

NORTHERN NEVADA DISCIPLINARY BOARD

In re: Brian Kelly, Esq.
Bar No.: 1993
File No.: NG14-0361
Filed: April 17, 2015

PUBLIC REPRIMAND

Attorney publicly reprimanded for failure to properly terminate representation in a probate matter or ensure the transfer of the client's representation to ex-law partner.

TO: Brian Kelly, Esq.

Client retained you, as a member of Hardy Law Group, on or about November 12, 2012, to pursue claims of elder abuse and HIPAA violations on behalf of her deceased father. Client's father died on November 1, 2012, in Clark County. You initiated a probate matter in the Eighth Judicial District Court by filing a Petition for Special Administration on January 23, 2013. The Petition for Special Administration of Client's father's estate detailed that the deceased had no assets other than his lawsuit claims and that the administrators, Client and Del Hardy (Hardy), would retain you to pursue the elder abuse and HIPAA violation claims. The petition requested that authority be granted to the administrators to so proceed.

In or about May, 2013, you left the Hardy Law Group and opened a solo practice. You sent Client a letter, dated May 13, 2013, detailing your departure and asking Client to contact you. Between May 13, 2013, and May 28, 2013, you communicated with Client that you would discuss with Hardy who should represent her in the elder abuse and HIPAA violation claims, and that you would get back to her about it. Thereafter, you did not contact Client.

You did lodge a proposed Order Appointing Special Administrator, on May 30, 2013, in the probate matter. The order did not address the lawsuit and/or authority to proceed with it. On June 3, 2013, you filed a Change of Address in the probate matter.

You did not communicate with Client after May, 2013. You did

not comply with the Clark County Probate Department's requests for information and revisions to the proposed order so that the Order Appointing Special Administrator could be issued. Specifically, you did not lodge an order with required language and did not submit a Verification of the Petition from Hardy. No Order Appointing Special Administrator was issued in the probate matter. You have done nothing to advance the probate matter since May, 2013.

You did not file a complaint for the elder abuse and HIPAA claims. As of February, 8 2014, the statute of limitations on Client's claims was in danger of expiring. You failed to fulfill your obligation to timely advance Client's claims.

Client brought a grievance to the State Bar of Nevada in March, 2014. In response to the grievance, you asserted that you had relied on Hardy to replace you in the matter. However, you failed to fulfill your obligation to properly terminate your representation of Client in the probate matter, or to ensure transfer of the representation to Hardy in a timely manner, so as to provide Client with reasonable time to pursue her claims.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.3 (diligence), RPC 1.4 (communication) and RPC 1.16 (declining and terminating representation) and are hereby PUBLICLY REPRIMANDED.

In re: Douglas W. Nicholson, Esq.
Bar No.: 3654
File No.: NG13-1256
Filed: April 20, 2015

PUBLIC REPRIMAND

Attorney publicly reprimanded for failure to inform a reinstatement panel of the Northern Nevada Disciplinary Board of his outstanding issues with a former client, where his failure to properly represent the

client resulted in a dismissal of her underlying civil case.

TO: Douglas W. Nicholson, Esq.

On or about November 3, 2005, Client retained you on a contingency basis to represent her interests after a car accident. On March 30, 2007, you filed a civil suit in the Second Judicial District Court on behalf of Client. The matter was assigned to the Court Annexed Arbitration Program.

On June 25, 2008, the arbitrator dismissed Client's case because of your failures during the action. You attempted to reverse the arbitrator's dismissal, but it was upheld by the Alternate Dispute Resolution Commissioner and District Court Judge.

On or about August 31, 2009, you agreed to pay Client \$22,500, as compensation for the claim she was barred from pursuing because of your failures in the civil suit. Although Client mentioned contacting the state bar regarding your failures, your agreement to pay Client was not conditional on her refraining from doing so. You made eight payments of \$400 towards that obligation and failed to pay Client after April, 2010.

On or about January 15, 2013, you affirmed your obligation to Client and signed a new Promissory Note for \$16,000. Again, Client mentioned contacting the state bar regarding your failures, but chose not to, without any input or prompting from you. You made two partial payments towards the obligation, totaling \$550, but failed to pay Client after March, 2013.

