

SUPREME COURT OF NEVADA

In Re: Gerald Luke Ciciliano
Bar No. 9530
Docket No. 67053
Filed September 18, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended five years with conditions for numerous counts of failure to perform his duties effectively, including lack of communication with clients. Refund of unearned retainers and restitution to clients' security fund also ordered.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Gerald Luke Ciciliano.

Under the plea agreement, Ciciliano admits to violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (declining or terminating representation), RPC 3.4 (fairness to opposing party and counsel), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct). These violations arise out of complaints that Ciciliano repeatedly accepted money from clients to perform legal work that he failed to perform or perform effectively. He did not meet deadlines, communicate with his clients, refund unearned fees, or transmit case files to substitute counsel. Moreover, Ciciliano repeatedly failed to respond to inquiries from the State Bar or substantiate his responses to the Bar.

The agreed-upon discipline provides that Ciciliano: (1) shall be suspended for five years commencing once his administrative suspensions have been resolved; (2) shall refund unearned retainer fees and reimburse funds distributed by the State Bar's Client Security Fund on his behalf; (3) agree to binding arbitration before the Fee Dispute Committee for any disputed fees; and (4) pay the actual costs of the disciplinary proceeding (excluding staff salaries) within 30 days of the State Bar submitting its memorandum of costs.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). Accordingly, we hereby impose a five-year suspension from the practice of law. Additionally, Ciciliano must comply with all of the conditions in the plea agreement, as outlined above. Ciciliano shall comply with SCR 115 and SCR 116, and the State Bar shall comply with SCR 121.1. It is so ORDERED.

In Re: David L. Tanner
Bar No. 2366
Docket No. 67067
Filed September 18, 2015

ORDER OF REINSTATEMENT

Attorney reinstated with numerous condition following two year suspension.

This is a petition for reinstatement to the practice of law by suspended attorney David L. Tanner. A hearing panel of the Southern Nevada Disciplinary Board recommended that Tanner be reinstated to the practice of law subject to conditions.¹

In its December 16, 2014, findings of fact, conclusions of law, and recommendation, the hearing panel found that Tanner demonstrated by "clear and convincing evidence that he has the competency and learning of law, that he has the moral qualifications required to be reinstated to the practice of law and that allowing him to resume law practice would not be a detriment to the integrity and standing of the Bar or the administration of the Bar." See SCR 116(2).

The panel recommended that Tanner be reinstated, and pursuant to this court's July 3, 2014, order, that Tanner be subject to the following conditions upon reinstatement: (1) complete 10 hours of Continuing Legal Education credits in trust accounting, said credits being in addition to the 12 credits required by the CLE board; (2) take and pass the MPRE; (3) maintain a State-Bar-approved mentor for two years, with regularly scheduled meetings and with the mentor providing quarterly reports to the State Bar documenting Tanner's practice and any issues of concern; (4) be employed by another attorney for one year after reinstatement; (5) should Tanner be a solo practitioner following one year of employment by a licensed attorney, hire an outside accounting

professional to maintain and reconcile all of his professional bank accounts for one year; and (6) maintain a co-signatory on his trust account for two years, with quarterly audits of his trust account provided timely to the State Bar. Additionally, Tanner shall pay the costs of the reinstatement proceeding within 30 days of an order from this court directing him to do so.

SCR 116(2) requires that an attorney seeking reinstatement demonstrate "by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in law required for admission to practice law in this state," and that the attorney's "resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest."

Having reviewed the record and the documents on file in this matter, we conclude that clear and convincing evidence supports the panel's findings and conclusions. We therefore approve the panel's recommendation that the petition be granted subject to conditions. Accordingly, David L. Tanner is hereby reinstated to the practice of law, subject to the conditions set forth above. Tanner shall pay the costs of the reinstatement proceeding within 30 days of this order. See SCR 120.

It is so ORDERED.

In Re: Thomas M. Fronczek
Bar No. 11380
Docket No. 68062
Filed: September 18, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended for two years and six-months, with two years stayed, with conditions after failing to supervise his non-lawyer assistant who also had access to his trust account. Restitution was ordered.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Thomas M. Fronczek.

