

Bar Counsel Report

In Re: BRIAN J. RAMSEY
Bar No.: 12475
Case No.: 82346
Filed: 06/14/2021

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 Brian J. Ramsey. Under the agreement, Ramsey admitted to violating RPC 1.1 (competence) and RPC 1.4 (communication) and agreed to a one-year suspension, stayed subject to certain conditions.

Ramsey 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 submitting the wrong form on behalf of an immigration client, resulting in the rejection of the immigration petition. He then resubmitted the correct form, but it was rejected because it was outdated and did not include the case number or the fee receipt. He failed to reasonably communicate with the immigration client resulting in the client asking him to withdraw.

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). Ramsey admitted to knowingly violating duties owed to his client (competence and communication). His client suffered actual or potential injury. Generally, the baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is reprimand. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.53(a) (Am. Bar Ass'n 2017) (providing that reprimand is appropriate when a lawyer "demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client"). Ramsey, however, agreed that Standard 4.42(a), which provides that suspension is appropriate when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client," applied. The record supports the panel's findings of two aggravating circumstances (multiple offenses and substantial experience in the practice of law) and five mitigating circumstances (absence of prior disciplinary record, absence of a dishonest or selfish motive, character

or reputation, imposition of other penalties or sanctions, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend Brian J. Ramsey from the practice of law for one year commencing from the date of this order, stayed for one year subject to the conditions outlined in the signed conditional guilty plea agreement.¹ Ramsey shall complete 8 CLEs (4 concerning immigration, 2 addressing diligence and/or time management, and 2 addressing communication). Ramsey must also obtain a mentor and meet with the mentor and provide monthly reports to the State Bar as provided in the conditional guilty plea agreement. Additionally, Ramsey must not receive discipline for any grievances reported to the Office of Bar Counsel for conduct engaged in after execution of the Conditional Guilty Plea Agreement through the expiration of the stayed suspension. Ramsey shall also pay the costs of the disciplinary proceedings including \$2,500 under SCR 120, within 30 days from the date of this order. If Ramsey successfully complies with the conditions outlined in the conditional guilty plea agreement, a letter of reprimand for his violations of RPC 1.1 (competence) and RPC 1.4 (communication) shall replace this order of suspension. The State Bar shall comply with SCR 121.1.

It is so ORDERED.²

In Re: MALIK W. AHMAD
Bar No.: 10305
Case No.: 82801
Filed: 06/25/2021

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to reinstate suspended attorney Malik W. Ahmad. As no briefs have been filed, this matter stands submitted for decision. SCR 116(2).

This court suspended Ahmad from the practice of law for one year, required he pay restitution as ordered in a fee dispute arbitration, and ordered him to pay the costs of the disciplinary proceedings. Ahmad has completed the suspension and complied with the requirements in the disciplinary order.

Based on our de novo review, we agree with the panel's conclusions that Ahmad has satisfied his burden in seeking reinstatement by clear and convincing evidence. SCR 116(2); *Application of Wright*, 75 Nev. 111, 112-13, 335 P.2d 609, 610 (1959) (reviewing a petition for reinstatement de novo). Accordingly, Malik W. Ahmad is hereby reinstated to the practice of law in Nevada. Ahmad shall 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.

In Re: DAVID D. ORTIZ
Bar No.: 12463
Case No.: OBC20-0604
Filed: 04/01/2021

LETTER OF REPRIMAND

To David D. Ortiz:

A Screening Panel of the Southern Nevada Disciplinary Board reviewed the above referenced grievance and unanimously determined to issue you a Letter of Reprimand for violations of Rules of Professional Conduct (RPC) set forth below regarding your handling of a personal injury case.

GRIEVANCE

On June 4, 2020, Dr. Gabriel Luis Stine filed a grievance with the State Bar regarding payment for his treatment of several clients that you were representing in a personal injury matter who were all from the same family. On December 15, 2017, Stine agreed to take a substantial reduction in fees to help you settle the case. On November 15, 2018, Stein sent you the final bill for all four patients.

