause. Likewise, a disciplinary panel can suspend disciplinary proceedings for good cause. The court has more options to address a non-serious crime. It can i) refer the matter to a disciplinary panel proceeding, ii) decline to refer the matter, or iii) issue an Order to Show Cause for the lawyer to demonstrate why they should not be immediately temporarily suspended. SCR 111(9).

Rule 111 enables the Supreme Court and the disciplinary board to take immediate action to protect both the practitioner and the public from possible harm. That protection can range from temporary suspension with a disciplinary panel referral to taking no action at all. The efficacy of this rapid-relief protection mechanism depends upon timely reports.

No one wants to turn themselves in. Legal practitioners have a lot of pressure on them. We all fail to measure up to expectations or rules from time to time. When we fail to measure up, Rule 111 seems like another crushing burden. But it can help. Rule 111 often leads to diversion (SCR 105.5) and wellness programs (SCR 106.5), which help the lawyer return to sobriety and effective practice. Challenges make life interesting. Overcoming challenges makes life more meaningful.

ENDNOTES:

1. A certified copy of proof of conviction is deemed conclusive for disciplinary purposes. SCR 111(5).
2. Misdemeanor first offense alcohol or drug-related traffic offenses were deemed exempt from self-reporting in 2018.
3. A "serious crime" involves: 1) any felony, or 2) any non-felony crime "... that adversely reflects on the attorney's fitness to practice law, or involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime.'" SCR 111(6).

The state bar has resources to help attorneys who are struggling. Call our hotline at 866-828-0022 or visit www.nvbar.org > For Lawyers > Resources > Lawyer Wellbeing.