Under the agreement, Fronczek admitted to violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15

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(safekeeping property), RPC 5.3 (responsibilities regarding non-lawyer assistants), RPC 5.5 (unauthorized practice of law), and RPC 8.1(b) (bar admission and disciplinary matters).

The agreement provides for a two-year-and-six-month suspension with two years suspended and six months actual suspension.

Additionally, the following conditions are imposed: (1)(a) if a screening panel determines that Fronczek engaged in professional misconduct after the execution of the plea, and violated any of the same rules he admitted to in this plea, the screening panel shall vote the matter for a formal hearing, and (b) if a hearing panel makes findings that Fronczek engaged in professional misconduct after the execution of the plea, and violated any of the same rules that he admitted to in this plea, the hearing panel shall recommend to the Supreme Court the imposition of the stayed suspension, along with any additional sanction that may be warranted in the new matter(s); (2) Fronczek shall pay restitution to the persons named in the conditional plea agreement for a total of \$113,980; (3) Fronczek shall pay the costs of the disciplinary proceeding, excluding Bar Counsel and staff salaries, within 30 days of receipt of the State Bar's bill of costs; (4) Fronczek shall timely pay any final civil judgment issued against him with regard to the events and circumstances pleaded to in paragraphs 36 through 41 of the conditional plea agreement; (5) if Fronczek should leave the public sector and choose to return to private practice, he must notify the State Bar and obtain a mentor, approved by the State Bar, who will mentor him for a period of one year; and (6) Fronczek shall take four additional CLE classes in the area of ethics and/or law practice management.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). We hereby impose a two-year-and-six-month suspension, with two years stayed and six months actual suspension, commencing on the date this order is filed. Additionally, Fronczek must comply with all of the conditions in the plea agreement, as outlined above. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: Noel A. Gage
Bar No. 6305
Docket No. 66902
Filed September 18, 2015

ORDER OF REINSTATEMENT

Attorney reinstated following four-year suspension.

This is a petition for reinstatement to the practice pursuant to SCR 116, filed by suspended attorney Noel Gage. On May 28, 2014, this court suspended Gage from the practice of law for four years based on his conditional guilty plea to violations of RPC 5.4 (professional independence of a lawyer), RPC 8.4(b) (misconduct: commit a criminal act that reflects adversely on the lawyer's fitness to practice), and RPC 8.4(d) (misconduct: engage in conduct prejudicial to the administration of justice). *In the Matter of Discipline of Noel Gage*, Docket Nos. 64988 (Order Approving Conditional Guilty Plea Agreement, May 28, 2014). The suspension was retroactive to July 30, 2010, the date Gage was temporarily suspended from the practice of law.

After serving the four-year suspension and satisfying all other conditions imposed by this court, Gage filed a petition for reinstatement, which was accompanied by several letters of support from former clients and attorneys espousing Gage's legal acumen, competence, and trustworthiness and encouraged his reinstatement to the practice of law.

At a formal hearing before a panel of the Southern Nevada Disciplinary Board, two attorneys from the law firm where Gage would return to practice should he be reinstated testified on his behalf, describing Gage's exceptional legal skills and abilities. Several times during the hearing, Gage acknowledged the wrongfulness of his conduct and assured the panel that he would not engage in such misconduct in the future.

Although the State Bar indicated at the conclusion of the hearing that it did not oppose Gage's reinstatement and the panel found that Gage had met his burden of demonstrating by clear and convincing evidence that he has the competency and learning of the law as required by SCR 116(2), a majority of the panel concluded that Gage failed to meet his burden to show by clear and convincing evidence that he has

the moral qualifications required for reinstatement and that allowing him to resume the practice of law would be a "detriment to the integrity and standing of the bar and to the administration of the bar." Accordingly, by a 3-2 vote, the panel recommended that Gage's petition for reinstatement be denied.

