

PUBLIC LETTER OF REPRIMAND**To: Suzanne Lugaski, Esq.****Bar No.: 8942****Case No.: OBC15-1510**

"You were defense counsel in a criminal matter pending in the Second Judicial District Court. Your client was convicted of a crime in that matter. You were obligated to file certain documents with the Nevada Supreme Court in order to appeal the conviction. See NRAP 3C.

The fast track statement and appendix were due on June 15, 2015. When you filed the documents referencing matters not on appeal, the Nevada Supreme Court issued a conditional sanction order with a new deadline of August 29, 2015. You failed to file documents that complied with the court's specific directions. You admit that the failure was due to your mistake.

You failed to file the fast track statement before the new deadline. The court issued an order with a new deadline and a warning that a failure to comply with the order would result in the imposition of sanctions.

You filed a second fast track statement that the court deemed to be "the exact same document" that it had stricken previously. The court sanctioned you, struck the second fast track statement that you filed and directed you, again, to file the proper documents.

You then filed a Motion to Dismiss the Fast Track appeal. The court issued an order stating that the Motion to Dismiss did not comply with NRAP requirements and directing you to file and serve a fast track statement or an NRAP-compliant motion, on or before November 9, 2015. You did not file anything before that date. On November 25, 2015, the Nevada Supreme Court issued an order removing you as counsel for the defendant and referring you to the state bar because of your failure to file and serve the fast track statement and appendix in the case.

The Nevada Supreme Court's November 25, 2015 order also remanded the matter to the district court for appointment of new appellate counsel. Replacement counsel was appointed to the defendant, the required documents were filed by that counsel and the appeal was adjudicated on April 20, 2016. Your failure to recognize and comply with NRAP 3C and the court's specific instructions regarding your client's appellate documents resulted in a delay in your client's appeal, of approximately nine months. Such delay is in direct contravention to NRAP 3C's express purpose of expediting this type of appeal. This appellate matter is one of eight "fast track" criminal appellate matters that you have handled since 2012, and you have properly handled such matters in the past.

The panel also considered that you were monetarily sanctioned by the Nevada Supreme Court, have had no prior discipline, were cooperative with the state bar in the disciplinary matter and expressed remorse for your failures.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.3 (diligence) and RPC 3.2 (expediting litigation) and are hereby PUBLICLY REPRIMANDED and ordered to take an additional five continuing legal education credits during 2016, in the areas of criminal and/or appellate law."

LETTER OF REPRIMAND**Reference No.: OBC15-1015**

"On June 2, 2016, a Formal Hearing Panel of the Northern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the panel concluded that you violated the Rules of Professional Conduct and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

Underlying Facts:

You represented a client regarding a personal injury claim in approximately 2013. Between June 2013 and September 2013, your client obtained medical treatment from Integrated Spinal Solutions (ISS) for her injuries. You were informed of ISS's medical lien during the pendency of the claim. You acknowledged notice of ISS's medical lien on approximately October 9, 2013.

You resolved the client's personal injury claim on or about December 1, 2014. You provided your client with a settlement distribution sheet on December 1, 2014. You did not account for ISS's medical lien in the distribution sheet. You were told that the client's trade bank had satisfied ISS's medical lien, but you did not confirm that the client and/or the trade bank had paid ISS's medical lien prior to distributing the settlement funds to your client. You did not pay ISS's medical lien before distributing funds to your client.

Pursuant to Rule 1.15 (safekeeping of property) of the Nevada Rules of Professional Conduct, you had a duty to ensure ISS received payment from your client's settlement funds, or another source, prior to disbursing the funds to your client directly. You violated RPC 1.15 when you failed to ensure that ISS's medical lien was satisfied before disbursing the settlement funds to your client.

In deciding the appropriate sanction for your violation, the hearing panel considered that you received a Letter of Reprimand for similar conduct in the past. The hearing panel also found relevant that:

1. You did not have a selfish motive when you failed to uphold your ethical duty;
2. The medical lien was satisfied shortly after you learned that your client and/or her trade bank had not satisfied the lien as expected;
3. The similar violation was very remote in time; and
4. You had a cooperative attitude toward the disciplinary proceeding.

