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STATE BAR OF NEVADA

BY: _____
OFFICE OF BAR COUNSEL

1 Case Number: OBC18-0267

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STATE BAR OF NEVADA

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NORTHERN NEVADA DISCIPLINARY BOARD

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STATE BAR OF NEVADA,

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Complainant,

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vs.

PUBLIC REPRIMAND

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KAREN L. WINTERS, ESQ.

STATE BAR NO. 3086

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Respondent.

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TO: Karen Winters, Esq.
c/o Douglas R. Brown, Esq.
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In or about August, 2016, you represented Heidi Roach ("Roach") in amending her (and her husband's) Trust for a twelfth time. The amendment designated Ralph and Penny Grant as beneficiaries. The Grants also had financial Power of Attorney for Roach that was previously prepared by another attorney. At the time that the Trust was amended, Roach was approximately 83 years old.

On or about August 5, 2016, you received a letter from the Roaches' former counsel that the Roaches had previously been exploited by other caregivers and that he had

1 concerns about the same thing happening with the Grants. However, the Roaches had
2 informed you the Grants were longstanding friends whom they knew and trusted and that
3 the Roaches did not want any family members or charities designated as the beneficiaries
4 of their Estate.

5 Roach's husband passed away shortly after the Trust was amended.

6 In or about August, 2016, the Grants sold a yacht that the Roaches owned for
7 approximately \$383,000. In or about September, 2016, the Grants sold a mobile home
8 park that the Roaches owned for approximately \$625,000, with a promissory note for the
9 majority of the sale proceeds. You knew about the sale of the mobile home park.

10 In October, 2016, the Grants transferred \$525,000 out of Roach's bank account and
11 put it in a Canadian bank account that did not bear Roach's name. You were not aware of
12 this transfer at the time it occurred.

13 During this time period, Roach's health declined and she was residing in an assisted
14 living facility no later than January, 2017. As of February, 2017, Roach's physician
15 identified that she suffered from dementia.

16 In March, 2017, the Grants sold Roach's primary residence for \$649,000.

17 In early April, 2017, Roach's bank denied two checks for \$500,000 each that were
18 made out to the Grants because the bank did not recognize the signature on the first check
19 and the second check did not have the proper Power of Attorney signature. Roach's
20 account had approximately \$530,000 in it at the time; thus, had one of the checks been
21 honored, Roach would have had almost nothing left of her own funds with which to support
22 herself.

23 When the Grants brought Roach into the bank to discuss the denied checks, an
24 employee of the bank insisted on speaking with Roach without the Grants present. He
25 asked Roach about the Grants' access to Roach's funds at the bank. The employee

1 reported that Roach stated she did not want the \$500,000 to go to the Grants and she was
2 upset about the loss of her home.

3 The Grants contacted you in April, 2017 (after the bank declined the checks), stating
4 that Roach's bank was not honoring the financial Power of Attorney ("POA") and they were,
5 therefore, unable to pay Roach's bills. In your experience, banks frequently do not honor
6 POAs and will instead only recognize letters of guardianship. Therefore, you identified to
7 the Grants that a guardianship would remedy the issue.

8 Although you spoke with a national representative of the bank regarding the bank
9 not honoring the POA, you did not speak to the bank employee that made the decision to
10 not honor the Grants' POA. Your primary understanding of what happened at the bank
11 was based on the Grant's representations to you.

12 You were also unaware, at the time, that despite having over \$500,000 of Roach's
13 funds in their bank account, the Grants were not paying Roach's bills and, instead,
14 represented to you that they needed access to her accounts to be able to do so.

15 You spoke with Roach and believed that Roach wanted to proceed with a voluntary
16 guardianship with the Grants serving as the guardians. Roach also made it clear at that
17 time that she did not want any family members or the public guardian involved due to her
18 past experiences with each. Although there is evidence to the contrary, you believed that
19 Roach's wishes were not influenced by the Grants.

20 Therefore, you prepared an *ex parte* Petition for Appointment of Temporary and
21 Permanent Guardian of the Estate on Roach's behalf. Included with the Petition was a
22 declaration from Roach's healthcare provider that stated Roach suffered from dementia
23 and did not comprehend the nature of her personal affairs.

24 On April 18, 2017, the Court held a hearing on the Petition and stated that the
25 Petition would not be granted as filed because of the healthcare provider's statements

1 regarding Roach's mental capabilities. You then revised the Petition so that the Grants
2 could file the Petition *in pro per*.

3 On April 26, 2017, the Douglas County Sheriff's Department contacted you about
4 issues with Roach's bank account and concerns with the Grants' check-writing. You
5 understood that the telephone call was only to confirm the authority of the Grants' Power
6 of Attorney. You did not alter your course regarding the Petition and you did not investigate
7 further after the Sheriff contacted you.

