

STATE BAR OF NEVADA

April 19, 2019



LETTER OF REPRIMAND

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Re: State Bar of Nevada Disciplinary Grievance Nos. 18-1220 and OBC18-1235

Dear Mr. Liker:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) in the handling of (i) the representation of a client in a matter where he was accused of a serious crime and (ii) your radio advertisements.

FACTUAL BACKGROUND:

In July, 2018, you were retained to represent a defendant in a criminal matter that had not yet gone to Preliminary Hearing. The client's mother executed a retainer agreement that identified that the representation was for one settlement conference or status check and that you would be paid a flat fee of \$6,000 (of which \$5,000 was paid). The client did not execute a retainer agreement or otherwise provide consent, confirmed in writing, of the limitation placed on the representation. The client now claims that he did not understand the limitation on the representation.

The retainer agreement also stated that the fee was nonrefundable, the representation excluded any appellate work, and you could resolve the case as you deemed appropriate. The aforementioned boilerplate contract provisions are concerning because 1) RPC 1.16(d) requires you to refund "any advance payment of fee or expense that has not been earned or incurred" and, pursuant to Ethics Opinion No. 15, no fee is ever *per-se* nonrefundable; 2) NRAP 3C(b) requires trial counsel to file a Notice of Appeal and perform certain initial appellate tasks— an attorney cannot contract out of those obligations; and 3) only the client can decide to settle a matter.

You communicated a settlement offer to your client, but it was not accepted. Then, on October 8, 2018, you filed a Motion to Withdraw from the representation citing the client's inability to pay for representation past the Preliminary Hearing and a

communication issue with the client as the basis for the request. Your motion was granted, the client was reassigned to the Public Defender, and the Preliminary Hearing had to be continued. You did refund the \$5,000 to the client.

You have also been running radio advertisements in Elko, Nevada that have not been submitted to the State Bar's Advertising Committee for review. During October, 2018 and February, 2019, you paid for a radio station to run an advertisement referencing recommendations from judges. However, the radio advertisement omitted that such recommendations were for the sole purpose of your admission to practice law in North Dakota. You ran at least one other radio advertisement between October, 2018 and March, 2019. You did not submit any of these radio advertisements for review by the State Bar Advertising Committee, as required by RPC 7.2A.¹

APPLICABLE RULES OF PROFESSIONAL CONDUCT:

RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) allows an attorney to reasonably limit the scope of representation with the client's informed consent. In this matter, there is no evidence that your client provided the necessary informed consent for you to limit the representation to "one settlement conference or status hearing." The client's mother signed the Fee Agreement and the client claims that he did not understand that the representation was limited in scope.

RPC 7.1 (Communications Concerning a Lawyer's Services) provides that "a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. "False or misleading" is defined as containing a material misrepresentation or fact or law or omitting a fact necessary to make the statement, as a whole, not materially misleading. In this instance, the radio advertisement that you ran twice in Elko, Nevada stated that judges "recommend" you but omitted that such recommendations were for the purposes of the moral character evaluation for admission into the North Dakota Bar, not for the purposes of representing particular clients.

RPC 7.2A (Advertising Filing Requirements) requires an attorney to file with the State Bar "written or recorded communications the lawyer causes to be disseminated for the purpose of advertising legal services" within 15 days of the first dissemination of the advertisement. You failed to submit multiple radio advertisements, despite knowing of the requirement to do so. Further, this instance exemplifies why advertisements are to be submitted— so that the content can be reviewed and the attorney instructed on the propriety of it in a timely manner. The Panel expects that if the "judges" radio advertisement had been submitted, you would have been directed to revise its content to correct the misleading nature of the "recommendation" statement.

Finally, RPC 8.4(e) (Misconduct) states that it is professional misconduct to imply an ability to influence improperly a government official. Your radio advertisement indicated judges recommended you which improperly implied an ability to influence a judge on behalf of a client because of the recommendations.

¹ You did attempt to submit an advertisement in December, 2018, but you did not use the correct form and, after it was returned to you without consideration, you did not re-submit the advertisement using the correct form.

APPLICABLE STANDARDS FOR IMPOSING LAWYER SANCTIONS:

Standard 4.63 of the ABA Standards for Imposing Lawyer Sanctions provides that “reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.” In this instance, your failure to get informed consent to the limitation on the representation from your actual client had the potential to cause your client injury and your refund of the entire flat fee if the only thing that prevent your conduct from causing actual injury to your client. Standard 4.64 provides that an admonition is appropriate if the failure was an isolated instance and there was little or no injury or potential injury to the client. A Letter of Reprimand is an appropriate sanction for your failure to provide your client with the complete information about the scope of your representation in light of the fact that you did return the flat fee when you terminated the representation.

Standard 7.2 provides that suspension 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. In this instance, you knew that you needed to submit all advertisements to the State Bar for review and you failed to do so on multiple occasions in the last seven months. In addition, at least one of the advertisements omits information that is material to prevent the advertisement from being misleading and from implying an ability to improperly influence a government official. Standard 7.4 states that an admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer’s conduct violates a duty owed as a profession and causes little or no injury or potential injury to a client, the public, or the legal system. Considering these Standards, it is appropriate in this instance to issue a reprimand, a form of discipline between suspension and admonition, for your violations of RPC 7.1 and RPC 7.2A.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to representation of the foregoing clients, which conduct violated Nevada Rules of Professional Conduct (“RPC”) as follows:

RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) for failing to get informed consent, confirmed in writing, from your client for the limitation of the representation in the criminal matter.

RPC 7.1 (Communications Concerning a Lawyer’s Services) for omitting material information from the radio advertisements that you ran in October, 2018 and February, 2019.

RPC 7.2A (Advertising Filing Requirements) for failing to submit multiple radio advertisements between October, 2018 and March, 2019 despite knowing that such submission was required.

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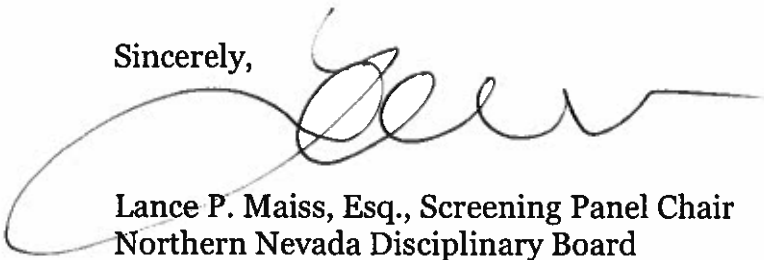
RPC 8.4(e) (Misconduct) for implying improperly an ability to influence improperly a government official when your radio advertisement stated that judges 'recommended' you without any qualification of that recommendation.

Please understand that the Screening Panel seriously considered directing the Office of Bar Counsel to proceed to Formal Hearing in these matters. However, after much discussion, it decided on a lesser form of discipline, trusting that you will be better and do better with your practice of law.

You are also cautioned that the boilerplate provisions of your fee agreements should be revised to comply with the applicable Rules of Professional Conduct and Rules of Appellate Procedure.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance P. Maiss", written over a large, light-colored scribble or watermark.

Lance P. Maiss, Esq., Screening Panel Chair
Northern Nevada Disciplinary Board

RKF/lp