In light of the foregoing, you violated Rule of Professional Conduct 1.15 (safekeeping of property), are hereby REPRIMANDED and are required to pay costs of the proceeding as set forth in the Findings of Fact and Conclusions of Law and Order. We trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future."

LETTER OF REPRIMAND**To: Cory J. Hilton, Esq.****Bar No.: 4290****Case Nos.: SG09-218-2849, SGI0-0017, SGI0-0042, SG 10-0398, SG 10-0236, SG 10-0445, SGII-0150, SG12-0629, SG12-0203, SG12-1784, SG12-1583, SG130101, SG13-0196, SG13-0226, SG13-0227, SG 13-0403, SG 13-0458, SG 13-0631, SG13-0785, SG14-1418 and SG14-1550**

"This complaint comprises multiple matters for which you have agreed to plead guilty to in exchange for a stated form of discipline pursuant to SCR 113. The facts of the matters for which you have agreed to accept discipline by consent are summarized as follows:

You were retained on February 18, 2009 to represent a woman and her husband in the handling of a personal injury claim. The woman contacted you over a period of two years, in an attempt to get information about the progress of the case. You claimed you had notified the client of your intent not to handle the case, but she states she was not notified. Following receipt of the grievance, you contacted the woman and agreed to continue with your representation. Again, however, you did not have any contact with the client for several months and failed to communicate your desire to terminate representation because you believed the filing of the grievance created a conflict between you and your client.

Your conduct as stipulated herein violates Rule of Professional Conduct 1.3 (diligence) and 1.4 (communication). Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

A man retained you on August 2, 2008, regarding a lawsuit against the Endoscopy Center of Southern Nevada and Dr. Dipak Desai. You assured the man his case had been filed. He made repeated attempts to contact you by phone and by going to your office, but was unsuccessful in speaking with you or obtaining any information regarding his case. On May 31, 2011, he personally delivered a letter to your office in which he requested a copy of his file. When he called to check on when he would receive a copy of his file, he was told you had not received his letter.

You stated action had not been taken on the matter, because you could not find a retainer agreement and believed the man was being represented by another attorney on this matter. You believed your representation involved side-effects caused by medications being taken by the man. You neglected to act with reasonable diligence and to keep the client reasonably informed, but acted without the conscious objective to intentionally injure the client. Your conduct as stipulated herein violates RPC 1.3 (diligence) and 1.4 (communication).

Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

You were retained by a man to file an appeal to the Nevada Supreme Court, regarding a family court order distributing pensions and awards for the failure to pay spousal support. You filed the appeal on June 27, 2011.

On September 27, 2011, you were notified of the failure to file the docketing statement and directed to file it within 10 days. You failed to file the docketing statement and, on October 25, 2011, were directed, a second time by the Supreme Court to file the statement within 10 days. After settlement attempts failed, you were ordered on November 22, 2011 to once again file the required docketing statement. On February 29, 2012, you were sanctioned for your failure to comply with the prior orders of the court.

Additionally, you failed to file the opening brief. A motion to dismiss the appeal was filed. You failed to file an opposition and

the appeal was dismissed on May 4, 2012. You stated the man had not paid the complete retainer for your services; however, you failed to advise him the appeal had been dismissed or moved to withdraw from the appeal. Your conduct as stipulated herein violates RPC 1.3 (diligence) and 1.4 (communication).

Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

On February 14, 2013, and February 19, 2013, the State Bar of Nevada was advised you had overdrawn your client trust account. You stated you were advised to open a second client trust account when a partner left your law firm on or about November 26, 2012. You indicated you had issued the checks from the wrong account. Both checks were reissued. While there is no evidence any client or third party was injured, you failed to properly account for matters held in trust in the separate accounts and between the two accounts. Your conduct as stipulated herein violates RPC 1.15 (safekeeping of property). Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

A man retained you to represent him for injuries resulting from a motor vehicle accident in March 2009. The matter was settled on August 10, 2010, in the amount of \$7,500. A settlement disbursement sheet prepared by you identified a lien from UMC ER in the amount of \$1,593.97. You indicated you would be responsible for the payment of the lien amount.

