

Bar Counsel Report

In Re: STEVEN HOSADA BURKE
Bar No.: 14037
Case No.: 88134
Filed: 07/23/2024

ORDER GRANTING PETITION FOR TEMPORARY SUSPENSION AND RESTRICTING ACCESS TO CLIENT FUNDS

Bar counsel has filed a petition under SCR 102(1)(d), asking this court to temporarily suspend attorney Steven Rosada Burke from the practice of law in Nevada and enjoin Burke from making withdrawals from accounts in which he is currently holding any client funds pending resolution of formal disciplinary proceedings against him. The petition and supporting documentation allege that Burke “appears to be posing a substantial threat of serious harm to the public.” SCR 102(1)(d)(2). In particular, the petition alleges that Burke misappropriated \$600,000 in client estate funds entrusted to him, a violation of RPC 1.15. Burke subsequently joined in the petition. Accordingly, and cause appearing, we grant the petition.

Attorney Steven Hosada Burke is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings. In addition, pursuant to SCR 102(1)(d)(3), we impose the following conditions on Burke’s handling of funds entrusted to him:

1. All proceeds from Burke’s practice of law and all fees and other funds received from or on behalf of any clients shall, from the date of service of this order, be deposited into a trust account from which no withdrawals may be made by Burke except upon written approval of bar counsel; and
2. Burke is prohibited from withdrawing any funds from any and all accounts in any way relating to Burke’s law practice, including but not limited to Burke’s general and trust accounts, except upon written approval of bar counsel.

The State Bar shall serve Burke with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Burke’s place of employment or residence, or by publication. When served on either Burke or a depository in which he maintains any accounts holding client funds, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order. See SCR 102(1)(d)(3). The parties shall comply with the provisions of SCR 115 and SCR 121.1.

It is so ORDERED.¹

In Re: NOEL S. WATERS
Bar No.: 58
Case No.: 88704
Filed: 07/23/2024

ORDER TRANSFERRING ATTORNEY TO DISABILITY INACTIVE

The State Bar and attorney Noel Waters have filed a joint petition asking this court to transfer Waters to disability inactive status. The petition explains that Waters currently is incapable of continuing the practice of law or defending against any pending disciplinary proceedings due to serious health conditions. Having reviewed the petition and supporting documentation, we grant the relief requested.

Attorney Noel Waters is transferred to disability inactive status commencing from the date of this order. See SCR 117(2). Any pending disciplinary proceedings against or investigations of Waters are suspended. *Id.* Waters must comply with SCR 117(4) in seeking reinstatement and may resume the active practice of law only upon reinstatement by order of this court. The parties shall comply with SCR 115 and SCR 121.1. See SCR 117(7).

It is so ORDERED.²

CASE NO.: SBN23-01046
FILED: 06/20/2024

ADMONITION

To [Attorney]:

A Southern Nevada Disciplinary Board Screening Panel convened on June 10, 2024, to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct (“NRPC”) and admonish you for your handling of your client’s litigation matter. This letter constitutes delivery of the Panel’s admonition.

Your client was in a car accident in 2019. Two days after the accident he retained you, at a prior law firm, to represent him in a personal injury claim against the insured. You agreed to represent the client on a contingency basis.

You fought on behalf of the client against the Insurance Company for the next two years. The claim was disputed and denied by the insurance company. In 2021, you filed a lawsuit on your client’s behalf in state court.

Bar Counsel Report

Early in the case, you defended against motions to dismiss, which delayed the discovery process. Eventually, discovery began in the case. In November 2022 opposing counsel served your office with a full set of discovery, including requests for admissions. The office staff failed to calendar the discovery when it came in – you missed the deadline to respond.

You have admitted the error and explained that your office was in the middle of a move and dissolution of your prior law firm arrangement. Because of the move and dissolution, your office experienced difficulties during the month the discovery was served.

As a result of this serious error, the opposing party moved for summary judgment against your client. You opposed the motion for summary judgment and followed up with a motion to withdraw or amend admissions, etc. Despite your efforts, the Court granted summary judgment against your client and dismissed his complaint with prejudice.

Over the next thirty days you had multiple conversations with your client, explaining the Court's ruling and the options moving forward. You represented to the State Bar that the client became unmanageable and at some point, threatened you and your family. The client's last instruction to you was to cease work on his case.

Approximately six months later, the client began contacting your former law firm partner, demanding a copy of his file. The conversations were hostile and threatening. The partner attempted to send the client a copy of his file via Dropbox link. The attempts failed; therefore, the partner copied the file onto CD and the client picked up the CD from the partner's office.