On April 20, 2010, a hearing panel of the Northern Nevada Disciplinary Board approved your Conditional Guilty Plea in Exchange for a Stated Form of Discipline and recommended to the Nevada Supreme Court that you be suspended for six months and one day for violations of the Rules of Professional Conduct in matters unrelated to your representation of Client.¹ On February 9, 2012, the Nevada Supreme Court approved

the recommendation for suspension. You refrained from the practice of law from approximately April 20, 2010, the date that the panel's recommendation was issued.

On or about May 20, 2013, you petitioned for re-instatement to the practice of law. On June 11, 2013, your petition for re-instatement was heard by a panel of the Northern Nevada Disciplinary Board. At that hearing, you detailed the consequences that the suspension had on your life and that you had been experiencing family problems at the time you were suspended. You were asked if there was anything that the panel should be concerned about, given the circumstances. In your comments to the panel, you omitted disclosure of the outstanding issue with your failure to appropriately represent Client and your failure to compensate her as you had agreed to do. Also at the hearing, the state bar asserted that no grievance had been lodged against you during your suspension and that it was not aware of a reason you should not be reinstated. You failed to tell anyone involved in the reinstatement process that there were outstanding issues with Client. The panel recommended that you be reinstated to the practice of law.

On August 25, 2013, Client submitted her grievance to the state bar. This was approximately 10 months after the expiration of the statute of limitations on any claims of violations of the Rules of Professional Conduct arising out your failure to properly represent Client in her action. This was the first that the state bar had heard of an outstanding issue with your practice of law.

In light of the foregoing, you violated Rule of Professional Conduct 3.3 (candor toward the tribunal) and are hereby PUBLICLY REPRIMANDED

SOUTHERN NEVADA DISCIPLINARY BOARD

In re: Jonathan Powell
Bar No.: 9153
File No.: SG14-0946
Filed: February 17, 2015

PUBLIC REPRIMAND

Attorney publicly reprimanded for failure to comply with the Nevada Rules of Appellate Procedures and subsequent orders issued by the Supreme Court on two separate appeals.

TO: JONATHAN POWELL, ESQ.

On or about June 25, 2013, you filed a Notice of Appeal/Fast Track in the Supreme Court on behalf of your Client A in Docket No. 63460. However, you did not file the rough draft transcript request form with the Notice of Appeal. Therefore, on the same day, the Supreme Court issued a Notice to Request Rough Draft Transcripts which directed you to, within 10 days, file the rough draft form or, alternatively, a certificate that preparation of transcripts was not requested.

In an order filed on July 24, 2013, the Supreme Court noted that, although you had filed the rough draft transcript request form in District Court, you failed to file two file-stamped copies of the form, and proof of service of the form, with the Supreme Court as required by the Nevada Rules of Appellate Procedure. The order of July 24, 2013, directed you to file these documents within 10 days. The order also warned you that failure to comply would result in sanctions.

On August 9, 2014, you filed a Motion to Extend Time for filing the Fast Track Statement. However, on August 16, 2014, the Supreme Court filed an Order Denying Motion which noted that your motion neither stated any basis — particularly extreme need or merit — to justify the extension, nor stated the length of time for which an extension was sought.

The Supreme Court also noted that you (1) still had not provided the documents referenced in its prior order, and (2) the Fast Track Statement and appendix were due to be filed on September 3, 2013. The Supreme Court again warned you that failure to comply with its directives would result in sanctions.

On or about June 28, 2013, your Client B filed a pro per Notice of Appeal, Docket No. 63501, in the Supreme Court. Because a rough draft transcript request form was not filed with the Notice of Appeal, on June 28, 2013, the Supreme Court directed you to file it within 10 days or face sanctions.

On July 24, 2013, because it appeared that the transcript request form might have been filed in District Court, the Supreme Court filed an order directing you to file the document. This order also reminded you that the Fast Track Statement and appendix were due to be filed by August 7, 2013. The Supreme Court again warned you that failure to comply with its directives would result in sanctions.

On November 15, 2013, the Supreme Court filed an order regarding both of the above-referenced dockets, and stated that you had failed to comply with its prior orders and directives. Therefore, the Supreme Court scheduled a hearing for December 11, 2013, for you to appear and show cause why sanctions, including referral to the state bar, should not be imposed.

On November 19, 2013, you filed a motion requesting an extension of time to file the Fast Track Statement, and to vacate the Supreme Court's order to appear at the show cause hearing. The Supreme Court granted the request for an extension of time, but refused to vacate the order to appear.