This court's automatic review of a disciplinary panel's findings and recommendations is de novo, SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992), and therefore we "must examine the record anew and exercise independent judgment," *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001).

Although we are not bound by the disciplinary panel's recommendations, those recommendations are persuasive. Having reviewed the record, we agree with the panel that clear and convincing evidence demonstrates that Gage has the moral qualifications, competency, and learning in law required for admission to practice law in this state, but we disagree that his resumption of the practice of law would be detrimental to the integrity and standing of the bar, to the administration of justice, or the public trust.

Gage has acknowledged the wrongfulness of his conduct, accepted responsibility, and satisfied all conditions of the imposed discipline, and the evidence presented at the hearing indicates that he is still held in high esteem by members of the public. Based on our de novo review, we conclude that Gage has met his burden under SCR 116(2).

Accordingly, Noel Gage is hereby reinstated to the practice of law.

It is so ORDERED.²

In Re: Rulon Huntsman
Bar No. 968
Docket No. 68110
September 18, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended one year, with all but 60 days stayed, for violations related to communication, fees and non-lawyer assistant responsibilities.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to

SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Rulon Huntsman.

Under the agreement, Huntsman admitted to violations of RPC 1.4 (communication), RPC 1.5 (fees), and RPC 5.3 (responsibilities regarding non-lawyer assistants).

The agreement provides for a 1-year stayed suspension with a 60-day actual suspension and that if Huntsman fails to comply with the conditions of probation and ultimately serves a suspension of more than 6 months, he will be required to petition for reinstatement pursuant to SCR 116. Additionally, the following conditions are imposed: (1) Huntsman shall be on probation for two years, during which he shall stay out of trouble and not receive any grievances that result in actual professional discipline, which would be considered a violation of probation and (2) Huntsman shall pay the costs of the disciplinary proceeding, excluding bar counsel and staff salaries, within 30 days of receipt of the State Bar's bill of costs.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). We hereby impose a 1-year stayed suspension with an actual suspension of 60 days.

Additionally, Huntsman must comply with all of the conditions in the plea agreement, as outlined above. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: ROBERT J. KOSSACK
Bar No. 2734
Docket No. 67998
Filed September 18, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended nine months, retroactive to November 25, 2014, and ordered to pay outstanding liens and resolve judgement.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea

agreement in exchange for a stated form of discipline for attorney Robert Kossack.

Under the agreement, Kossack admitted to violations of RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 8.4 (misconduct). The agreement provides for a 9-month suspension to commence on November 25, 2014, immediately consecutive to his 18-month suspension in another discipline matter. Additionally, the following conditions are imposed: (1) Kossack shall pay the costs of the disciplinary proceeding, excluding Bar Counsel and staff salaries, within 90 days of receipt of the State Bar's bill of costs; (2) Kossack shall resolve and pay the outstanding liens referenced in the conditional guilty plea agreement; and (3) Kossack shall resolve the judgment issued against Dorothea Erbacher in the amount of \$10,114.14.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). We hereby impose a nine-month suspension from the practice of law, retroactive to November 25, 2014. Additionally, Kossack must comply with all of the conditions in the plea agreement, as outlined above. Kossack shall comply with SCR 115 and SCR 116, and the State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: Gwynne R. Dumbrigue
Bar No. 10031
Docket No. 67765
Filed: September 29, 2015

ORDER APPROVING REVISED CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended for one year, stayed for all but 90 days, following multiple violations related to competence, safeguarding client property and diligence, among others. Conditions including two years probation, CLEs and restitution also ordered.

This is an automatic review of a Southern Disciplinary Board hearing panel's recommendation that we approve attorney Gwynne R. Dumbrigue's revised conditional guilty plea in exchange for a stated form of discipline.³ See SCR 113(1), (3); SCR 105(3)(b).