On August 26, 2014 you issued a check in the amount of \$1,594 made payable to your client. The check memo indicates the purpose of the check was for "bill pay UMC ER." You failed to provide any explanation for the delay in paying a recognized lien or why the payment was made by the client. You neglected to be diligent in the processing of payments and failed to properly hold funds in trust by issuing the check to the client.

Your conduct as stipulated herein violates RPC 1.3 (diligence) and 1.15 (safekeeping of property). Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

A man was involved in a motorcycle accident in 2007, and he also suffered complications resulting from an alleged medical malpractice suffered during his stay at a rehabilitation facility. You were retained to represent him in both matters. A dispute ensued regarding the payment of liens from a settlement from the motorcycle accident. A lien retention agreement was executed on December 1, 2010. You agreed to make an immediate disbursement to the man and disburse funds in payment of a lien for UMC. The agreement provides for you to hold \$10,000 in trust, pending resolution of other medical liens. No funds have been disbursed to the current holder of the medical liens. You filed the medical malpractice action on May 29, 2008. Mediation was attempted, but failed, in June 2009. On August 18, 2010, the parties agreed to arbitrate the matter through JAMS. The arbitrator dismissed the matter on January 31, 2012, for lack of prosecution. Note was made of failing to respond to written discovery requests or attempts to meet and confer. It was also noted the client had failed to appear for his deposition on three different occasions. The decision indicates that "the Arbitrator finds NO evidence of real diligence or even real interest in pursuing this matter for years on the part of Appellant and his Counsel, as well as absolutely No showing of circumstances excusing said lack of diligence."

Judgment was entered in favor of the defendant against the client on March 29, 2012. You filed a Notice of Appeal on May 1, 2012, but failed to pay the required fees within 10 days. You were delinquent in filing the case appeal statement and ordered to file the document within 10 days. The case appeal statement was not filed as ordered and was found to be

deficient. You were ordered to file a proper statement within 10 days. The opposing party filed a motion to dismiss the appeal due to your failure to properly prosecute the appeal in accordance with applicable rules of procedure. Your services were terminated when the client learned of the motion for dismissal. The change of counsel occurred shortly before a scheduled mediation. The matter was successfully mediated in favor of the man prior to any final action on the motion to dismiss the appeal.

While the appeal was not dismissed, you neglected to act with reasonable diligence and keep the clients reasonably informed. Your conduct as stipulated herein violates RPC 1.3 (diligence), 1.4 (communication) and 3.2 (expediting litigation). Based upon the foregoing, you are hereby PUBLICLY REPRIMANDED.

You were contacted in August 5, 2014 for payment of a lien that had been submitted on September 26, 2013. Payment was not made to the lienholder until December 9, 2014, which was shortly after you received an open file letter from the state bar. A woman retained you to represent her in a personal injury action arising from a slip and fall on July 16, 2010. A grievance was filed on November 20, 2014, because the woman was having difficulty communicating with you. You sent a proposed settlement distribution sheet to the woman on October 15, 2014, for a settlement you received on February 14, 2015. Distributions were made to your client by four checks, issued between March 9 and May 4, 2014. Three of the checks were issued from an unknown account.

You neglected to reasonably communicate with your client or to diligently pursue this matter. You also neglected to properly account for the proceeds of the settlement. Your conduct as stipulated herein violates RPC 1.3 (diligence), 1.4 (communication) and 1.15 (safekeeping property.)”

PUBLIC REPRIMAND

To: Kenneth G. Frizzell, III, Esq.