In Docket No. 63460, the Fast Track Statement ultimately filed by you was rejected by the Supreme Court because it was not formatted pursuant to NRAP requirements. Similarly, in Docket No. 63501, your Fast Track Statement was rejected for the same formatting violations.

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You appeared before the Supreme Court for the show cause hearing on December 11, 2013.

On February 11, 2014, the Supreme Court entered an order which (1) removed you as counsel-of-record in the above-referenced appellate matters and (2) suspended you from practicing in the Supreme Court for a minimum of two years.

On February 28, 2014, you filed a Motion to Reconsider Sanctions in the Supreme Court. In your motion, you discussed the “exceptional circumstances” which you were dealing with during the pendency of the appeals underlying this matter. You also accepted responsibility for your actions, and described “significant changes” to your law practice which would ensure that such actions would not be repeated.

On May 8, 2014, the Supreme Court filed an order granting reconsideration which vacated the suspension, but imposed a \$2,000 sanction to be paid to the Supreme Court Law Library. The order also referred this matter to the state bar for investigation.

You subsequently provided proof of your payment of the sanction to the Nevada Supreme Court Law Library.

In light of the foregoing, you violated Rule of Professional Conduct 1.3 (diligence), RPC 3.4(c) (fairness to opposing party and counsel: knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (misconduct: engaging in conduct that is prejudicial to the administration of justice), and are hereby PUBLICLY REPRIMANDED.

In re: Michael J. Harker
Bar No.: 5353
File Nos.: SG13-1104, SG11-1420, SG12-0359, SG12-1745, SG13-1107, SG13-1125, SG13-1246, SG13-1323
Filed: March 19, 2015

PUBLIC REPRIMAND

Attorney publicly reprimanded, with conditions, for allowing

non-lawyer staff to engage in UPL and providing inadequate representation for several clients.

TO: MICHAEL J. HARKER, ESQ.

This matter came before a designated formal hearing panel of the Southern Nevada Disciplinary Board on February 23, 2015, at the State Bar of Nevada’s offices in Las Vegas, Nevada. The panel determined that the imposition of a Public Reprimand was the appropriate discipline, along with the following conditions:

1. That within 30 days from the date of this order, you shall obtain an attorney, at your own expense, and approved by the state bar, to review and assess your law office practice, particularly in the areas of calendaring, responding to client calls and supervision of non-lawyer assistants. You shall implement any recommendations made by the attorney and accepted by the state bar;
2. That you shall have six months from the date of this order for the attorney to complete the assessment, the state bar to review any recommended changes, and to implement the changes that are approved by the state bar;
3. That within three months from the date of this order, you shall complete two credit hours of continuing legal education (CLE) in the area of law office management. The course shall be approved by the state bar, and shall be in addition to your regular CLE requirements;
4. That within 30 days of the issuance of the Public Reprimand, the state bar shall have it translated into Spanish and made available to any potential clients who contact the office or go to the state bar’s website; and
5. You shall pay the actual costs of the disciplinary proceeding, excluding Bar Counsel and staff salaries, within 30 days of receipt of a billing from the state bar.

The individual complaints underlying the Public Reprimand are as follows:

SG13-1104 (State Bar of Nevada) You entered into a business relationship with Avila, a non-attorney who provided loan modification services. You took over his files, and thereafter established a second office where Avila worked. You acknowledged that Avila improperly signed up clients and engaged in the unauthorized practice of law. You severed your relationship with Avila after he diverted funds for his own personal use.

Your actions in this matter violated RPC 5.3 (responsibilities regarding non-lawyer assistants), RPC 5.4 (professional independence of a lawyer), and RPC 5.5 (unauthorized practice of law).

SG11 -1 420 (Client A) Client A retained you for loan modification assistance, but communicated through Avila, who charged Client A additional monies that he kept for himself, and for which you later reimbursed Client A. Avila, along with other members of your staff, improperly provided legal advice of questionable merit to Client A. In this matter, you violated RPC 1.4 (communication), RPC 5.3 (responsibilities regarding non-lawyer assistants), and RPC 5.5 (unauthorized practice of law).