On December 20, 2017, you settled the case as to all four family members in the amount of \$19,000 and deposited the settlement funds into your IOLTA account. On January 18, 2018, you issued a check to the parents of the family in the amount of \$7,276.99. You improperly included \$1,501 in the payment to the parents that should have been reserved for the minor children. At the direction of the court, the \$1,501 should have been placed into a blocked account for the benefit of the minor children. However, once you realized your error, you did reduce your legal fee by \$1,501 to replace the monies owed to the child that you improperly paid to their parents.

Additionally, you waited almost two years after receiving the bill from Dr. Stein before releasing the funds to him even though you had possession of the funds the entire time.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to representation of the foregoing client(s), which conduct violated the Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 1.1 (Competence) – for improperly paying money owed to a minor child to the child's parents instead of placing the money into a blocked account established for the benefit of the minor child.

RPC 1.15 (Safekeeping) – for failing to promptly distribute monies owed to Stine Chiropractic.

The Nevada Supreme Court and the American Bar Association Standards for Imposing Lawyer Sanctions adopted an analysis of four factors to consider for disciplinary sanctions: 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 Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (Nev. 2008).

You have a duty to understand the legal concepts and demonstrate skill, thoroughness, and preparation in any area of law in which you agree to represent a client. You also have a duty to promptly disburse funds owed to third parties. The evidence shows that you demonstrated a failure to understand how to properly protect the funds owed to a minor child. Your conduct would have resulted in an actual injury to the child had you not agreed to reduce your legal fee to preserve the money for the child. You also failed to distribute the funds that were in your trust account to Stein Chiropractic for approximately two years. Thus, weighing the rules violated, your mental state, the potential or actual injury caused, the applicable ABA Standard is 4.13, which states that: "Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."

The Supreme Court of Nevada has provided two types of reprimand: a Public Reprimand or a Letter of Reprimand. The latter is the lowest form of discipline available. Based upon the above factors, the Panel finds that the lesser of the two sanctions is appropriate.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

In Re: STEVE K. PARKE
Bar No.: 12627
Case No.: OBC20-0035 &
OBC20-0601
Filed: 06/09/2021

LETTER OF REPRIMAND

To Steve K. Parke:

A Formal Hearing Panel of the Southern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rule 1.3 (Diligence) and Rule 5.3 (Responsibilities Regarding Non-lawyer Assistants) of the Nevada Rules of Professional Conduct ("RPC").

GRIEVANCES

Client John Matute (OBC20-0035)

John Matute retained you, on a contingency fee basis, to represent him regarding a personal injury claim. You negotiated a settlement of Matute's claims. On or about January 5, 2015, you received a settlement check for \$18,600 to resolve Matute's claim.

You deposited Matute's settlement amount into your Client Trust Account. You then (i) transferred the contingency fee into your operating account for

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representing Matute, (ii) wrote check to Matute, and (iii) wrote checks to three lienholders.

Matute did not come to your office to pick up his check in 2015. The check to one lienholder cleared in your Client Trust Account on or about January 15, 2015. But, the checks to the other two lien holders were never presented for payment.

In 2017, Matute requested disbursement of his funds and you re-issued the check to him. You did not re-issue any other checks for Matute or his lienholders in 2017.

In or about December 2019, Las Vegas Radiology initiated collections efforts against Matute for failure to pay for certain treatment associated with the matter. In January 2020, Matute submitted a grievance to the State Bar regarding your failure to pay the lienholders. He also separately contacted you about the collection notice from Las Vegas Radiology.

In January 2020, upon hearing from Matute but before receiving notice of the grievance from the State Bar, you determined that the checks to the two lienholders had never been presented for payment. You also determined that you had failed to account for a second bill from Las Vegas Radiology, which was the subject of the collection effort.

On or about January 13, 2020, you issued new checks to the original two outstanding lienholder [sic]. On or about January 16, 2020, you issued a second check to Las Vegas Radiology to pay the outstanding bill. The lienholder received the January 2020 checks and deposited them.

