

**In Re: KAREN E. ROSS**  
**Bar No.: 9299**  
**Case No.: 74509**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA

*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 in exchange for a stated form of discipline for attorney Karen Ross. Under this agreement, Ross admitted to violations of RPC 1.15 (safekeeping property). The agreement provides for a three-year suspension, with all but six months stayed, compliance with certain terms during the stayed portion of the suspension, and payment of \$2,500 in fees plus the actual costs of the disciplinary proceedings.*

Ross has admitted to the facts and violations alleged in the complaint. The record therefore establishes that Ross failed to maintain sufficient funds to protect all client obligations in her trust accounts; that she allowed her trust accounts to repeatedly fall below the client obligations that they should have held; that she commingled personal, business, and client funds in her trust accounts; and that she failed to promptly deliver client funds to clients and third parties, including her own earned attorney fees.

In determining the appropriate discipline, we weigh four factors: "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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). In this case, Ross violated duties owed to her clients by not safekeeping their funds in her trust accounts. Ross' mental state was reckless in that that she knew or should have known of her ongoing failure to protect client funds, but she lacked any intent to harm her clients. While at least one client was delayed in receiving funds, there was no other actual injury from the trust account mismanagement, but there was potential for further injury. The panel adopted the parties' agreed-upon five aggravating factors (selfish motive, pattern of misconduct, multiple offenses, vulnerability of victims, and substantial experience in the practice of the law) and seven mitigating factors (absence of prior discipline, absence of dishonest motive, personal or emotional problems, timely good faith effort to make restitution or rectify consequences of misconduct, full and free disclosure to disciplinary board, character or reputation, remorse).

The baseline sanction for the misconduct at issue, before considering aggravating and mitigating circumstances, is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) (providing that suspension is appropriate when an attorney "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client"). In light of the foregoing, we conclude that the agreed-upon three-year suspension with all but six months stayed is appropriate. The duration of the suspension along with the other imposed conditions are sufficient to serve the purpose of attorney discipline—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). Thus, we conclude that the guilty plea agreement should be approved. See SCR 113(1) ("The tendered plea is subject to final approval or rejection by the supreme court if the stated form of discipline includes disbarment or suspension.").

Accordingly, we hereby suspend attorney Karen E. Ross from the practice of law in Nevada for three years, with all but the first six months stayed, commencing from the date of this order. Ross shall be on probation during the stayed portion of her suspension, subject to the following conditions:

- a. Ross will maintain only one Trust Account;
- b. Ross will not have sole access to her Trust Account;
- c. Ross will place her Trust Account under the management

of a CPA firm familiar with lawyer IOLTA Trust Account management and requirements (not an employee of her law firm);

- d. All withdrawals from the Trust Account, including online transactions, will require joint authorization of Ross and the designated member of the CPA firm;
- e. Ross will facilitate the CPA firm's provision to the State Bar of:
- f. quarterly reports from the CPA firm, concerning Trust Account transactions;
- g. both her personal affirmation and the affirmation of the CPA firm that no transactions have occurred within the Trust Account during that quarter that were not approved by the CPA firm;
- h. bank Trust Account and operating account records for the relevant quarter;
- i. additional client documents (disbursement sheets, liens, lien negotiations,
- j. billing invoices and cost invoices, etc.), within fifteen (15) days of the State Bar's request for any such information;
- k. Ross will institute and maintain a conflict check program to include all consultations with prospective clients, and document confirmation of that system to the State Bar within thirty (30) days of the entry of the Panel's Findings and Recommendation consistent with this Plea;
- l. Ross will immediately remove any prospective conflict waiver language from her client Engagement Letter, said language being void in violation of RPC 1.7.

