

Bar Counsel Report

In Re: DOUGLAS C. CRAWFORD
Bar No.: 181
Case No.: 84860
Filed: 07/01/2022

ORDER GRANTING PETITION FOR TEMPORARY SUSPENSION AND RESTRICTION ON ACCESS TO CLIENT FUNDS

This matter involves competing petitions regarding Nevada licensed attorney Douglas Crawford. Bar counsel has filed a petition under SCR 102(4), asking this court to impose an immediate temporary suspension and enjoin Crawford from making withdrawals from accounts in which he is currently holding any client funds pending resolution of formal disciplinary proceedings against him. Crawford opposes that petition and alternatively petitions this court under SCR 117(3) to transfer him to disability inactive status pending a determination as to whether he is incapable of practicing law based on a disability due to mental or physical infirmity, illness, or addiction. Bar counsel opposes Crawford's petition.

We first address Crawford's request under SCR 117(3). His petition does not satisfy the requirements of that rule. In particular, Crawford's petition does not argue, and his supporting mental health letters do not establish, that the alleged disability incapacitates him from defending against a disciplinary proceeding or investigation. See SCR 117(3) ("If, during the course of a disciplinary proceeding or investigation, the attorney contends in a petition or joint petition filed with the supreme court that he or she is suffering from a disability due to mental or physical infirmity, illness, or addiction, *which makes it impossible for the attorney to adequately defend the disciplinary proceeding*, the supreme court shall enter an order transferring the attorney to disability inactive status ..." (emphases added)). We therefore deny Crawford's petition for transfer to disability inactive status.

Turning to bar counsel's petition under SCR 102(4), we grant the petition. The petition and supporting documentation show that Crawford "appears to be posing a substantial threat of serious harm to the public." SCR 102(4)(b). In particular, he allegedly has engaged in conduct over an extended period of time that violates RPC 1.8(j) (sexual relations with a client), RPC 8.4(a) (violation or attempted violation of the RPC), and RPC 8.4(b) (criminal act that reflects adversely on fitness as a lawyer). Although Crawford argues that he currently does not pose a "substantial threat" of harm because he has voluntarily ceased practicing law, we disagree. Crawford's actions in that respect notwithstanding, they are voluntary. Absent action by this court, he could resume the practice of law at any time. The threat of harm to the public has not been abated. And the potential harm he poses to the public is "serious." In particular, some of the allegations involve sexual conduct toward clients in violation of RPC

1.8(j). The allegations and supporting documentation thus satisfy SCR 102(4)(b). We further conclude that Crawford's handling of client funds should be restricted. See SCR 102(4)(c) (providing that the court may place restrictions on an attorney's handling of funds entrusted to the attorney).

The State Bar shall immediately serve Crawford with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Crawford's place of employment or residence, or by publication. When served on either Crawford 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(4)(c). The parties shall comply with the provisions of SCR 115 and SCR 121.1.

It is so ORDERED.¹

In Re: TODD M. LEVENTHAL
Bar No.: 8543
Case No.: 83245
Filed: 06/17/2022

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Todd M. Leventhal be suspended for one year, stayed for five years subject to certain conditions, based on two violations of RPC 1.8(a) (conflict of interest: current clients: specific rules).²

As an initial matter, Leventhal argues the hearing panel erred by denying his motion for summary judgment after one of the two subject clients withdrew his grievance. Attorney "disciplinary proceedings are generally treated as civil actions." *In re Discipline of Arabia*, 137 Nev., Adv. Op. 59, 495 P.3d 1103, 1109 (2021). In a civil action, summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation marks omitted). Because the State Bar has a duty to proceed with a disciplinary action after the withdrawal of a client grievance if warranted, SCR 107, and the record supports that a genuine issue of material fact remained disputed as to whether Leventhal violated RPC 1.8(a),³ we conclude the hearing panel properly denied Leventhal's motion. *Cf. GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (explaining that while a denial of a summary judgment is not independently appealable, this court can review it de novo in an appeal brought from the final judgment).

As to the challenged disciplinary recommendation, the State Bar has the burden of showing by clear and convincing evidence that Leventhal committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d

709, 715 (1995). We conclude that the panel's findings of fact regarding only one violation of RPC 1.8(a) is supported by substantial evidence and not clearly erroneous. See SCR 105(3)(b); *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). Substantial evidence supports the panel's conclusion that Leventhal borrowed a client's personal vehicle for more than one year without obtaining a conflict of interest waiver and failed to return the vehicle after numerous requests by the client, which forced the client to rent a vehicle for his own use. However, substantial evidence does not support the panel's finding that Leventhal violated RPC 1.8(a) in relation to his acceptance of stolen property as collateral from a second client.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must ... exercise independent judgment," the panel's recommendation is persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). 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, 124-6, 197 P.3d 1067, 1077 (2008).

