

Bar Counsel Report

In Re: MICHAEL H. HAMILTON
Bar No.: 7730
Case No.: 85027
Filed: 08/09/2022

ORDER OF DISBARMENT

The Southern Nevada Disciplinary Board has filed, under SCR 112, a petition for attorney Michael H. Hamilton's disbarment by consent. The petition is supported by Hamilton's affidavit, stating that he freely and voluntarily consents to disbarment, after having had the opportunity to consult with counsel. Hamilton acknowledges in the affidavit that he has not complied with the orders entered in three prior disciplinary proceedings: *In re Discipline of Hamilton*, No. 81256, 2020 WL 5512516 (Nev. Sept. 11, 2020) (Order Approving Conditional Guilty Plea Agreement) (suspending attorney for four years to run concurrently with suspensions imposed in two other cases); *In re Discipline of Hamilton*, No. 80556, 2020 WL 2319994 (Nev. May 8, 2020) (Order of Suspension) (imposing previously stayed 42-month suspension based on attorney's failure to comply with conditions on stayed portion of the suspension); *In re Discipline of Hamilton*, No. 78101, 2019 WL 2140630 (Nev. May 14, 2019) (Order Approving Conditional Guilty Plea) (suspending attorney for four years with 42 months of the suspension stayed subject to certain conditions). And he admits that he could not successfully defend against a disciplinary complaint based on his failure to comply with the prior disciplinary orders.

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. Hamilton's affidavit meets the requirements of SCR 112(1), and we conclude that the petition should be granted. Accordingly, Hamilton is disbarred. The provisions of SCR 115 and SCR 121.1 governing notice and publication of orders of disbarment shall apply to this order.

It is so ORDERED.

In Re: ROY L. NELSON
Bar No.: 7842
Case No.: 84369
Filed: 08/11/2022

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that Roy L. Nelson III be suspended for six months after he

failed to comply with the terms of a Diversion Program Consent Contract.¹ Nelson agreed to enter a diversion program as an alternative to discipline after it was alleged that he violated RPC 1.3 (diligence), RPC 3.4(c) (fairness to opposing party and counsel) and RPC 8.4(d) (misconduct).

"As an alternative to or in conjunction with disciplinary sanctions, an attorney ... may participate in an approved diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct." SCR 105.5(1). "The terms shall be stated in a written diversion contract or mentoring agreement." SCR 105.5(2). When bar counsel concludes that an attorney has failed to comply with the attorney's diversion contract and the attorney has failed to provide a timely justification for the failure, bar counsel shall refer the matter to a hearing panel. SCR 105.5(6). "In proceedings brought under [SCR 105.5], bar counsel shall have the burden by a preponderance of the evidence to establish any breach of the contract or agreement, and an attorney shall have the burden by a preponderance of the evidence to establish justification for any such breach." SCR 105.5(6)(a). "If a hearing panel finds a breach to be material and without justification ... [and i]f the contract or agreement was effectuated as an alternative to disciplinary sanctions, the panel shall terminate the contract or agreement and impose the applicable alternative sanctions." SCR 105.5(6)(b).

Nelson acknowledged at the hearing that he had breached terms of the Diversion Program Consent Contract that he entered into with the State Bar before beginning a diversion program. The record supports the hearing panel's finding that the breach was material and that Nelson failed to meet his burden of establishing a justification for the breach.² Because Nelson breached the Diversion Contract and had already agreed to the alternative discipline of a six-month suspension, SCR 105.5(6)(b) requires that the panel terminate the contract and impose the agreed-upon discipline.

Accordingly, we agree with the panel's recommendation to terminate the Diversion Contract and impose the alternative discipline to which Nelson agreed. Thus, the Diversion Contract is terminated and we hereby suspend attorney Roy L. Nelson III from the practice of law for six months commencing from the date of this order. Nelson shall pay the costs of the disciplinary proceedings, including \$2,500 mandated by SCR 120(3), within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.

It is so ORDERED.

In Re: THOMAS S. SHADDIX
Bar No.: 7905
Case No.: 84263
Filed: 08/04/2022

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court revoke attorney Thomas S. Shaddix's disciplinary probation and impose the stayed six-month-and-one-day suspension based on his failure to comply with probation conditions. Shaddix has filed a brief challenging the panel's recommendation, the State Bar has filed a response, and Shaddix has filed a reply.

On May 14, 2021, this court approved Shaddix's conditional guilty plea and imposed a stayed six-month-and-one-day suspension subject to an 18-month probationary period for violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 5.3 (responsibilities regarding non-lawyer assistants), and RPC 8.1 (disciplinary matters). The stayed suspension was conditioned on Shaddix's compliance with probation terms, which included conditions that he obtain a mentor and provide quarterly reports and engage in binding fee dispute resolution with a specified client within 90 days of the May 14 disciplinary order.