If Ross violates any of these conditions or engages in the unauthorized practice of law during the course of the actual suspension, the stay will be revoked and the full suspension will be imposed. Ross is further ordered to pay administrative costs in the amount of \$2,500 plus the costs associated with the disciplinary proceedings within 30 days from the date of this order, if she has not already done so. The parties shall comply with SCR 115 and SCR 121.1.<sup>1</sup>

**It is so ORDERED.**

**In Re: STEVEN T. LOIZZI**  
**Bar No.: 10920**  
**Case No.: 75884**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a modified conditional guilty plea agreement in exchange for a stated form of discipline for attorney Steven T. Loizzi, Jr. Under the agreement, Loizzi admitted to violating RPC 1.2 (allocation of authority), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.7 (conflict of interest: current clients), RPC 3.4 (fairness to opposing party and counsel), and RPC 8.4(d) (misconduct prejudicial to the administration of justice). He agreed to a six-month-and-one-day suspension stayed for 18 months subject to the condition that he receive no discipline for misconduct occurring for 18 months after entry of the plea agreement.*

Loizzi has admitted to the facts and violations as part of his plea agreement. The record therefore establishes that Loizzi violated the above-listed rules by failing to properly communicate with two separate HOA clients and proceeding with collection and/or foreclosure efforts without the respective clients' authorization. Additionally, he failed to recognize the inherent conflict in the dual representation of one client and his employer, as co-client, in one matter and failed to obtain informed consent from the non-employer client for the representation. He also failed to reasonably participate in two separate litigations and failed to respond to four separate orders from this court.

As Loizzi admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating and mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Loizzi has admitted that he knowingly violated duties owed to his clients (diligence, communication, scope of representation) and the legal system (misconduct prejudicial to the administration of justice) and negligently violated a duty owed to his clients (conflict of interest). He also admitted that the judicial system and the integrity of the profession were “significantly injured” by his misconduct and his clients could have been harmed. Based on the most serious instance of misconduct at issue, Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, 452 (Am. Bar Ass’n 2017) (“The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.”), the baseline sanction before considering aggravating and mitigating circumstances is suspension. See *id.* Standard 4.42 (providing that suspension is appropriate if a lawyer either “knowingly fails to perform services for a client and causes injury or potential injury to a client,” or the “lawyer engages in a pattern of neglect and causes injury or potential injury to a client”); Standard 6.12 (explaining that suspension is appropriate when a lawyer knows that “material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding”). The record supports the panel’s findings of two aggravating circumstances (prior disciplinary offenses and pattern of misconduct) and four mitigating circumstances (inexperience in the practice of law when compared to his employer, personal or emotional problems, cooperative attitude towards the proceeding, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Steven T. Loizzi, Jr. for six months and one day. The suspension shall be stayed for 18 months subject to the condition that Loizzi does not receive any final discipline for conduct that occurs from the date of the plea agreement until 18 months afterwards (October 6, 2019). If a bar complaint is filed based on conduct during the 18-month period, the hearing panel that considers the misconduct will also consider whether that conduct constitutes a violation of the terms of the stay, and if so, recommend that the six-month-and-one day suspension should be imposed in addition to any other discipline recommended because of the subsequent conduct. Additionally, Loizzi shall pay the actual costs of the disciplinary proceeding, including \$2,500 under SCR 120 within 30 days of the date of this order. The State Bar shall comply with SCR 121.1.

**It is so ORDERED.**

**In Re: GABRIEL A. GINAPP**  
**Bar No.: 8467**  
**Case No.: 75431**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

*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 Gabriel A. Ginapp. Under the agreement, Ginapp admitted to violating RPC 8.1 (bar admission and disciplinary matters). The agreement provides for a suspension of six months and one day.<sup>2</sup>*

Ginapp has admitted to the facts and the violation alleged in the complaint. The record therefore establishes that Ginapp failed to respond to the State Bar’s lawful requests for information related to a grievance filed against him.