Leventhal knowingly violated a duty owed to his client (failure to avoid conflicts of interest). The client suffered actual harm because he was without his personal vehicle for over a year. The baseline sanction for Leventhal's misconduct, before consideration of aggravating and mitigating circumstances, is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.32 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."). The panel found and the record supports five aggravating circumstances (prior discipline,⁴ dishonest or selfish motive, pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law) and one mitigating circumstance (full and free disclosure to the disciplinary authority or cooperative attitude toward proceeding). Because we conclude that only one of the violations found by the panel is supported by substantial evidence, we conclude the panel's recommended discipline is too harsh.

Accordingly, we hereby suspend attorney Todd M. Leventhal from the practice of law for six months, stayed for five years subject to the following conditions: (1) Leventhal must complete one additional hour of Continuing Legal Education (CLE) credit in ethics and one additional hour of CLE credit in law practice management every year during the stayed five-year term; and (2) Leventhal must not receive a public reprimand or worse during the five-year term. Additionally, Leventhal shall pay the costs of the disciplinary proceeding, including \$2,500 mandated by SCR 120(3), within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: HAMPTON M. YOUNG
Bar No.: 11
Case No.: 84663
Filed: 06/22/2022

ORDER IMPOSING RECIPROCAL DISCIPLINE AND SUSPENDING ATTORNEY

This is a petition under SCR 114 to reciprocally discipline attorney Hampton M. Young based on his one-year suspension in Wyoming for violations of Wyoming Rules of Professional Conduct 1.15 (safekeeping property belonging to clients or others) and 5.3 (oversight of nonlawyer assistants). In the Wyoming disciplinary proceedings, Young stipulated that he failed to maintain proper trust account records; improperly commingled personal, business, and client funds; and failed to adequately supervise his legal assistant, resulting in the legal assistant embezzling thousands of dollars of client and firm funds.⁵

Under SCR 114(4), this court must impose identical reciprocal discipline unless the attorney demonstrates or this court determines that (1) the other jurisdiction failed to provide adequate notice, (2) the other jurisdiction imposed discipline despite a lack of proof of misconduct, (3) the established misconduct warrants substantially different discipline in this jurisdiction, or (4) the established misconduct does not constitute misconduct under Nevada's professional conduct rules. We conclude that none of the exceptions apply, and so we grant the petition for reciprocal discipline. Accordingly, we hereby suspend Young for one year from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

ENDNOTES:

1. The Honorable Abbi Silver, Justice, voluntarily recused herself from participating in this matter. This is our final disposition of this matter. Any new proceedings shall be docketed under a new docket number.
2. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.
3. The evidence included copies of text messages the client sent to Leventhal. After the disciplinary hearing, Leventhal raised questions as to whether some text messages were missing, thus providing an incomplete history of the transaction underlying the disciplinary complaint. When he moved for summary judgment, however, Leventhal did not assert any inaccuracy with the text message evidence.
4. This factor is particularly aggravating, as Leventhal's prior discipline also involved a violation of RPC 1.8(a), in which Leventhal accepted personal and real property as payment from a client and then tried to evict the client from the real property while he was still representing her.
5. No clients were found to be harmed by Young's legal assistant's actions.

TIP

FROM THE BAR COUNSEL

Keep Client's Directives, Intentions Foremost in Your Representations

Lawyers' ethical duties can be categorized as (i) a duty of loyalty to a client, (ii) duties to the public, and (iii) duties to the legal system. "Loyal" is defined as "unswerving in allegiance." A client trusts a lawyer because of this allegiance.

The duty of loyalty to a client permeates several of the Nevada Rules of Professional Conduct. It is easy to understand that loyalty drives all conflict analyses. It is the basis for a lawyer's confidentiality and diligence obligations. Perhaps less obvious is that the duties to be competent in practice and candidly inform a client are also based on the

expectation that a lawyer will be loyal to a client. Even converting a client's funds from an IOLTA is deplorable because it is a fundamental violation of the lawyer's obligation to be loyal to the client at all times.

A person can be loyal to another person, a government, or a cause or principle. Often lawyers mistake loyalty to a principle for loyalty to a client. A lawyer's intent to "do the right thing" may result in a violation of the all-important duty of loyalty to the client and ultimately lead to a sanction. This is because the lawyer's perception of "the right thing" may be contrary to the client's expressed directives. To this end, even a lawyer's declination or termination of a representation may evidence loyalty to a client. The lawyer may refuse to act contrary to the client's request but be unable to comply with the client's intent at the same times. Loyalty to the client requires a lawyer to withdraw from the situation.

The Rules of Professional Conduct may seem very nuanced and complex. Instead of trying to be mindful of all the various rules, remember why the rules were promulgated. Just simply do your best to always keeping your client's directives and intentions foremost in your representations and you will avoid ethical missteps.