On January 13, 2020, you also issued another check to Matute for \$1,323.50. At the time you issued the second check to Matute, you believed that Las Vegas Radiology would discount its outstanding bill, leaving a final sum of \$1,323.50 to distribute to Matute. However, you were unable to secure a discount because the bill had gone into collections. Matute deposited the second check.

In March 2020, you issued a third check to Matute for \$724, because you believed that amount was still outstanding from Matute's 2015 settlement. Your accounting failed to include the 2015 payment to the first lienholder and the January 2020 \$1,323.50 payment to Matute. You realized the errant exclusion of the \$450 payment and deposited your own funds into the Client Trust Account to reconcile the imbalance.

When the State Bar pointed out the overpayment to Matute, you promptly deposited \$1,323.50 of your own funds into the Client Trust Account to reconcile the imbalance.

Matute's claim was one of the first matters you handled after being licensed to practice law in Nevada. You have since implemented policies and procedures at your office to carefully track payments of all medical bills for clients and ensure that checks are presented for payment within a timely manner and, if not, to follow up with the lien holders. Further, you now use a case management software to help efficiently manage your clients' claims. The errors in the belated distribution of Matute's funds are due, in part, to Matute's accounting, not being originally, or subsequently, entered into that case management system.

Client William Bryant (OBC20-0601)

William Bryant and Dawn Garrick retained you and your office, the Law Firm of Parke Esquire ("Parke Law Firm"), to represent them in pursuing personal injury claims. Richard Wong is a non-lawyer employee at Parke Law Firm.

During the course of the representation, Bryant sought additional communication from your office, often without scheduling appointments with you in advance. On some of these occasions, Wong attempted to satisfy the client who was demanding immediate answers to his questions despite your absence and, in the process, overstepped the limitations of his position as a non-lawyer employee in your office.

You have discussed with Wong the need to refrain from answering a client's questions that could cause Wong to overstep the limitations of his position as a nonlawyer employee in your office. You have also instructed Wong to call or locate you if any client demands answers to questions that should be answered by a licensed attorney.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

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

RPC 1.3 (Diligence) by (i) failing to promptly forward payment to your client's lienholders and, (ii) failing to accurately account for the various distributions of funds to that client and his lienholders over time; and

RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants) by (i) failing to ensure that the distribution of your client's funds proceeded in a timely manner and was accurate, and (ii) failing to ensure that Wong refrained from providing legal advice to a client, regardless of pressure the client applied.

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 4.43 of the ABA Standards for Imposing Lawyer Sanctions provides that reprimand is the appropriate baseline sanction for your negligence and lack of reasonable diligence in representing your client, which caused injury to the lienholders and potential injury to your client. Similarly, Standard 7.3 provides that reprimand is the appropriate baseline sanction for your negligent conduct that violated your duty to the profession to supervise your non-lawyer assistants and had the potential to injure your clients.

In Nevada, a reprimand can be a Public Reprimand or a Letter of Reprimand, with the latter being a lower form of discipline. Balancing the pattern of misconduct

exhibited herein with your absence of prior discipline, an absence of a dishonest or selfish motive, your acceptance of responsibility for the misconduct, and your inexperience in the practice of law when first distributing Matute's funds, the Panel finds that the lesser of the two sanction [sic] is appropriate.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your negligent violation of RPC 1.3 (Diligence) and RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants).

You are required to complete six Continuing Legal Education (CLE) credits in the area of office management and/or staff supervision within six months after entry of the Findings of Fact, Conclusions of Law, and Order in this matter. These CLE credits shall be in addition to the annual requirement. You must report the completion of the additional CLE credits to the Office of Bar Counsel directly on or before the deadline for completion.

Finally, in accordance with Nevada Supreme Court Rule 120, you are assessed costs in the amount of \$1,500 plus the costs of the Formal Hearing, which are to be paid no later than 30 days after the filing of the Order in the disciplinary matter.

In Re: LYNN HUGHES
Bar No.: 6349
Case No.: OBC20-1223
Filed: 05/27/2021

LETTER OF REPRIMAND

To Lynn Hughes:

In or about September 2019, DaNae Griese hired you to file a motion for enforcement of an existing order for child support and the selling of the marital home where her ex-husband resided. She paid a retainer of \$3,000.