In determining the appropriate discipline, we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating and mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Ginapp knowingly violated a duty owed to the legal profession when he failed to respond to lawful requests for information by a disciplinary authority. His failure to cooperate in the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system. The baseline sanction before considering aggravating and mitigating circumstances is suspension. *Standards for Imposing Lawyer Sanctions*, Compendium of Professional Responsibility Rules and Standards, Standard 7.2 (Am. Bar Ass’n 2017). The record supports one aggravating circumstance (substantial experience in the practice of law) and four mitigating circumstances (absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to disciplinary authority or cooperative attitude, and remorse). Considering all of the circumstances, and particularly those related to the personal or emotional problems that contributed to the RPC 8.1 violation, we conclude that the agreed-upon discipline of a six-month-and-one-day suspension is sufficient to serve the purpose of attorney discipline because it will require Ginapp to apply for reinstatement and demonstrate that he is fit to resume the practice of law. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (stating that the purpose of attorney discipline is to protect the public, the courts, and the legal profession). Thus, we conclude that the guilty plea agreement should be approved. See SCR 113(1).

Accordingly, we hereby suspend attorney Gabriel A. Ginapp from the practice of law in Nevada for a period of six months and one day commencing retroactively from the date of the formal hearing, February 13, 2018. Ginapp shall pay the costs of the disciplinary proceeding plus \$2,500, within 30 days of this order if he has not done so already. See SCR 120. The parties shall comply with SCR 115 and SCR 121.1.

**It is so ORDERED.**

**In Re: JAMES W. PENGILLY**  
**Bar No.: 6085**  
**Case No.: 74316**  
**Filed: 09/07/2018**

#### ORDER OF SUSPENSION

*This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel’s findings of fact, conclusions of law, and recommendation for discipline of attorney James W. Pengilly. After a hearing, the panel found that Pengilly violated RPC 8.4(d) (misconduct) based on his conduct during a deposition wherein he was representing himself as the defendant in a defamation lawsuit. Ultimately, the panel recommended a six-month-and-one-day suspension, fees in the amount of \$2,500, and the costs associated with the disciplinary proceedings.*

The misconduct involves Pengilly’s behavior during a noticed plaintiffs deposition at his office. When questioning the deponent, Pengilly used vulgarities, called the deponent derogatory names,

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aggressively interrupted the deponent and opposing counsel, answered questions for the deponent, and repeatedly made inappropriate statements on the record. Pengilly went on to ask the deponent if he was “ready for it” while positioning his hand near his hip. The deponent briefly left the room, but when he returned Pengilly displayed a firearm he had holstered on his hip to the deponent and opposing counsel. As a result, the deposition was terminated and the underlying defamation litigation was put on hold pursuant to an order by the discovery commissioner. The discovery commissioner also sanctioned Pengilly for his conduct.

The State Bar has the burden of showing by clear and convincing evidence that Pengilly committed the violation charged. SCR 105(2)(f); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We employ a deferential standard of review with respect to the hearing panel’s findings of fact, SCR 105(3)(b), and will not set them aside unless they are clearly erroneous or not supported by substantial evidence. See generally *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Having reviewed the record on appeal, we conclude that there is substantial evidence to support the panel’s findings that Pengilly violated RPC 8.4(d) (prohibiting an attorney from engaging in conduct that is prejudicial to the administration of justice). Indeed, the deposition transcript, coupled with the testimony at the formal hearing, demonstrates that Pengilly displayed appalling behavior toward the deponent. Additionally, the record is clear, and Pengilly admits, that he displayed a firearm. Accordingly, we agree with the hearing panel that Pengilly committed the violation set forth above.<sup>3</sup>

