

Bar Counsel Report

Case No.: SBN23-00864
Filed: 03/21/2024

ADMONITION

To [Attorney]:

A Southern Nevada Disciplinary Board Screening Panel convened on March 12, 2023, to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct (“NRPC”) and admonished you for your handling of your client’s funds that you did not earn or use for a client expense. This letter constitutes delivery of the Panel’s admonition.

A couple retained you to prepare an I-601A waiver application for the wife. You had successfully completed multiple other immigration petitions for this family. The clients paid you \$7,600 for the preparation of the I-601A waiver application. You assigned the matter to another lawyer in your office, who did not complete the work and, you allege, absconded with documentation from your office.

The clients allege that you have failed to communicate with them regarding the filing of the I-601A waiver application. You respond that you asked the clients for required supporting documentation that has not been provided. You have asserted that you stand willing and ready to submit the I-601A waiver application if you receive the necessary documents from the clients.

In addition, the clients requested a refund of the fees paid. You assert that the clients have a balance owed from prior work performed, although the clients state that they were previously unaware of any unpaid balance. You did not deposit the client funds into a Client Trust Account to be held until earned by the preparation of the agreed-upon I-601A waiver application. Thus, you are unable to return any of the fees paid for the I-601A waiver application.

Nevada Rule of Professional Conduct 1.15 (Safekeeping Property) requires a lawyer to deposit all fees and costs paid in advance into a client trust account, withdrawing funds only as fees are earned or expenses are incurred. You failed to deposit, and safekeep, the client’s funds until fees were earned or expenses were incurred, in direct violation of RPC 1.15. Your failure to appropriately deposit and safekeep these funds could be deemed negligent because it may have been common in the immigration legal community in the past to deposit these fees into an operating account instead of a Client Trust Account. In this instance, your failure has caused your clients injury because you are now unable to return the unearned fees to them.

The baseline sanction for your conduct here is reprimand. ABA Standards for Imposing Lawyer Sanctions (2nd Ed. 2019), Standard 4.13 states: “reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.”

A downward deviation from the reprimand baseline is warranted because you have no discipline history in almost 30 years of practice. In addition, the Panel imposes the condition that for the next 12 months you:

1. Create and maintain a ledger for every client for which, or from whom, you receive money. Each ledger shall clearly and expressly record the date, amount, source, and explanation for all deposits and withdrawals.

2. Create and maintain an account ledger for your IOLTA account. The ledger will clearly and expressly record the date, amount, source, explanation, and client for all deposits and withdrawals.
3. You shall reconcile your IOLTA account monthly. Reconciliation shall include:
 - i. Reconciling the IOLTA ledger with the total of each client ledger other than individual client accounts to make sure the amounts equal.
 - ii. Reconciling the IOLTA ledger and client ledgers with the bank statement.
 - iii. Entering bank charges, interest, and finding and correcting discrepancies between the IOLTA ledger, client ledgers, and bank statement. In this step, you should address checks that have not cleared the bank or other deposits, or withdrawals not posted on the bank statement.
4. You shall not withdraw or draft a check for attorney fees until sufficient work has been done on behalf of the client to render the fee reasonable, pursuant to RPC 1.5. You shall not withdraw or draft a check for attorney fees from multiple clients in a single withdrawal or check.
5. You shall submit, no later than the 10th of each month, to the State Bar with a breakdown of all client ledgers (you may conceal client names), the total of those ledgers, and the total of the IOLTA ledger, and bank statement for that month.

Based on the foregoing, you are hereby ADMONISHED for violations of NRPC 1.15. 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.

Case No.: SBN23-00016
Filed 05/21/2024

ADMONITION

To [Attorney]:

A Southern Nevada Disciplinary Board Panel convened on March 25, 2024, to consider a Conditional Guilty Plea tendered in the above-referenced matter. The Panel accepted the Plea and concluded that you violated the Nevada Rules of Professional Conduct (“NRPC”) and admonished you for your conduct. This letter constitutes delivery of the Panel’s admonition.

On January 1, 2023, at approximately 1:15 a.m., P.K., A.K., and L.S. were involved in an auto accident. After returning home, P.K. called his insurance agent, (hereinafter “Agent”) – who works for Farmers Insurance – to initiate an insurance claim. At approximately 2:00 p.m. on January 1, 2023, Agent, and her son (hereinafter “Son”) – who also works for Farmers Insurance – visited P.K. and L.S. Agent and Son asked P.K. to provide a copy of the citation, his driver license,

Bar Counsel Report

and pictures of the accident. Agent then asked P.K. and L.S. to sign documents. P.K. and L.S. believed that the documents they signed were to initiate a claim with their insurance. What was actually signed was a retainer agreement with your office. You are not licensed to practice law in Nevada.

