

PUBLIC REPRIMAND

TO:

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

Complainant,

vs.
DAVID J. OTTO, ESQ.,
Nevada Bar No.5449,

Respondent

David J. Otto, Esq.

David Otto & Affilliates, PC

2300 W. Sahara Avenue, Suite 800 Las Vegas, NV 89012

On Monday, November 13, 2017, a Hearing Panel of the Southern Nevada Disciplinary Panel convened to determine whether your representation of your clients violated the Rules of Professional Conduct as part of a Conditional Guilty Plea.

Grievance File OBC16-1231

In the first matter, you represented several clients who sought treatment at a Las Vegas doctor's office who provided medical services on a lien basis. The lien specialist from the office contacted the State Bar of Nevada because she was made aware that numerous individuals you represented that were treated by the doctor had settled but the liens had not been paid.

As a result of this complaint, the State Bar reviewed your bank account records which revealed that numerous client checks were inappropriately deposited into your operating account. There were several instances where clients were paid their portions of settlements from the settlements of other clients.

Additionally, you indicated in response to a Letter of Investigation that some of the clients' matters had not settled when there was evidence from your bank account that they had, and that some of the accounts had settled for less than the deposits indicated.

You explained these discrepancies by indicating that your office had "cash flow issues;" however, this statements ignores the most basic premise that client money is to be safeguarded in a designated trust account and not comingled with other monies. Indeed, records reveal that your trust account constantly failed to have sufficient funds to pay the liens from the cases you resolved on behalf of your clients.

In this matter you violated RPC 1.3 (Diligence) for not timely resolving the medical liens. You also violated RPC 1.4 (Communication) for failing to adequately advise the doctor's office as to the status of the cases in questions and that the matters had been resolved. You violated RPC 1.15 (Safe-keeping Property) for depositing settlement checks into your operating account and for not using the proceeds of the settlements to resolve the outstanding liens. In addition, you violated RPC 8.1 (Bar Admission and Disciplinary Matters) for failing to respond to the State Bar truthfully by giving the State Bar erroneous information as to the status of your cases and the amount the cases settled for. Finally, you violated RPC 8.4 (Misconduct) for your actions in this matter.

Grievance File OBC16-1430

In this case, an individual had approached your office in an effort to seal his criminal record. He met with a non-lawyer employee of yours who indicated that your office would be able to handle the matter and received \$500 in cash for the representation in addition to various money orders made payable to Las Vegas Justice ostensibly to pay related court fees.

Your client waited three years for the records to be sealed yet nothing was done on his behalf. During those three years, when your client would contact your office, he was given the runaround by your non-lawyer employee.

 When the State Bar inquired about this matter, you indicated that you had never heard of the client and that, if he did in fact pay \$500, your non-lawyer employee had embezzled the funds. When the State Bar asked you for additional information regarding this employee, including whether you reported the theft to law enforcement and the details of the employees employment with your office, you failed to respond.

As such, you violated RPC 1.3 (Diligence) for failing to represent your client in a timely fashion. You also violated RPC 1.15 (Safe-keeping Property) for failing to ensure that your client's funds were protected even from your own employees. Your conduct was also in violation of RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants) for not ensuring that your employees conduct comported professional obligations of the lawyer, and RPC 8.1 (Bar Admission and Disciplinary Matters) for failing to respond to the State Bar regarding this investigation.

OBC17-0103

In this matter, you agreed to represent your client regarding a divorce matter. Your client complained that he had issues regarding communication with you and that he could not get an updated status as to his case. Indeed, according to your client, he was only able to speak directly with you for a total 24 minutes and there was no communication in the weeks leading up to his trial.

When the State Bar sent you a letter regarding this matter, you signed the receipt for the letter but never responded. As such you violated RPC 1.3 (Diligence) and RPC 1.4 (Communication) for failing to timely respond to your client's request for information. You violated RPC1.5 (Fees) for collecting \$3,000 in fees without doing the corresponding work to justify the fees received, and RPC 8.1 (Bar Admission and Disciplinary Matters) for failing to respond to the State Bar regarding this investigation.

Although the Hearing Panel had concerns regarding this resolution, they ultimately approved the negotiation between you and the State Bar because of your agreement to discontinue the practice of law and resign from the State Bar of Nevada and due to the fact that, prior to the hearing, you had made full restitution to all victims. Nonetheless, your conduct fell substantially below the minimum duties an attorney owes their client and to the system itself. As such, you are **PUBLICLY REPRIMANDED**.

DATED this ____ day of December, 2017.

Cherthe Jan Boo

Formal Hearing Panel Chair

Southern Nevada Disciplinary Board