Under the revised conditional guilty plea agreement, Dumbrigue admits to a total of 79 violations of

the following Rules of Professional Conduct stemming from 11 grievances: RPC 1.1 (competence) (10 violations); RPC 1.2 (scope of representation) (10 violations); RPC 1.3 (diligence) (10 violations); RPC 1.4 (communication) (10 violations); RPC 1.15 (safekeeping property) (11 violations); RPC 1.16 (declining or terminating representation) (10 violations); RPC 3.2 (expediting litigation) (10 violations); RPC 3.4 (fairness to opposing party and counsel) (7 violations); and RPC 8.4(d) (misconduct) (1 violation).

The stated form of discipline in the revised conditional guilty plea agreement provides for a 1-year stayed suspension with a 90-day actual suspension and the following conditions: (1) probation for 2 years, during which Dumbrigue must submit quarterly reports to the Bar, stay out of trouble, and not be the subject of any grievances that result in actual discipline; (2) as Dumbrigue already obtained a mental-health evaluation, follow up with any recommendations and provide updates as to treatment in the quarterly reports; (3) maintain a Bar-approved mentor to monitor Dumbrigue's practice and submit quarterly reports to the Bar, with the mentor ensuring that Dumbrigue has a proper accounting system to track client fees and costs, that cases are properly filed and calendared, and that Dumbrigue does not have more than 25 active bankruptcy cases at any time; (4) complete a total of 10 additional CLE credits in the area of office management and provide proof of attendance; (5) pay restitution in the total amount of \$4,859 within 1 year;⁴ (6) participate in the fee dispute process and be bound by the State Bar Fee Dispute Committee's decision if former client Treena Leonard files a fee dispute; (7) submit quarterly reports to the Bar detailing his place of employment, number of active bankruptcy cases, areas of practice, restitution payments, treatment progress (if recommended by medical expert), and any issues that may have developed; and (8) pay the actual costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within 1 year.

This court's automatic review of a disciplinary panel's findings and recommendations is de novo, SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853t 855 (1992), and therefore we

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"must examine the record anew and exercise independent judgment," *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001).

Although we are not bound by the disciplinary panel's recommendations, those recommendations are persuasive. Having reviewed the record, we conclude that the revised conditional guilty plea should be approved in its entirety. See SCR 113(1).

We hereby impose a 1-year stayed suspension with an actual suspension of 90 days commencing from the date of this order. Additionally, Dumbrigue must comply with all of the conditions in the plea agreement, as outlined above. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.

DOUGLAS and SAITTA, J.,
dissenting:

We would reject the conditional guilty plea agreement because the stated form of discipline is insufficient in relation to Dumbrigue's conduct. Accordingly, we dissent.

IN RE: MARINA E. KOLIAS
Bar No. 6383
Docket No. 67559
Filed: October 22, 2015

ORDER OF SUSPENSION

Attorney suspended for five years due to existence of significant mitigating factors for multiple violations, mostly related to handling of client matters resulting in substantial financial harm to clients.

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney Marina Kolas violated multiple Rules of Professional Conduct and its recommendation that Kolas be suspended from the practice of law for five years.

The alleged violations involve three complaints addressing numerous grievances primarily related to Kolas' misappropriation of client funds. Based on a stipulation to the facts and violations, the panel found that Kolas violated RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 4.1 (truthfulness in statements to others), RPC 5.3 (responsibilities

regarding nonlawyer assistants), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct).

After a formal hearing and considering the aggravating and mitigating circumstances, the panel recommended that Kolas be suspended from the practice of law for five⁵ years and be required to pay the costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries. The panel further recommended that reinstatement be conditioned on payment of full restitution to all victims and to the Client Security Fund and a psychiatric evaluation by an expert declaring that Kolas' gambling addiction is under control and that she does not pose a threat to the public if allowed to practice law.

This court's automatic review of a disciplinary panel's findings and recommendations is de novo, SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992), and therefore, while the panel's recommendations are persuasive, we "must examine the record anew and exercise independent judgment," *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The question before this court is the appropriate discipline, as the parties stipulated below to the facts and the rule violations.

The purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney, *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). In determining the appropriate discipline, this court has considered four factors to be weighed: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Having reviewed the record⁶, we conclude that the mitigating circumstances outweigh the aggravating circumstances, and as a result, the recommended five-year suspension is the appropriate discipline. We further agree with the recommended conditions that Kolas must meet before applying for reinstatement.