Agent provided P.K. with your cell phone number and scheduled medical appointments for both P.K. and L.S. When P.K. and L.S. arrived to their respective appointments, P.K. noticed that your name was already filled out on his new patient paperwork. P.K.'s first interaction with you was on or about January 7, 2023, over the phone.

After speaking with you, P.K. met with a Nevada attorney (hereinafter "Nevada Attorney") to retain her services to file personal injury claims. P.K. informed Nevada Attorney that he had spoken with you, but that he did not retain you. Nevada Attorney then called you to inform you that she would be representing P.K. and L.S.

You informed Nevada Attorney that P.K. and L.S. retained your services. P.K. and L.S. were surprised to learn of the same. Accordingly, Nevada Attorney asked for a copy of any retainer agreements purportedly signed by either P.K. or L.S.

Nevada Attorney noticed that you asserted a lien for eight (8) hours of work performed. The itemized time sheet stated that on January 1, 2023, you had a telephone conference with P.K. and L.S., as well as traveled to and from a meeting with them. This did not occur.

RPC 1.5 (Fees) states, in pertinent part, that a lawyer "shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The Rule further states that "[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate[.]" and that "[a]ny changes in the basis or rate of the fee or expenses shall also be communicated to the client. You charged for a telephone conference and travel to and from a meeting with P.K. and L.S. that allegedly occurred on January 1, 2023. P.K.'s first interaction with you was on January 7, 2023. Further, you did not communicate the basis and/or rates of your fees. This type of ethical breach caused potential injury to P.K. and L.S.

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) states, in pertinent part, that a lawyer "having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." You allowed Agent and/or Son to coordinate their appointments with medical providers. This type of ethical breach caused potential injury to P.K., L.S., the public, and the legal system.

RPC 5.5 (Unauthorized Practice of Law) states, in pertinent part, that unless an exception applies, a lawyer shall not "practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction" or "assist another person in the unauthorized practice of law." You engaged in, and assisted Agent and/or Son in the unauthorized practice of law. You allowed Agent and/or Son to retain clients without an attorney's presence. This type of ethical breach caused injury to the public and the legal system.

RPC 7.3 (Solicitation of Clients) states, in pertinent part, that "a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or

otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in person, by telephone, telegraph, or facsimile, by letter or other writing, or by other communication directed to a specific recipient." You solicited professional employment through Agent and/or Son. This type of ethical breach caused injury to the public and the legal system.

RPC 8.4 (Misconduct) states that "[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate the RPC, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (e) state or simply imply an ability to influence improperly a government agency or official or to achieve results by means that violate the RPC or other law; or (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or law." You engaged in conduct involving dishonesty and/or misrepresentation when you had Agent and/or Son act on your behalf to retain P.K. and L.S. Further, you knowingly charged for services that never occurred. This type of ethical breach caused potential injury to P.K. and L.S., and caused injury to the public and the profession.

Here, you acted negligently during the representation and caused injury or potential injury to your client, the public, and the legal system. RPC 5.5 (Unauthorized Practice of Law) states, in pertinent part, that unless an exception applies, a lawyer shall not "practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction" or "assist another person in the unauthorized practice of law." You engaged in, and assisted Agent and/or Son in the unauthorized practice of law. You allowed Agent and/or Son to retain clients without an attorney's presence. This type of ethical breach caused injury to the public and the legal system.

RPC 7.3 (Solicitation of Clients) states, in pertinent part, that "a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional telegraph or facsimile, by letter or other writing, or by other communication directed to a specific recipient." You solicited professional employment through Agent and/or Son. This type of ethical breach caused injury to the public and the legal system.

The baseline sanction for your conduct is reprimand. ABA Standards for Imposing Lawyer Sanctions (2nd Ed. 2019), Standard 7.3 states: "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."

A downward deviation from the reprimand baseline is warranted. You have no discipline history in forty years of practice and took responsibility by entering into a Conditional Guilty Plea.

Based on the foregoing, you are hereby ADMONISHED for violations of NRPC 1.5, 5.3, 5.5, 7.3, and 8.4. 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.