SG12-0359 (Client B) Client B retained you regarding a child support modification matter. Your delay in filing a motion to modify child support resulted in the court noting that you should have filed something as soon as you realized a stipulation was not going to be prepared immediately. You also did not timely file a motion to change custody, which resulted in the motion being heard after the child’s school year commenced. In this matter, you violated RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 1.4 (communication).

DISCIPLINE KEY

Resignation with charges pending:
SCR 98(5)(b)

Types of possible discipline listed generally:
SCR 102

Attorneys convicted of crimes:
SCR 111

**Conditional guilty plea agreements
(discipline by consent):** SCR 113

Reciprocal discipline: SCR 114

Disbarred/Suspended attorneys: SCR 115

Reinstatement: SCR 116

Disability Inactive: SCR 117

Supreme Court Rules (SCRs):
www.leg.state.nv.us/CourtRules/SCR.html

DISBARMENT – License to practice revoked.

SUSPENSION – License suspended for a time certain, ineligible to practice. More than six months requires petition for reinstatement and court order.

DISABILITY INACTIVE – Ineligible to practice until further order of the court. In the interim, disciplinary proceedings held in abeyance.

INTERIM TEMPORARY SUSPENSION – Interim suspension based on showing of a substantial threat of serious harm to the public, in effect until further court order, usually after hearing.

RESIGNATION WITH CHARGES PENDING – Ineligible to practice. Requires Bar Counsel approval. Resignation is irrevocable, with readmission only possible upon application as a new admittee.

PUBLIC REPRIMAND – Misconduct found and public censure issued, including attorney's name and the underlying facts and charges. Published in *Nevada Lawyer* and made available to the press. Remains eligible to practice law.

LETTER OF REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or for failure to complete and report the required Continuing Legal Education hours (SCR 212). While these **are not disciplinary suspensions**, the attorney is **ineligible to practice law** until the deficiency is remedied and the procedures to transfer back to active status completed as set forth in the applicable rules.

SG12-17 45 (Client C)
Client C retained you to file a divorce against her husband. You acknowledged that you could have communicated with her more effectively and took responsibility for the delays in her matter. In this matter, you violated RPC 1.3 (diligence) and RPC 1.4 (communication).

SG1 3-1107 (Client D)
Client D retained you to obtain your advice regarding his defaulted mortgage. In investigating the matter, your staff missed that a Trustee Deed Upon Sale had been recorded upon the property but was advised by the bank that the property had not been sold. As such, Client D paid for you to file a Chapter 13 bankruptcy petition which became moot. You subsequently offered to file a Chapter 7 bankruptcy to stop a writ of restitution from taking effect, but did not do so, as the fee was not fully paid. You refunded the majority of the monies Client D paid you, after participating in the state bar's Fee Dispute Arbitration Program. In this matter, you violated RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication) and RPC 1.5 (fees).

SG13-1125 (Client E)
Client E retained you for various matters, and complained about the lack of communication from your office. In regard to the personal injury case you handled for Client E, it took over a year for the lien-holders to receive payment. Although holding onto the funds for a period of time to negotiate the liens is permitted, a year is excessive. In this instance you violated RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 1.15 (safekeeping property).

SG13-1246 (Client F)
Client F retained you for loan modification assistance at your second office, and was signed up by a non-attorney who also gave her legal advice. She was able to meet with you after she submitted her bar complaint. Client F's loan modification was approved.

However, your conduct in this matter violated RPC 5.3 (responsibilities regarding non-lawyer assistants) and RPC 5.5 (unauthorized practice of law).

SG13-1323 (Client G)
Client G is the practice administrator for Nevada Orthopedic and Spine Center, an entity that is contracted to provide services to individuals who have benefits through the Culinary Health Fund. She complained that that one of your staff members rendered legal advice to a client that resulted in the client not qualifying for treatment by her office. You provided evidence that the client chose not to go through the Culinary Health Fund for cost-related issues. However, it was still improper for a non-attorney to offer legal advice. Accordingly, your conduct in this matter violated RPC 5.3 (responsibilities regarding nonlawyer assistants) and RPC 5.5 (unauthorized practice law).

Based on the foregoing, you are hereby **PUBLICLY REPRIMANDED**. Please be advised that if this behavior reoccurs in the future, the state bar is likely to seek the imposition of a harsher sanction.

1. The underlying grievances that led to your prior suspension were due to your conduct at or about the same time that you failed to adequately pursue Client A's action.