Bar No.: 6303

**Case Nos.: SG13-0323, SG13-0520,
SG14-0667**

“This public reprimand is issued pursuant to a ‘Conditional Guilty Plea’ you entered on April 7, 2016.

One of your clients (SG13-0323) was arrested for DUI and incarcerated at the Henderson Detention Center. The client’s mother was contacted by an individual claiming to be you or a member of your office staff, and was advised that her son had been arrested and was in jail. The client’s mother was told by this individual that he could arrange bail for her son and that you could represent him in his case for \$1,500. You were retained and paid. One or more members of your staff told the client’s mother how to obtain a temporary driver’s license and arrange bail for her son.

You were not present for any of these events, and you did not speak with the client or his mother until after returning from an out-of-state trip. Your negligence in supervising your staff led to an improper intake procedure.

Another of your clients (SG13-0520) was arrested and incarcerated for DUI. You were retained while the client was still in custody. A few days after being released from jail, your client met with a nonlawyer assistant at your office. You were not present at this meeting. At this meeting, your nonlawyer assistant told the client that this would be a routine DUI case, despite the BAC of .385. In addition, the client was told by your nonlawyer assistant that the only time

his license would be in jeopardy would be at a Department of Motor Vehicles hearing. Your client was not told by your nonlawyer assistant that a plea of guilty to DUI could entail a 90-day suspension of his license. Nor was your client told that a plea of guilty to DUI could entail jail time. Your negligence in supervising and directing your staff led to incomplete and incorrect information being given to your client—some of it information that should have come from you, the attorney.

In the third matter (SG14-0667), one of your nonlawyer assistants was the citation manager for The Ticket Fixer, an entity that handled traffic matters. You had performed legal work under The Ticket Fixer entity. This nonlawyer assistant was responsible for most client intake and communication, operating and maintaining the theticketfixer.com website and registry, and all other business operations of theticketfixer.com business, except for providing legal advice and/or services. You and this nonlawyer assistant were both signatories on a bank account opened specifically for The Ticket Fixer’s business. The management and ownership of The Ticket Fixer business, along with interests in associated intellectual property and a website domain name, were later disputed in federal court between yourself, the same nonlawyer assistant, a client and that client’s mother. That case ended in a dismissal. Your negligence in supervision led to your nonlawyer assistant overstepping his appropriate bounds and taking on more responsibility than he should have in your business affairs.

These nonlawyer assistants were long-term, trusted employees who acted outside the scope of their employment, but you had direct supervisory authority over them, and you did not make reasonable efforts to ensure that their conduct was compatible with your professional obligations. That is a violation of RPC 5.3(b).

Pursuant to negotiation and your conditional guilty plea, in light of the foregoing, you negligently violated Rule of Professional Conduct 5.3 (responsibilities regarding nonlawyer assistants) in these three instances and are hereby PUBLICLY REPRIMANDED.”

PUBLIC REPRIMAND

To: Kirk T. Kennedy

Bar No.: 5032

Case No.: SGII-1193

“You were retained in November 2009 to represent a woman in a matter against Hartford Insurance Company (Hartford), which had insured her 1983 Jaguar. Hartford declared the woman’s Jaguar a total loss after it was damaged by fire and offered \$7,075.34, but she retained you because she wanted the policy limit of \$30,000.

You discovered that her policy mandated binding arbitration for any disputes regarding valuation of loss and required that she obtain an independent appraisal of the vehicle at her expense. The client did not wish to pursue arbitration because of these costs, and she asked you to try and settle the matter for between \$12,000 and \$15,000. Despite your efforts, Hartford would not increase its original offer.

On December 1, 2010, you deposited into your trust account Hartford’s check for the original offer amount of \$7,075.34. You intended to thereafter proceed with a breach of contract lawsuit to try and obtain additional funds toward the cost of defense, and thus come closer to the amount the

TIPS FROM THE OFFICE OF BAR COUNSEL

client was seeking. You did not, however, inform her that you had received and deposited the check from Hartford. Instead, you cashed the check and locked the money in your office safe, with the intent to immediately file the breach of contract lawsuit and then give the settlement cash to the client so she would have it prior to the holidays.