In the proceedings below, Shaddix admitted that he did not obtain a mentor and did not participate in binding fee dispute arbitration. Despite this, Shaddix argues that we should not impose the stayed suspension for two reasons. First, he argues that the panel chair made a statement before any evidence was presented showing that he already made up his mind regarding the proceeding and which "poison[ed] the well" of the other panel members. But the panel chair made this statement in response to Shaddix's oral request for a continuance of the disciplinary proceedings. As such, we disagree with Shaddix that this statement prejudiced Shaddix or potentially impacted the hearing panel's ultimate recommendation.

Second, Shaddix argues that the panel's recommendation is too harsh under the totality of circumstances. In this, he asserts that he could not find a mentor and insinuates that he did not need one because he was not practicing law and that the fee dispute did not meet the minimum jurisdictional requirements for that program. But Shaddix testified that he still had one active case and that he contacted only three attorneys to act as his mentor. Moreover, he did not even attempt to engage in fee dispute resolution. Under these facts, and considering that Shaddix agreed to the discipline and probation conditions in his conditional guilty plea agreement, we conclude that the stayed suspension should be imposed.³

Accordingly, we revoke Shaddix's probation and suspend him for six months and one day commencing from the date of this order. Shaddix shall pay the actual costs of the disciplinary proceedings within 30 days from the date of this order. SCR 120. The parties shall comply with SCR 115 and SCR 121.1. It is so ORDERED.

In Re: MARK P. CHAKSUPA
Bar No.: 10537
Case No.: OBC20-0728
Filed: 06/29/2022

PUBLIC REPRIMAND

To Mark P. Chaksupa:

On May 5, 2022, a Breach Hearing Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel concluded that you failed to comply with, and materially breached, the terms of your Diversion Program Consent Agreement and shall be issued a Public Reprimand in violation of RPC 1.4 (Communication) and RPC 8.1 (Bar Admission and Disciplinary Matters).

On or about September 16, 2019, R.F. (hereinafter "Grievant") retained you to substitute in as the attorney of record in his criminal case. On September 18, 2019, you confirmed as Grievant's counsel. On, about, or between September 18, 2019, and June 11, 2020, Grievant had one conversation with you regarding his case. Grievant, his wife, and his friends attempted unsuccessfully to communicate [sic] you over one hundred times. Based on his inability to reach you, Grievant learned from the Clark County Public Defender's Office that the court vacated his calendar call and trial due to COVID-19. Moreover, on August 5, 2020, Grievant appeared for a status check at 11:30 am only to learn from the clerk that the court moved it up to 10:20 am. The clerk informed Grievant that you appeared at the hearing and told the Court that you attempted to contact Grievant, but to no avail.

On July 31, 2020, the State Bar of Nevada (hereinafter "State Bar") sent you a letter of investigation ("LOI") to your SCR 79 email address. You did not respond. On August 31, 2020, the State Bar sent you another LOI to your SCR 79 email address and your SCR 79 address. Still, you did not respond. On September 21, 2020, an investigator with the State Bar emailed a third LOI to your SCR 79 email address, as well as a second email in the State Bar's records. Although the State Bar received delivery receipts for both emails, you did not respond. On October 8, 2020, an investigator with the State Bar left messages on two of your phone numbers.⁴ You failed to return the investigator's phone calls. On October 14, 2020, the State Bar sent a fourth LOI to your SCR 79 address, as well as an alternate address. The

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postal service confirmed delivery of both, but again you failed to respond to the State Bar. On November 12, 2020, the State Bar left another message on the phone number with your voicemail message. You did not return the State Bar's phone call.

RPC 1.4 (Communication) states, in pertinent part, that a lawyer shall "[k]eep the client reasonably informed about the status of a matter" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." You failed to keep Grievant informed about the status of his matter. Moreover, you failed to respond to Grievant's multiple attempts to contact you. 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. This type of ethical breach caused injury to Grievant.

RPC 8.1 (Bar Admission and Disciplinary Matters) states, in pertinent part, that "a lawyer in connection with a disciplinary matter, shall not [. . .] knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority." You failed to respond to multiple letters of investigation the State Bar sent you. You also failed to return any of the State Bar's phone calls. 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. This type of ethical breach caused injury to the public and/or the legal system.

DISCIPLINE IMPOSED

In light of the foregoing, you are hereby PUBLICLY REPRIMANDED for violating RPC 1.4 (Communication) and RPC 8.1 (Bar Admission and Disciplinary Matters). In addition, pursuant to SCR 120(3), you shall pay a \$1,500 fee plus the hard costs of the instant proceedings. You shall make such payment no later than thirty (30) days after receiving a billing from the State Bar.

In Re: JOHN R. HOLIDAY
Bar No.: 13151
Case No.: OBC21-0014
Filed: 06/13/2022

LETTER OF REPRIMAND

To John R. Holiday:

A Southern Nevada Disciplinary Board Hearing Panel convened on May 16, 2022 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 and the State Bar's subsequent investigation inquiries. This letter constitutes delivery of the Panel's reprimand.