Accordingly, Kolas is suspended from the practice of law in Nevada for five years commencing from the date of this order. Kolas must petition for reinstatement under SCR 116. See SCR 102(2). She must successfully complete the State Bar examination, see SCR 116(5), and comply with the conditions set forth above before she will be reinstated to the practice of law. Kolas shall pay the costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within 30 days of receipt of the State Bar's bill of costs. See SCR 120. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: William A. Hustwit
California Bar No. 43439
Docket No. 67784
Filed: September 29, 2015

ORDER OF INJUNCTION AND APPROVING DECISION

California attorney permanently enjoined from practice of law in Nevada following violation of safekeeping of property and obstruction of disciplinary hearing.

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that William A. Hustwit violated multiple Rules of Professional Conduct and its recommendation of discipline.

Hustwit, a California licensed attorney, is a partner in the Nevada law firm Hustwit & Lombino, Ltd. Hustwit entered into an agreement with Premiere One Holdings (POH) to assist POH in quieting title to properties POH purchased at auction. Hustwit represented to POH that he had a bank contact who could assist POH in settling mortgages on properties owned by the bank in bulk at a deeply discounted rate.

POH wired \$117,500 to Hustwit's trust account for the purchase of two properties. Subsequently, Hustwit represented to POH that the bank would not offer deep discounts on only two properties and that POH would have to purchase at least ten properties to get the discounted rate. POH wired \$333,500 to Hustwit's trust

account for the purchase of an additional eight properties. However, POH never received the deeds of trust on any of the ten properties, and, despite several demands for a refund of the \$451,000, Hustwit never refunded the money to POH.

Further, Hustwit did not respond to inquiries from the State Bar or file a timely and proper answer. Based on this information, the State Bar filed a complaint alleging violations of the following rules of professional conduct: RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(b) (bar admission and disciplinary matters), and RPC 8.4 (misconduct). Hustwit was served with the complaint and notice of the hearing date and time, but he did not appear at the hearing. The panel concluded that the violations alleged in the complaint were established by clear and convincing evidence.

This court's automatic review of a disciplinary panel's findings and recommendations is de novo. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The State Bar has the burden of showing by clear and convincing evidence that Hustwit committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). After reviewing the record of the disciplinary proceedings in this matter, we conclude that clear and convincing evidence supports the panel's findings that Hustwit committed violations of RPC 1.4, 1.5, 1.15, 8.1(b), 17 and 8.4.

When imposing discipline on an attorney who is not licensed in this state, sanctions must be tailored accordingly. *In re Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007). Appropriate sanctions in such circumstances include injunctive relief, fines, and payments of costs at 168, 160 P.3d at 884-85. We conclude that the

panel's recommended discipline in this matter is appropriate considering the aggravating factors (dishonest or selfish motive; a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, indifference to making restitution, illegal conduct), SCR 102.5(1), and the mitigating factor (lack of prior disciplinary history), SCR 102.5(2), identified by the panel.

Accordingly, William A. Hustwit is hereby permanently enjoined from the practice of law in Nevada. Further, he is required to (1) pay restitution to Premiere One Holdings in the amount of \$451,000, (2) pay \$50,000 to the State Bar of Nevada Client Security Fund, and (3) pay the costs and staff salaries associated with the disciplinary proceedings within 30 days of his receipt of the State Bar's bill of fees and costs.⁸

It is so ORDERED.

IN RE: ROBERT FRY
Bar No. 702
Docket No. 67783
Filed October 22, 2015

ORDER APPROVING REVISED CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended for four years, retroactive to March 2014, following violations related to federal felony conviction for harboring an alien and misconduct in his role as a fiduciary for a disabled veteran.

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, an amended conditional guilty plea agreement in exchange for a stated form of discipline for attorney Robert Fry.