NRPC 1.3 (Diligence) states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Here, you failed to calendar discovery requests, and therefore, did not timely respond to those requests. This failure resulted in Requests for Admission going unanswered. The unanswered Requests for Admissions were the foundation for a successful Motion for Summary Judgment.

Your lack of diligence was due, in large part, to the dissolution of a law firm partnership and relocation of your office at the time that the discovery was received. You did attempt to remedy the failure by opposing the Motion for Summary Judgment and requesting the court allow your client to respond to the discovery. You also timely explained the situation and its consequences to your client.

Your client was injured by your lack of diligence because he was unable to have his matter heard on its merits in the district court.

The baseline sanction for your conduct here is reprimand. ABA Standards for Imposing Lawyer Sanctions (2nd Ed. 2019), Section 4.4 (Lack of Diligence), Standard 4.43 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."

A downward deviation from the reprimand baseline is warranted. You have no discipline history in twenty years of practice. You also accepted responsibility for your lack of diligence and fully cooperated in the State Bar's investigation.

Based on the foregoing, you are hereby **ADMONISHED** for violations of NRPC 1.3 (Diligence). Please promptly conclude this matter by remitting the cost of \$750 within 30 days of the issuance of this sanction. SCR 120(3).

Please allow this Admonition 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. This is our final disposition of this matter. Any new proceedings shall be docketed under a new docket number.
2. This order constitutes our final disposition of this matter. Consistent with SCR 121(7), this order is public but all other proceedings and documents in this matter shall remain confidential.

Succession Planning Can Be Tough, But It Is a Gift to Others

No private attorney wants to think about it, but someday they might be incapacitated, or worse, and unable to handle client matters.

Recently, an immigration attorney died unexpectedly. He was the only attorney in his firm. Consequently, the firm could no longer complete its clients' objectives. The State Bar of Nevada had to recruit other lawyers to access the firm's trust account, notify clients, and return their files. Without a succession plan in place, the deceased attorney's firm and his heirs struggled for direction.

To avoid such problems, the state bar recommends that every solo or small firm practitioner prepare a succession plan to protect those you leave behind when the unexpected occurs.

A Succession Handbook is located on the state bar's website as a free download. It includes:

- Agreement to Close Practice;
- Power of Attorney;
- Will provisions;
- A letter advising that the lawyer is unable to continue practicing law;
- A letter advising the lawyer is closing their office; and
- A letter from the successor firm offering to continue representation.

The first step is finding an attorney to close your practice or manage it for a short time in the event of your death, disability, impairment, or incapacity.

As a practical matter, you and the other attorney might agree to help each other in a buddy-type system.

The arrangements for closure of your office should include:

- An agreement that gives the assisting attorney the power to determine whether you are disabled, impaired, or incapacitated, and, if necessary, to close your practice;
- A signed consent form authorizing the assisting attorney to contact your clients for instructions on transferring their files;
- An authorization to obtain extensions of time in litigation matters when needed; and
- Authorization to provide all relevant people with notice of closure of your law practice.

The agreement with your assisting attorney also should include provisions that give the assisting attorney authority to:

- Wind down your financial affairs;
- Provide your clients with a final accounting and statements;
- Collect fees on your behalf; and
- Liquidate or sell your practice.

Arrangements for payment by you or your estate to the assisting attorney for services rendered can also be included in the agreement.

The attorney also should be able to appear in ongoing litigation to get continuances as necessary. Such appearances usually go smoothly because a court will be happy that someone showed up with information about what is going on.

Probably the hardest part of this process is making the difficult decisions that are necessary. If you are incapacitated, for example, you may not be able to give consent for someone to assist you.

Also consider:

- Under what circumstances do you want someone to step in?
- How will it be determined that you are incapacitated, and who do you want to make this decision?

It is probably a good idea to give the assisting attorney access to the practice only during a specific time period or after a specific event and allow the assisting attorney to determine whether the contingency has occurred.

Alternatively, you can have someone else (such as a spouse or partner, trusted friend, or family member) keep the applicable documents until they determine that the specific event has occurred.

Finally, it is useful to check with your bank to determine their procedures in the event of a practice takeover.

Some banks require only a letter signed by you and the assisting attorney granting authorization to access accounts. The sample agreements provided in the handbook should be legally sufficient to grant authority to sign on your account.

However, you and the assisting attorney may also want to execute a limited Power of Attorney (POA). A sample also is in the handbook.

Most banks prefer a Power of Attorney, so a separate limited POA might increase the likelihood that the bank will honor the agreement.

Preparing for an unexpected event can be difficult, but it's not impossible. Resources in the Succession Planning Handbook on the state bar's website provide a good place to start.