

1 Case Number: OBC15-0406



FILED

JAN 09 2017

STATE BAR OF NEVADA

BY: *[Signature]*
OFFICE OF BAR COUNSEL

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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,)

12

vs.)

PUBLIC REPRIMAND

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MICHELLE R. BUMGARNER, ESQ.)

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STATE BAR NO. 10525)

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Respondent.)

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TO: Michelle R. Bumgarner, Esq.

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611 Sierra Rose Drive

Reno, Nevada 89511

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Background Facts

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You represented Reno Cab Company in the lawsuit *Cheeseman et al. v. Warne, et*

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al., case no. CV13-02220, in the Second Judicial District Court (the "Lawsuit"). The

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Lawsuit alleged that Richard Warne and Reno Cab Company Inc. were liable for the

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wrongful death of Bradley Driscoll Cheeseman. Warne drove a taxi for Reno Cab.

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Warne drove Cheeseman in his taxi in December, 2012. An altercation happened

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between Warne and Cheeseman and Cheeseman died thereafter.

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1 There is a dispute in the Lawsuit over whether Warne was an independent
2 contractor, and thereby separate from Reno Cab, or an employee for Reno Cab.
3 Someone at Reno Cab Company instructed Warne to seek your advice after he had been
4 served with the Complaint in the Lawsuit. You identified that there was a conflict of
5 interest between Reno Cab and Warne. You attempted to convey that conflict to Warne
6 and to explain to him that you could not represent him. Multiple times Reno Cab
7 requested that you represent Warne and you believed that you conveyed to Reno Cab
8 and Warne that you could not do so.

9 You believed that if Warne did not file an Answer it would be detrimental to your
10 client, Reno Cab. Therefore, you gave Warne a form Answer, told him generally what
11 answers were available to him for answering the allegations of the complaint, and told
12 him to go to the Court to file it.

13 You also believed that if Warne failed to respond to Plaintiffs' written discovery
14 requests then it would be detrimental to your client, Reno Cab. Warne asked you for help
15 in responding to Plaintiffs' written discovery. You helped Warne obtain an extension of
16 time for serving his discovery responses in the Lawsuit. You obtained the extension of
17 time to respond for Warne, because he sought your help in preparing responses and you
18 were unable to assist him right then because you were in the hospital and had a newborn
19 baby in the NICU.

20 You drafted discovery responses for Warne's review and comment. You emailed
21 the drafts to him. You then met with Warne to review his discovery responses before
22 they were finalized and served. In August 2014, you served Warne's discovery
23 responses for him.

24 Warne testified at a hearing in the Lawsuit that in his written response to at least
25 one of Plaintiff's Requests for Admission was a statement contrary to his personal belief;

1 to wit, he believed himself to be an employee of Reno Cab and the response denied such
2 a status and asserted that he was an independent contractor. If Warne was deemed an
3 employee of Reno Cab Company, then it may have been (i) obligated to provide him with
4 defense counsel and/or (ii) liable for his conduct in the altercation with Cheeseman.

5 Warne testified that you prepared that particular response to Plaintiff's Request for
6 Admission and that he and you went "round and round" about the issue of his
7 employment status. He testified that he ultimately deferred to your preferred response
8 because he believed you were his attorney.

9 You and Plaintiffs' counsel often served documents on each other, or
10 corresponded with each other, in the Lawsuit without including Warne separately.

11 You have asserted that prior to assisting Warne with his Answer, and prior to
12 assisting Warne with his discovery responses, you told Warne on the telephone and in
13 person that you could not represent him, but Warne claims that he did not understand
14 that until the day of his deposition. On November 24, 2014, the day that Warne was
15 deposed in the Lawsuit, you again told Warne unequivocally that you did not represent
16 him, would not be representing him at the deposition, and would not represent him at
17 trial. Warne testified that that was the first time he realized that you were not
18 representing him in the Lawsuit. You believe that Warne understood you did not
19 represent him, or his interests, long before the morning of the deposition, but there is no
20 evidence, such as written communications from you, that supports your belief.

21 After a full evidentiary hearing on the issue, you were disqualified from
22 representing Reno Cab in the Lawsuit because the Court found that you assisted Warne
23 and when doing so you acted for the benefit of Reno Cab and to detriment of Warne. You
24 were ordered to pay the attorney's fees incurred as a result of the evidentiary hearing
25 made necessary by your assistance of Warne.