As time went on, communication from your office declined and her emails requesting status updates went unanswered.

On or about July 6, 2020, you sent Ms. Griese an email stating that her motion had been prepared but was never filed in court.

In August 2020, Ms. Griese asked that her retainer be returned in full. On October 4, 2020, Ms. Griese again emailed you requesting a full refund.

Although the motion for Ms. Griese was never filed in court, she did not receive a full refund. Your office instead issued a refund check in the amount of \$1,375 on October 16, 2020. In short, you charged \$1,625 for a motion you were retained to file but which was never filed, and failed to keep Ms. Griese reasonably informed about the status

of her matter or to promptly comply with her reasonable requests for information.

Accordingly, you are hereby Reprimanded for violating Rules of Professional Conduct 1.3 (Diligence), RPC 1.4 (Communication) and RPC 1.5 (Fees).

ENDNOTES:

1. The hearing panel's recommended discipline includes slight variations from the signed conditional guilty plea agreement. Because nothing in the record before this court indicates Ramsey agreed to those variations, we cannot adopt those changes, and instead approve the signed conditional guilty plea agreement as written.
2. To the extent Ramsey's arguments from are not addressed in this order, we conclude they do not warrant relief from the plea agreement and the hearing panel's resulting recommendation. In light of this order, we deny as moot the State Bar's request to strike Ramsey's brief.

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.



FROM THE BAR COUNSEL

Time, Effort Must Substantiate Flat Fees

What is the best way to bill? Hourly? Contingency? Flat fee? Some form of hybrid? Lawyers must get paid, but fees can bring trouble.

Under Rule of Professional Conduct 1.5, lawyers may charge a contingency fee for anything except domestic relations matters and criminal matters. Contingency fees can have their own pitfalls, but they too must be reasonable.

A current concern is the flat fee. Flat fees are a welcome alternative to hourly billing. The client knows the cost up front and often pays up front. Collection is easier. Flat fees enchant many lawyers into believing the fees are non-refundable. This leads many to believe they need not track their work or safekeep the fees in a client trust account, but beware.

Under Rule 1.16, a client may terminate a lawyer’s representation at any time and receive a refund of their fees—including flat fees. This means a lawyer must issue a partial refund for incomplete work or even a full refund if no work had yet been done. A lawyer that has not tracked the work done may not be able to calculate a refund. A lawyer that has not safekept the money may not be able to issue a refund. Either scenario may lead to discipline.

Additionally, the reasonableness standard in Rule 1.5 considers the time and labor required for the representation among other factors. This means that the lawyer’s time and effort must substantiate the flat fee. A lawyer may not need to track flat fee work with the same detail, but the lawyer should record some of the

time and effort spent on the representation in case the client ends the relationship.

The reasonableness standard also excludes a *per se* nonrefundable fee. As discussed more fully in Ethics Opinion 15, all fees must satisfy the various factors to ensure reasonableness. This rule protects clients, even if they agreed to a ‘non-refundable’ fee. A lawyer cannot contract into an unreasonable fee.

Finally, if all fees must be reasonable and such reasonableness cannot be determined at the outset of the representation, then fees are unearned until the work is performed. RPC 1.15 (Safekeeping Property) requires lawyers to deposit unearned fees into a Client Trust Account (aka IOLTA) until earned. *See in re Mance*, 980 A.2d 1196 (D.C. 2009). To complete the circle, a lawyer earns the fee and can deposit the funds into an operating or personal account only after the reasonableness factors are met at a later point in the representation. Holding the funds in an IOLTA until earned ensures that the lawyer can refund any unearned portion of the fees if the representation is terminated before its objective is accomplished. So, take that “earned upon receipt” clause out of your fee agreements.

All of this means there is not much difference between getting paid a flat fee or an hourly rate with an advanced payment. Timekeeping and accounting are usually a lawyer’s least favorite activities, but do not let the allure of a flat fee engagement lull you into potentially violating RPC 1.5 or RPC 1.15.