TIP

FROM THE BAR COUNSEL

“I’m from the Office of Bar Counsel and I’m Here to Help”

On August 12, 1986, President Ronald Regan said: “The nine most terrifying words in the English language are ‘I’m from the government and I’m here to help.’” The same is occasionally said about the Office of Bar Counsel. Receiving that dreaded letter of inquiry from an investigator or a phone call from an assistant bar counsel before the screening of your first grievance can feel discouraging. However, most attorneys will respond to at least one lawful demand for information from bar counsel during their careers. The trick? Responding.

While “[k]nowingly” making a false statement when responding to that letter of inquiry is a violation of RPC 8.1(a), choosing not to respond to that letter entirely is a violation of RPC 8.1(b). Furthermore, if an attorney did commit misconduct, “burying your head in the sand” is also a missed opportunity to provide valuable insight regarding mitigating circumstances that may justify a reduction in attorney discipline. SCR 102.5(4). Personal or emotional problems, physical disability, rehabilitation, rectifying the consequences of misconduct, and even remorse all play an important role in crafting formal and “informal” discipline before that pesky or embarrassing grievance becomes public. See SCR 121(1), (11) (once bar counsel files a formal complaint “all records of the attorney discipline agency shall become public ...”).

Everyone makes mistakes—especially as they begin their legal careers—which is why screening and disciplinary panels commonly recognize, if applicable, “[i]nexperience in the practice of law” as a mitigating circumstance. SCR 102.5(4)(f). Some mistakes may also be more excusable than others, especially if a panel disagrees whether the attorney committed the misconduct knowingly or negligently, or if quantifying the degree of potential or actual injury is difficult. Discerning whether fact-specific misconduct warrants suspension, a reprimand, or even an admonition could therefore feel inconsistent—even arbitrary—to an outside observer.

The Office of Bar Counsel recognizes that the primary goal of attorney discipline “is not additional punishment of the attorney but rather to protect the public from persons unfit to serve as attorneys ... and to maintain public confidence in the bar as a whole.” *State Bar v. Claiborne*, 104 Nev. 115, 219 (1988) (citing *In re Cochrane*, 92 Nev. 243, 255 (1976)). When appropriate, bar counsel therefore

invites attorneys to participate in diversion in lieu of formal discipline. This invitation often occurs before screening and the filing of a formal complaint.

Diversion is “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). Minor misconduct excludes misappropriation; misconduct that caused a substantial injury; dishonesty, deceit, fraud, or misrepresentation; or committing a serious crime as defined by SCR 111(6). Bar counsel may also not offer diversion if the attorney already participated in probation, diversion, or a mentoring program for similar misconduct within the last five years or if the attorney received an admonition or any public discipline in the last three years. SCR 105.5(1)(d)(3)–(4).

Bar counsel may (and commonly does) offer diversion in cases where “there is little likelihood that the attorney will harm the public” during diversion. SCR 105.5(1). Conditions of diversion may include law practice mentoring, individual counseling, and participation in Nevada Lawyers Assistance Program if alcohol or substance abuse may have contributed to the misconduct. SCR 105.5(1)(a). Along with a term of diversion not to exceed two years, these conditions are then memorialized with the Office of Bar Counsel, including whether the underlying grievance is dismissed upon successfully completing diversion. SCR 105.5(2). If by agreement the grievance is dismissed, the Office of Bar Counsel responds to any related inquiry by stating there is no record of the matter. SCR 105.5(6). Similarly, the attorney may state that any allegations filed with the Office of Bar Counsel were dismissed. *Id.*

Diversion is a proverbial “win-win” in appropriate cases involving minor misconduct. It is an important tool to effectuate the goal of attorney discipline: protecting the public and maintaining public confidence in the bar. However, the greater the misconduct and more likely disbarment or suspension is necessary based upon ABA Standards, the less likely diversion is appropriate, especially if the attorney failed to respond to lawful demands for information.

The Office of Bar Counsel is “here to help” if an attorney is unwilling to seek help independently. The real trick? Convincing an attorney to accept help before the Office of Bar Counsel is required to intervene. Please contact Lawyers Concerned for Lawyers LCL) at **866-828-0022** if you or someone you know is struggling. More information about LCL is available at <https://nvbar.org/for-lawyers/resources/wellbeing/lcl/>. All information obtained by LCL, including the initial report and information provided to the program, is confidential and not admissible in any disciplinary, admission, administrative, or other state bar proceeding. SCR 106.5(2).