1 The Court also re-opened discovery in the Lawsuit because of your actions in
2 assisting Warne. The trial in the Lawsuit, originally a fourth set with a start date of April
3 27, 2015, was also continued. The trial in the Lawsuit was reset for 20 months later.

4 Violations of the Rules of Professional Conduct

5 You had a duty, pursuant to RPC 4.3 (Dealing with Unrepresented Person) to:

- 6 (i) not state or imply that you were disinterested when dealing, on behalf of
7 Reno Cab Company, with Warne, a person who was not represented by
8 counsel,
9 (ii) correct Warne's misunderstanding of your role in the matter when you
10 knew or reasonably should have known that Warne misunderstood, and
11 (iii) not give legal advice to Warne, other than the advice to secure counsel,
12 if you knew or reasonably should have known that Warne's interests were,
13 or had a reasonable possibility of being, in conflict with your client's
14 interests.

11 By advising Warne on his Answer and written discovery responses and assisting
12 him with preparation of those documents, you knowingly violated RPC 4.3 (Dealing with
13 Unrepresented Person). Warne was injured by your conduct, although the direct injury
14 has been mitigated by the Court's subsequent actions. The judicial process was injured
15 by your conduct because the trial in the Lawsuit had to be reset for 20 months later as a
16 result of your conduct and disqualification. Finally, the integrity of the profession was
17 injured by your conduct because the laypeople involved in the Lawsuit may have
18 received the impression that you could advise an unrepresented person that was
19 adverse, or potentially adverse, to your client.

20 You also had a duty, pursuant to RPC 1.1 (Competence) to provide competent
21 representation to your client, Reno Cab. By advising and assisting Warne, an
22 unrepresented co-defendant in the Lawsuit, you knowingly failed to apply the legal
23 knowledge and skill necessary to competently represent Reno Cab Company. Your
24 client was injured by your conduct because it had to retain new counsel in the Lawsuit
25 which cost money and delayed the Lawsuit.

1 You also had a duty, pursuant to RPC 8.4(d) (Misconduct) to not engage in
2 conduct prejudicial to the administration of justice. You knowingly violated this duty when
3 you advised and assisted Warne in the Lawsuit. Your conduct resulted in prejudice to the
4 administration of justice, and thus injury to the judicial process and integrity of the
5 profession, because Warne was almost bound by legal responses that were not in his
6 best interest and were not what he intended to assert in the litigation and the only way to
7 undo the harm to Warne was to continue the Lawsuit, which delayed resolution for the
8 other parties and hindered efficiency of the judicial system.

9 Aggravating and Mitigating Factors

10 The Panel is concerned that you identified the conflict of interest between your
11 client and Warne, but you were nonetheless persuaded by your client and by Warne's
12 continued request for assistance. You knew that it was inappropriate to counsel Warne,
13 but when faced with repeated requests to do so, and potential adverse consequences for
14 you client, you helped him.

15 The Panel finds in mitigation (i) that you have no prior discipline record (SCR
16 102.5(2)(a)), (ii) you had a complicated pregnancy and the premature birth of your child
17 at the time that you engaged in the misconduct (SCR 102.5(2)(c), and (iii) the imposition
18 of sanctions by the District Court including payment of \$2,500 in attorney's fees and
19 removal from the Lawsuit and the implicit penalty of the loss of Reno Cab Company as a
20 client (SCR 102.5(2)(l)).

21 In light of the foregoing, you violated Rule of Professional Conduct ("RPC") RPC
22 4.3 (Dealing with Unrepresented Person), RPC 1.1 (Competence), and RPC 8.4(d)
23 (Misconduct- prejudicial to the administration of justice) and are hereby PUBLICLY
24 REPRIMANDED and ordered to pay the costs of the disciplinary proceedings in the
25 amount

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2 of \$500 plus all mailing and court reporter expenses incurred by the State Bar of Nevada.

3 DATED this 6th day of January, 2017.

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By: 

Richard Williamson, Esq.
Formal Hearing Panel Chair
Northern Nevada Disciplinary Board

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