

Bar Counsel Report

In Re: ERIC MATTHEW LIPMAN
Bar No.: 4319
Case No.: 86991
Filed: 08/24/2023

ORDER IMPOSING RECIPROCAL DISCIPLINE AND DISBARRING ATTORNEY

This is a petition to reciprocally discipline attorney Eric Matthew Lipman pursuant to SCR 114.¹ Lipman had his bar license permanently revoked in Florida in November 2022 and untimely reported the same to the Nevada State Bar in March 2023. See SCR 114(1). Lipman has not responded to the State Bar's petition. See SCR 114(3).

In Florida, Lipman pleaded guilty to one count of conspiracy to distribute, receive, and possess child pornography and distribution, receipt, and possession of child pornography; and one count of distribution of and attempt to distribute child pornography. He was sentenced to 72 months in prison, supervised release, and payment of restitution. This violated Rules Regulating the Florida Bar R. 4-8.4(b), identical to RPC 8.4(b), which provides that it is misconduct to commit "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." As a result of this violation and Lipman's amended petition to the Florida State Bar for disciplinary revocation without leave to seek readmission, the Supreme Court of Florida entered an order permanently revoking Lipman's Florida bar license.

SCR 114(4) mandates the imposition of identical reciprocal discipline unless the attorney demonstrates, or the court finds, that one of four exceptions apply. None of the four exceptions apply in this case, and "[i]n all other respects a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purpose of a disciplinary proceeding in this state."² SCR 114(5). Accordingly, we grant the petition for reciprocal discipline and hereby disbar Eric Matthew Lipman from the practice of law in Nevada. The parties shall comply with SCR 115 and SCR 121.1.

It is ORDERED.³

In Re: BRANDON L. PHILLIPS
Bar No.: 12264
Case No.: 86627
Filed: 08/222/2023

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 in exchange for a stated form of discipline for

attorney Brandon L. Phillips. Under the agreement, Phillips admitted to violating RPC 1.1 (competence), RPC 1.3 (diligence), RPC 3.1 (meritorious claims and contentions), RPC 3.4 (fairness to opposing party and counsel), and RPC 4.4 (respect for rights of third persons). He agreed to a one-year suspension, stayed for two years subject to certain conditions.

Phillips admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that Phillips violated the above-listed rules by failing to prepare and file orders as directed by the court, filing multiple erroneous bankruptcy filings and failing to comply with bankruptcy court rules, and filing more than one nonconforming document in district court without correcting those documents. Phillips failed to timely correct or withdraw both the erroneous bankruptcy filings and the nonconforming documents even after he was put on notice they were erroneous or nonconforming. The opposing party in the bankruptcy proceedings incurred \$3,000 in unnecessary attorney fees related to Phillips' actions.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. See *In re Discipline of Arabia*, 137 Nev. 568, 571, 495 P.3d 1013, 1109 (2021) (stating the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Phillips admitted to negligently violating duties owed to his clients (competence and diligence) and the legal system (meritorious claims and contentions). The baseline sanction for such misconduct, before considering the aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium, of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2017) (explaining that suspension is appropriate when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client"); Standard 4.52 (providing that suspension is "appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client"). The record supports the panel's finding of two mitigating circumstances (absence of dishonest or selfish motive and full and free disclosure to the disciplinary authority or cooperative attitude toward the proceeding). It also supports the panel's finding of four aggravating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law). Phillips' prior discipline history is particularly relevant given that it includes three letters of reprimand and a public reprimand for similar rule violations as those at issue here. Specifically, he received a letter of reprimand and a public reprimand for failing to file documents in two separate appeals even after being directed to do so and being sanctioned for failing to do so. Phillips also received a letter of reprimand for failing to attend a follow-up hearing and failing to communicate with a client when he took over as lead counsel in a taxation hearing after co-counsel admitted to not being an attorney. Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Brandon L. Phillips from the practice of law for one year from the date of this order, stayed for two years subject to the conditions outlined in the conditional guilty plea agreement. Those conditions include the requirements that Phillips (1) not accept any new bankruptcy cases; (2) no longer practice as a solo practitioner; (3) seek employment at a law firm where at least one attorney will supervise him; (4) complete five CLE credits in ethics, in addition to his annual CLE requirement; and (5) submit quarterly reports to the State Bar. If Phillips successfully completes the requirements outlined in the conditional guilty plea agreement, a public reprimand shall be entered for the State Bar cases SBN22-00006 and SBN22-00528. Additionally, Phillips must maintain current contact information with the State Bar. Lastly, Phillips 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.

In Re: JOHN WILLIAM CROSBY
Colorado Bar No.: 27245
Case No.: SBN22-00458
Filed: 09/05/2023

LETTER OF REPRIMAND

To John William Crosby:

A Formal Hearing Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violation of Rule 8.1 of the Rules of Professional Conduct ("RPC").

On October 12, 2022, the State Bar of Nevada requested that you provide information related to a grievance your former client filed. Your former client alleged a lack of diligence in prosecuting his patent application and a lack of communication with him regarding that application. You did not provide a response. Therefore, on December 5, 2022, the State Bar of Nevada again requested you provide information related to the grievance. No response was received.