In March 2020, you began the representation of Bacilio Baldonado in a divorce, child custody and support matter in Clark County Family Court. Over time, you began to decline taking his calls. After settlement while awaiting your filing of a time-sensitive draft court order, you failed to adequately respond to his emails, calls, or texts from October 2020 through December 2020. Your client was unable to directly access court information because you were the attorney of record.

The State Bar thereafter inquired with you on six occasions seeking substantive information on the Baldonado representation and your client's complaints: January 12, 2021, February 4, March 17, April 9, May 17, and June 15, 2021. These information queries were important for the State Bar to properly discharge its responsibilities to the public. The information sought would have helped determine if the Baldonado grievance had merit and if your client sustained actual injury or was facing additional potential injury. You offered two responses on February 3 and April 23 that consisted of only five sentences and were not fully or adequately responsive to the detailed inquiries.

NRPC 1.4(a)(4) provides that a licensed practitioner must promptly comply with a client's reasonable requests for information. You knowingly breached that duty by not adequately responding to your client's repeated phone messages, emails, and text messages over several months while a draft court order submission was overdue. Your client suffered actual minor injury from frustration resulting from your non-responses about the court order submission. Your client suffered potential injury from the court sanctions that could have been imposed. The legal system sustained actual minor injury by the increased docket congestion.

ABA Standards for Imposing Lawyer Sanctions, Section 4.42 (Duties owed to Clients) states that Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or when a lawyer engages in a pattern of neglect that causes injury or potential injury to a client.

NRPC 8.1(b) provides that a licensed practitioner must respond to information requests from the State Bar in connection with a disciplinary matter. You knowingly or intentionally breached that duty by not responding to numerous State Bar requests for information over six months concerning your representation of Mr. Baldonado before the Family Court. You provided incomplete information in response to two inquiries. You did not respond to the remaining four inquiries. The numerous unnecessary inquiries caused actual injury by causing unnecessary investigative delay and unnecessary administrative time expense.

ABA Standards for Imposing Lawyer Sanctions, Section 7.2 (Duties owed as a Professional) states that 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.

Based upon your absence of a prior disciplinary record, personal problems, and cooperative attitude toward the proceedings here, a downward departure in sanction is warranted. Based on the foregoing, you are hereby REPRIMANDED for a violation of NRPC 1.4(a) and 8.1(b). Please promptly conclude this matter by remitting the minimum costs of \$1,500 within 45 days of the issuance of this sanction and remitting the costs of the proceedings. SCR 120(1), (3).

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. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.
2. While Nelson pointed to events and alternative treatment as justification for his breach, despite the State Bar's requests for documentary evidence supporting those events and alternative treatment, Nelson failed to provide that evidence.
3. Based on this, we need not address Shaddix's failure to fully pay the costs of the 2021 disciplinary proceeding.
4. One phone number had a voicemail greeting that the number belonged to you.

BECAUSE YOUR SOBRIETY MATTERS
WE'RE HERE TO HELP.

NEVADA LAWYER ASSISTANCE PROGRAM

LRS

WE GENERATE LEADS.
Join today for just \$50 per year.

LAWYER REFERRAL SERVICE
STATE BAR OF NEVADA

NVBAR.ORG > MEMBER SERVICES > LAWYER REFERRAL SERVICE

TIP

FROM THE BAR COUNSEL

RPC 6.1: Pro Bono Publico Service

Every year when a lawyer renews their license, they are asked on the electronic Annual Pro Bono Reporting Form to declare the number of hours provided of direct legal services for no fee to low-income clients.

By filing out the form, lawyers are complying with RPC 6.1, which states, “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 20 hours of pro bono publico legal services per year ...”

During those 20 hours, a lawyer should spend a majority of the time providing legal services without compensation to persons of limited means or to a public service, charitable group, or organizations in matters that are designed primarily to address the needs of persons of limited means.

If an attorney is unable or unwilling to provide 20 hours of pro bono legal services, they can satisfy their professional and ethical duty by providing at least 60 hours of professional services per year at a substantially reduced fee to persons of limited means, or by contributing at least \$500 per

year to an organization or group that provides pro bono legal services to persons of limited means.

Work that does not qualify as pro bono legal services under the rule are legal services written off as bad debts, legal services performed for family members, and activities that do not involve the provisions of legal services, such as serving on the board of a charitable organization.

Remember, when providing pro bono legal services for an individual without compensation or at a substantially reduced fee, the fee must be agreed to in writing at the inception of the representation and refer to rule 6.1 in the written agreement.

Participating in pro bono services is a great way to help individuals that need help and would otherwise be left to face the complications and obstacles of a court system on their own. It may also be a great opportunity for a lawyer to experience a new area of law or try an area they don't typically practice in to see if it is something they would like to venture into. It is also a great way for a lawyer to meet new people. Participating in pro bono services is not only our responsibility as attorneys, but it is something that can be very rewarding for all parties involved. The state bar's Office of Bar Counsel encourages you to take the required time to participate in pro bono services for those less fortunate and unable to pay for the services of an attorney in a time of need.