8 You felt pressure to establish a guardianship so that Roach's outstanding bills could
9 be paid and to do so in the most cost-effective manner because of the Grants'
10 representation about Roach's mounting expenses.

11 On or about May 3, 2017, you filed the Grants' *pro per* Petition. You told the Grants
12 to get their own counsel, but they indicated it was difficult to do so. You also referred the
13 Grants to another attorney, but they ultimately did not retain him.

14 You recognized that it would be a conflict of interest to represent the Grants in filing
15 the Petition. However, you failed to heed that your interactions with the Grants, as third
16 parties, still created a substantial risk that your ability to fulfill your responsibilities to Roach
17 would be limited, which is a conflict of interest as well. Further, Roach was not in a position
18 to provide valid informed consent to proceed despite any conflict of interest.

19 On May 5, 2017, the Court issued a temporary guardianship order. The Order
20 required all Roach's funds be held in a blocked account, with the Grants only having access
21 to sufficient funds to pay Roach's monthly expenses. You retrieved a copy of the Order
22 from the Court, and forwarded it to the Grants.

23 A hearing regarding permanent guardianship was set for June 20, 2017.

24 During the week of June 12, 2017, you learned that the Elder Protection Services
25 ("EPS") had opened a matter regarding Roach based on concerns that the Grants were

1 exploiting and taking money from Roach. After speaking with the EPS representative, you
2 asked the Grants to provide all bank statements and documentation for Roach's accounts
3 and monies for the time period during which the Grants held a POA and up to June 2017.

4 The day before the hearing on the permanent guardianship petition, the Grants
5 informed you that Roach had gifted them \$525,000 during the time the Grants held the
6 POA. You told the Grants to immediately return the funds to Roach's blocked bank
7 account. However, at the permanent guardianship hearing, you did not specifically tell the
8 Court about the "\$525,000 gift," your contact with the Douglas County Sheriff, or your
9 contact from EPS. The Grants were granted permanent guardianship over Roach.

10 On July 6, 2017, Roach's niece, Nonine Freitas, filed an *ex parte* Motion for Order
11 to Compel Production, Permit Discovery, and Suspend Power and for Petition for Co-
12 Guardians to Appear and Answer Under Oath. A hearing on Freitas's Motion was held on
13 August 3, 2017. Mid-hearing, Freitas and the Grants stipulated to the removal of the Grants
14 as Roach's guardians and that the Grants would not have any physical visits with Roach
15 until her primary physician provided a written determination that their visiting is in Roach's
16 best interest. The Court's subsequent Order memorialized the agreement and added that
17 the Grants were restrained from discussing financial accounts or property interests with
18 Roach if they had any telephone contact with her.

19 Freitas was appointed Guardian of the Person of Roach and Nicole Thomas, Public
20 Guardian, was appointed Guardian of the Estate of Roach. The Court's Order also relieved
21 you as counsel for Roach and appointed new counsel for Roach.

22 On February 22, 2018, the Court issued an Order denying your request for
23 attorney's fees, stating that the evidence showed you:

24 provided legal advice to the Grants [the prior Guardians] including, but not
25 limited to, advising them as to the requirement and amount of a guardianship
bond, revising documents to add the requirement of a blocked account,

1 answering other questions and revising documents based on information
2 received from the Grants. [Respondent] never had a signed (by anyone)
engagement agreement and had no waiver of conflict.

3 The Court's Order also found that you had violated your duty of candor to the Court
4 (RPC 3.3) and that you acted with mixed loyalties (RPC 1.3 and RPC 1.7). The Court's
5 Order stated that "had [you] fulfilled [your] duties to the Court and Ms. Roach, then the
6 Grants would not have been appointed in the first place." The Court's Order also noted,
7 however, that you did not work with intent to defraud Roach during your representation.

8 Violations of the Rules of Professional Conduct

9 You had a duty, pursuant to RPC 1.7 (Conflicts of Interest: Current Clients), to
10 identify when there was a significant risk that your representation of one client would be
11 materially limited by your responsibilities to another or your own personal interest and to
12 withdraw from the representation or get informed consent, confirmed in writing, from your
13 client before proceeding further. You knowingly¹ violated this duty when you failed to
14 identify, or heed, the conflict inherent in assisting the Grants in obtaining the guardianship,
15 even as third-parties, when you were tasked with advocating on behalf of Roach and when
16 Roach was unable to give informed consent to otherwise proceed. You failed to put your
17 ethical obligations first.

18 You also had a duty, pursuant to RPC 3.3 (Candor Towards the Tribunal), to refrain
19 from knowingly making a false statement of fact or law to a tribunal or failing to correct a
20 false statement of material fact or law made to the tribunal by the lawyer. You knowingly
21 violated this duty when you failed to clearly articulate the status of Roach's estate at the
22 June 20, 2017 hearing.

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25 ¹ A knowing violation is one taken with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. This is different, and less severe, than acting intentionally.