Based on your failure to respond to the State Bar's requests, the State Bar had no choice but to accept the facts as alleged by the former client and proceed with a disciplinary matter and file a formal Complaint.

On May 24, 2023, you provided an initial response to the grievance in the form of an Answer. You provided some relevant information in June 2023. However, you did not provide adequate supporting documentation evidencing reasonable diligence and communication with your client until August 10, 2023.

Based on the information that you finally provided, the State Bar was able to evaluate that your conduct did not violate RPC 1.3 (Diligence), RPC 1.4 (Communication, or RPC 8.4 (Misconduct).

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

Your conduct related to representation of the foregoing clients, violated Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 8.1 (Bar Admission and Disciplinary Matters) because you initially failed to respond to the State Bar's lawful demands for information in a disciplinary matter and subsequently failed to provide all relevant information responsive to the State Bar's requests until two weeks before the Formal Hearing date.

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 7.2 of the ABA Standards for Imposing Lawyer Sanctions provides that "[s]uspension 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." In this instance, you were aware of your obligation to respond to the State Bar, yet you failed to do so. You also failed to provide adequate information until the near eve of the formal hearing. This injured the disciplinary process because the State Bar cannot operate as a self-regulating agency without lawyer participation.

The Panel does consider the mitigating factors of your personal issues that may have contributed to your failure to initially respond to the grievance and your lack of a selfish or dishonest motive in failing to respond. These mitigating factors warrant a downward deviation in the appropriate sanction for your misconduct.

Based upon the foregoing, you are hereby REPRIMANDED for your violation of RPC 8.1 (Bar Admission and Disciplinary Matters). Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500 plus the hard costs of the Formal Hearing proceeding.

ENDNOTES:

1. Lipman has been suspended from the practice of law in Nevada since June 2022 for failure to pay annual license fees or complete annual disclosures.
2. Notably, when Lipman reported the revocation of his Florida bar license, he did not raise any concerns about the process leading to that revocation and indicated he had no objection to a reciprocal discipline order.
3. In light of Lipman's disbarment, we need not temporarily suspend him pending further disciplinary proceedings as required by SCR 111(7) for an attorney convicted of a "serious crime." See *In re Discipline of Serota*, 129 Nev. 631, 636, 309 P.3d 1037, 1040 (2013) (concluding that disbarring an attorney mooted other bar matters regarding the same attorney).

TIP

FROM THE BAR COUNSEL

From Capping to Clarity: Ethical Strategies for Client Acquisition

“Ambulance chaser” is just one negative moniker bestowed on members of our profession. It presents the image of a personal injury attorney running after an ambulance in hopes of soliciting the patient upon arrival.

Unethical lawyers use subtler ways to solicit clients and usually do so through a third party. Examples include having an operative working in a hospital’s accounting office or emergency room, in a doctor’s office, or somewhere inside an insurance agency.

A common method is encouraging tow truck drivers to hand out business cards to accident victims. Unethical lawyers with higher levels of technical savvy monitor police communications and rush to crash scenes. Sometimes they arrive before police officers.

Rule of Professional Conduct 7.3 (Communications with Prospective Clients) prohibits the direct solicitation of prospective clients with whom the lawyer has no family or prior professional relationship. In other words, a lawyer cannot solicit business directly from someone they do not know.

And RPC 8.4(a) prohibits a lawyer from violating an ethics rule – in this case RPC 7.3– through the acts of another person. We call a person trying to solicit a new client for an attorney a “capper.”

If caught using a capper, an attorney faces professional discipline that could include suspension or disbarment. Solicitation can even result in significant criminal and civil penalties.

Here are six tips to avoid capping:

- 1. Know the Rules:** Familiarize yourself with RPCs 5.4, 7.2, and 7.3 on fee sharing, referral kickbacks, and direct solicitation, respectively.
- 2. Educate Staff and Associates:** Make sure that anyone working with or for you, including paralegals, assistants, or other associates, understands the rules and avoids prohibited solicitation. Remember, their actions can reflect on you.
- 3. Rely on Reputation and Referrals:** Instead of direct solicitation, focus on building a strong professional reputation. Satisfied clients and colleagues will often refer new clients to you. However, avoid referrals from those likely to engage in direct solicitation. Do not give a stack of business cards to a towing company, body shop, ambulance service, or similar business.
- 4. Advertise Ethically:** Build a professional website. Create a profile on legal directories. Advertise on social media, print, radio, and television. Using mass mailers or general advertising is ethical. Just ensure that any information or claims you make are not misleading.
- 5. Avoid Cappers Disguised as Legitimate Marketers:** Do not associate or work with non-lawyers who engage in direct solicitation. If they call themselves a marketing specialist or referral service but do not explain how they obtain their client referrals, then stay away. They land you in ethical hot water even if they present themselves as legitimate.
- 6. Consult When in Doubt:** If you are unsure whether a particular action could be seen as prohibited solicitation, call the ethics hotline at (800) 254-2797.

Ethical marketing and networking will not only keep you compliant with the law but will also bolster your professional reputation in the long run.



ETHICS
RESPECT
CODE
HONESTY