The panel recommends a six-month-and-one-day suspension. Pengilly asserts that a suspension is not appropriate and argues for a lesser discipline. While the hearing panel’s recommendation is persuasive, we are not bound by it and we review the proposed form of discipline de novo. SCR 105(3)(b); *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, we weigh four factors: “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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Pengilly violated his duty to the legal system by engaging in conduct that was prejudicial to the administration of justice. Pengilly argues that his conduct should be viewed under a negligence standard, but we agree with the panel that he acted knowingly as he was consciously aware of his conduct and knew his behavior was inappropriate. His conduct caused actual injury to the proceeding as the deposition concluded early and the discovery commissioner had to issue a protective order, causing the case to be delayed. Both the deponent and his attorney testified they were afraid Pengilly was going to shoot them, and their fears were documented: they immediately called the police, filed police reports the next day, filed for a TPO, and filed bar grievances. Further, there was the potential for serious injury to every one [sic] present—the deponent, his attorney, the court reporter, Pengilly’s office staff, and even Pengilly himself—because a deadly weapon was involved. Considering the foregoing, the baseline sanction is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 6.22 (Am. Bar Ass’n 2017) (“Suspension is generally appropriate when a lawyer knows that he or she is ... caus[ing] interference or potential interference with a legal proceeding.”).

Pengilly argues that the panel did not give sufficient weight or consideration to mitigating circumstances pursuant to SCR 102.5, the applicable ABA standards, and the Nevada State Bar Disciplinary Rules of Procedure (DRP), as the panel did not address any mitigating circumstances in its written recommendation. The governing rule, however, merely provides that the panel *may* consider aggravating and mitigating circumstances, it does not require it to do so. See SCR 102.5 (“Aggravating and mitigating circumstances

may be considered in deciding what sanction to impose ....”). And, furthermore, although the panel did not make explicit findings regarding mitigating circumstances, Pengilly did present evidence and argument regarding relevant mitigating circumstances to the panel and the panel’s recommendation expressly states that its decision is “based upon the pleadings on file, the testimony given, and the evidence admitted during the hearing.” We therefore conclude that the failure to explicitly address mitigating circumstances in its final decision does not diminish the persuasive value of the panel’s recommendation.

Based in part on the panel’s alleged failure to consider mitigating circumstances, Pengilly argues that suspension is too harsh. Having considered all the factors, Pengilly’s arguments regarding relevant mitigating circumstances, and the evidence supporting those arguments, we conclude that the panel’s recommended suspension is appropriate as it is sufficient to serve the purpose of attorney discipline—to protect the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). We also agree with the panel’s recommendation to impose the required administrative costs and the costs of the disciplinary proceeding under SCR 120.

Accordingly, we hereby suspend attorney James W. Pengilly from the practice of law in Nevada for six months and one day, commencing from the date of this order. Pengilly is further ordered to pay administrative costs in the amount of \$2,500 plus the costs associated with the disciplinary proceedings within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.<sup>4</sup>

**It is so ORDERED.**

**In Re: JOHN B. MARCIN**  
**Bar No.: 7078**  
**Case No.: 75337**  
**Filed: 09/07/2018**

#### ORDER OF SUSPENSION

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel’s recommendation that attorney John Marcin be suspended for four years based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 3.2 (expediting litigation), RPC 3.3 (candor toward the tribunal), RPC 3.4(c) (fairness to opposing party and counsel), RPC 4.1 (truthfulness in statements to others), RPC 7.5A (registration of multijurisdictional law firms), RPC 8.1(a) (bar admission and disciplinary matters), and RPC 8.4(c) and (d) (misconduct).<sup>5</sup> Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).*

The facts and charges alleged in the complaint are deemed admitted because Marcin failed to answer the complaint and to appear at the disciplinary hearing.<sup>6</sup> SCR 105(2). The admitted facts establish that while representing a client in a medical malpractice case, Marcin failed to properly retain and designate expert witnesses, timely file expert reports, and timely comply with discovery and motion deadlines, resulting in some of the defendants being dismissed. Marcin misappropriated client funds when he accepted a settlement check of \$75,000 on behalf of the client, used some of that money to make a payment on his personal residence, transferred a large portion to his operating account without permission, and failed to distribute the portion of the funds owed to the client. Marcin also lied to the client and to the court about the status of the settlement funds, failed to communicate with the client about the status of the case, lied to the court about his out-of-pocket expenses, and repeatedly failed to appear at necessary hearings and comply with court orders. Additionally, he failed to properly register his law firm with the State Bar Membership Services, update his SCR 79 address