Under the agreement, Fry admitted to violations of RPC 1.8(a) (restrictions on business transactions between a lawyer and client), RPC 8.4(a) (misconduct), and RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). The violations relate to Fry's federal felony conviction for harboring an alien and misconduct in his role as a fiduciary for a disabled veteran.

The agreement provides for a four-year suspension retroactive to

the date that Fry was temporarily suspended under SCR 111 (March 27, 2014). The agreement further provides that as conditions to reinstatement, Fry will (1) take and pass the Multistate Professional Ethics and Responsibility Examination; (2) comply with the conditions of probation set forth in his federal district court sentence, including 100 hours of community service; (3) refrain from serving as a fiduciary for incompetent persons, a V.A. conservator, a guardian of any person or estate, or a personal representative throughout the course of his suspension and thereafter; and (4) pay the costs of the investigation, preparation of hearing materials, and disciplinary hearings within six months. The hearing panel accepted the amended conditional guilty plea agreement and recommended the agreed-upon discipline.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). We hereby impose a four-year suspension retroactive to the date that Fry was temporarily suspended under SCR 111 (March 27, 2014). Additionally, Fry must comply with all of the conditions in the plea agreement, as outlined above.

The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.

SAITTA, J., dissenting:
I dissent because the agreed-upon discipline is insufficient in relation to Fry's admitted conduct. I therefore would reject the conditional guilty plea agreement.

In Re: JEFFREY BRIGGS
Bar No. 5884
Docket No. 65741
Filed September 29, 2015

ORDER OF SUSPENSION

Attorney suspended for six months and one day, stayed until June 30, 2017, following violations related to misconduct, failing to respond to the Bar and engaging in the unauthorized practice of law while suspended.

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings of fact, conclusions of law, and

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recommendations for attorney discipline, arising from attorney Jeffrey Briggs' representation of a client while suspended from practice (count 1) and his handling of a matter involving another client (count 2).

The panel found that Briggs violated RPC 5.5 (unauthorized practice of law), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4(d) (misconduct: engaging in conduct that is prejudicial to the administration of justice). Based on these violations, the panel recommended that Briggs be suspended from the practice of law for six months and one day but that the suspension be stayed until June 30, 2017, provided that Briggs complies with the following conditions: (1) that he undertake reasonable efforts to make restitution of \$3,500 to the client in count 1 as quickly as possible; (2) that he refrain from acting as a solo practitioner until restitution to the client in count 1 is paid in full; (3) that, from July 1, 2014, until June 30, 2017, he report in writing to the State Bar of Nevada on or before the first day of each calendar quarter, stating: his current place of employment, the status of his restitution to the client in count 2, and his health status; and (4) that he pay the State Bar of Nevada reasonable costs associated with his quarterly written report submission, if any. Finally, the panel recommended that Briggs be required to pay the costs associated with the January 7, 2014, proceedings pursuant to SCR 120.

This court's automatic review of a disciplinary panel's findings and recommendations is de novo. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The State Bar has the burden of showing by clear and convincing evidence that Briggs committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

After reviewing the record, we conclude that clear and convincing evidence supports the panel's findings that Briggs violated RPC 5.5 and RPC 8.1. However, we conclude that the panel's finding that he violated RPC 8.4 is not supported by clear and convincing evidence. We further conclude that the panel's recommended discipline is appropriate considering the aggravating factors (a pattern of misconduct, an appearance of indifference to restitution, Briggs' years of experience in the practice of law, and an appearance of bad faith and/or obstructionist intent because of Briggs' intentional failures that led to the complaints to the State Bar) and the mitigating factors (no prior discipline, evidence of emotional/personal issues occurring during the time of the misconduct, evidence of Briggs' rehabilitative potential, evidence of progression in his rehabilitation, and that he is currently abiding by the Rules of Professional Conduct) identified by the panel. See SCR 102.2.

We further agree with the recommended conditions of probation with the exception that Briggs shall pay the restitution amount to the client in count 1 by December 31, 2015.