However, before you could do that, you suffered a crisis when a member of your family committed suicide. As a result, the matter languished. You failed to file the lawsuit and remit the funds as intended until four months later, when your client called you after finding out directly from Hartford that you had received the settlement.

Immediately upon receiving her call, on April 6, 2011, you issued her a cashier's check, linked to your trust account, for the full settlement amount. On May 23, 2011, you also refunded her \$1,500 retainer.

You admitted that, because the cash was in your safe, your trust account balance fell below the settlement amount between December 2010, when you deposited the check and cashed the check, and April 6, 2011, when you remitted payment to the client.

You acknowledged that placing the cash in your office safe and failing to notify your client that you received the money were actions that do not meet your professional obligations. The funds should have remained in your trust account for safekeeping until such time that your client presented for payment. You further acknowledge that, in this case, once those fiduciary funds left your trust account and were placed in your safe, the burden of proof shifted to you to show you fulfilled the requirements of RPC 1.15 (safekeeping property).

You entered into a conditional guilty plea for a stated form of discipline, pursuant to SCR 113, which provides that you receive a public reprimand upon completion of a one-year probation, subject to a stayed 90-day suspension. You also agreed to pay the costs of the disciplinary proceeding, excluding staff salaries. During the period of probation, you agreed to complete six hours of CLE on trust account management/law office accounting practices; reimburse the client \$1,971 for car rental expenses incurred during the relevant four-month period; pay a \$7,500 fine, \$5,000 of which shall be remitted to the state bar's Client Security Fund, and remain free from further discipline during the probation period. The formal hearing panel that reviewed this matter found aggravating and mitigating factors pursuant to SCR 102.5 as follows. In aggravation, you have a Letter of Private Reprimand from 2001, (mitigated by its remoteness in time) and you have substantial experience in the practice of law. In mitigation, you:

1. Had personal problems during the relevant time period arising from the suicide of a family member;
2. Made a timely good-faith effort to rectify the consequences of your misconduct and make restitution at the time it occurred;
3. Cooperated freely and fully with the state bar's investigation and accepted responsibility for your actions; and
4. Exhibited remorse for your misconduct.

Your conduct as stipulated herein violates Rules of Professional Conduct 1.3 (diligence), RPC 1.4 (communication) and RPC 1.15 (safekeeping property). Having successfully completed the terms of probation and paid all fines and costs, based upon the foregoing you are hereby PUBLICLY REPRIMANDED."

Judge Charles McGee, Sr. District Judge for the Second Judicial District, recently provided a real-life ethics issue faced by an attorney. Some details have been changed for the sake of anonymity.

"I am a young attorney in solo practice and was introduced to a prospective client through a friend. The client had been sued and provided a \$10,000 retainer to file an Answer and Counterclaim. I began due diligence, with an eye toward postponing the civil matter by advising my client to file for bankruptcy.

In doing due diligence, I quickly discovered the client had filed for bankruptcy within seven years of the suit, disqualifying him from filing a new petition. In addition, and more importantly, the allegations against my client were actually true—and the client's allegations in the counterclaim were patently untrue.

My practice has not been going great guns lately, and I could use the funds provided by the retainer to stay afloat. However, I don't feel I can proceed further."

The attorney in Judge McGee's scenario returned the entire retainer, due to the allegations against the client being true, and because the client had no legitimate defense for a counterclaim.

Rule 3.1 (meritorious claims and contentions) addresses this issue, because the attorney's due diligence found any case on the client's behalf in this matter would be frivolous.

Since he felt he could not proceed, the attorney fulfilled his obligations by withdrawing under Rule 1.16 (declining or terminating representation), though the attorney would also have been free to take a reasonable amount from the retainer for the work he actually performed.

Any bar members wishing to submit their own ethical dilemma or scenario for publication as a future bar counsel tip, should email jims@nvbar.org.