Accordingly, we suspend Briggs from the practice of law for six months and one day. The suspension shall be stayed until June 30, 2017, provided that Briggs fully complies with the conditions set forth by the panel, as described and modified above. If Briggs has complied with those conditions by June 30, 2017, the suspension shall be vacated. Briggs shall pay the costs associated with the January 7, 2014, hearing within 30 days of receipt of the State Bar's bill of costs. See SCR 120(1). Briggs and the State Bar shall comply with the applicable provisions of SCR 121.1 and if necessary SCR 115 and 116.

It is so ORDERED.

SAITTA, J., dissenting:
I dissent because the stayed suspension is insufficient in relation to Briggs' conduct.

1. This court suspended Tanner from the practice of law for two years, retroactive to his temporary suspension on March 31, 2011, and indicated that reinstatement would not be considered "unless it is clearly demonstrated that he understands his ethical duties regarding clients' property, including trust account management, and that for at least one year following any reinstatement: (1) a mentor, chosen by the bar, is required to monitor Tanner's practice and report to the bar on a quarterly basis; (2) a co-signatory, approved by the bar, is required on Tanner's trust account; and (3) quarterly audits of his trust account are required." *In re Discipline of Tanner*, Docket No. 61583 (Order of Suspension, July 3, 2014).
2. The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision in this matter.
3. We previously rejected Dumbrigue's conditional guilty plea because "the suspension recommendation [was] insufficient in relation to Dumbrigue's admitted conduct." *In re Discipline of Gwynne Dumbrigue*, Docket No. 65707 (Order Rejecting Conditional Plea Agreement and Remanding for Further Proceedings, October 24, 2014).
4. The restitution shall be paid to the following former clients in the indicated amounts: Marian Clark, \$1,499; Kevin Posner, \$ 2,000; Vincente Acosta, \$1, 100; and Lucille Brown, \$260.
5. This court temporarily suspended Kollias on July 24, 2013, pending the resolution of the disciplinary proceedings. *In re Discipline of Marina Kollias*, Docket No. 62783 (Order of Temporary Suspension, July 24, 2013); see SCR 102(4).
6. Kollias did not file an opening brief. As a result, this matter was submitted for decision on the record without briefing or oral argument. SCR 105(3)(b).
7. Based on the panel's factual findings concerning Hustwit's failure to respond to inquiries from the State Bar and his submission of an untimely and unverified answer, it appears that the panel's conclusion that Hustwit violated RPC 8.1(a) is a typographical error and that it intended to find a violation of RPC 8.1(b), for which there is clear and convincing evidence in the record to establish a violation.
8. The panel also recommended that Hustwit refrain from providing any pro bono services for a two-year period. However, the permanent injunction will preclude him from providing any legal services, including pro bono services, in Nevada and therefore that condition is unnecessary.

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.

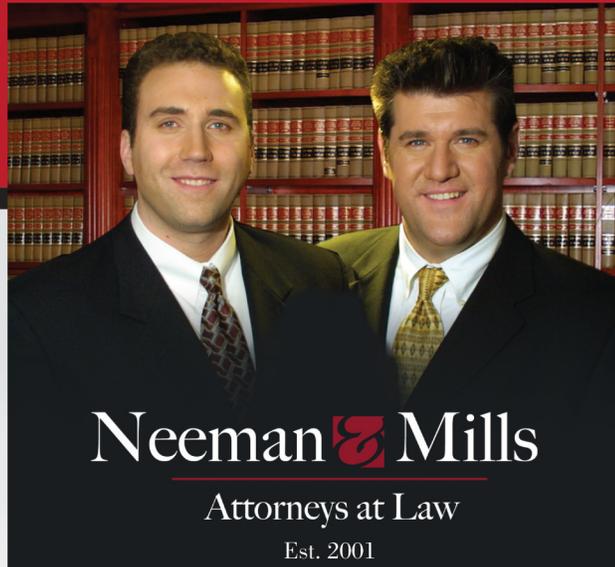
PUBLIC REPRIMAND – Misconduct found and public censure issued, including attorney's name and the underlying facts and charges. Published in *Nevada Lawyer* and made available to the press. Remains eligible to practice law.

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.

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