and contact information, or respond to the State Bar's lawful requests for information regarding these allegations.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "exercise independent judgment," the panel's recommendations are persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, we weigh four factors: "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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Marcin violated duties owed to his clients (competence, diligence, communication, safekeeping property, and truthfulness in statements to others), to the legal system (expediting litigation, candor to the tribunal, and fairness to opposing party and counsel), and to the legal profession (registration of multijurisdictional law firms, and failure to respond to lawful request for information from a disciplinary authority). The allegations in the complaint support the panel's finding that he acted intentionally at least with respect to converting client funds and failing to comply with court orders. His client was injured because he failed to diligently litigate the medical malpractice case and failed to disburse settlement funds to his client. His misconduct also harmed the integrity of the legal system, as he made misrepresentations to the court, failed to attend necessary hearings and comply with the district court's orders, and failed to move the litigation forward in an expedited manner. Further, his failure to update his SCR 79 contact information and to cooperate in the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system.

Based on the most serious instances of misconduct at issue, see Standards for Imposing Lawyer Sanctions, *Compendium of Professional Rules and Standards* 452 (Am. Bar Ass'n 2017) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations."), the baseline sanction in this case before considering aggravating and mitigating circumstances is disbarment, see *id.*, Standard 4.11 (providing that disbarment is appropriate when an attorney "knowingly converts client property and causes injury or potential injury to a client"). The record supports the panel's finding of five aggravating circumstances (dishonest or selfish motive, refusal to acknowledge the wrongful nature of conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution) and one mitigating circumstance (lack of disciplinary history).

Considering all the factors, and because disbarment is irrevocable in Nevada, see SCR 102(1), unlike in many other states, see Brian Finkelstein, *Should Permanent Disbarment be Permanent?*, 20 Geo. J. Legal Ethics 587, 590-91 (2007) (recognizing that the majority of states permit reinstatement after disbarment), we agree with the hearing panel that Marcin's misconduct warrants a lengthy suspension. We conclude that the recommended suspension of four years is sufficient to protect the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988).

The hearing panel also recommended that Marcin be required to pay his client \$75,000 in restitution, which is the entire sum of the settlement received in the medical malpractice case. The record, however, indicates that Marcin and his clients had a contingency fee agreement whereby Marcin would receive a certain percentage of any settlement amount and also be reimbursed out-of-pocket expenses. While restitution may be imposed as a condition of reinstatement, see SCR 116(5), the amount recommended by the panel, which does not account for Marcin's fees or expenses, is more akin to a fine, which may not be imposed in conjunction with suspension under our rules. *In re Discipline of Reade*, 133 Nev., Adv. Op. 87, 405 P.3d 105 (2017) (holding that a monetary fine exceeds the scope of sanctions that may be imposed with a suspension under SCR 102(2)). The record does not reflect the exact amount Marcin owes to his client, as

this amount will not be determined until the district court enters an order approving the petition for minor's compromise. Accordingly, as a condition of reinstatement, we order Marcin to pay restitution in the amount of \$75,000, less attorney fees and costs as determined by the district court in its order approving the petition for minor's compromise in Eighth Judicial District Court case no. A-12-674268-C.

Finally, we consider the panel's recommendation that Marcin's trust account and operating account be frozen. SCR 102(4) provides this court with authority to enter a temporary order restricting the attorney's handling of client funds upon the petition of bar counsel. No petition has been filed by bar counsel and nothing in SCR 102 provides this with court with the authority to freeze an attorney's bank accounts absent such a petition. Thus, we decline to accept this recommendation.

Accordingly, we hereby suspend attorney John Marcin from the practice of law in Nevada for four years commencing from the date of this order. Marcin shall pay \$2,500 in administrative costs as provided by SCR 120(3), plus the actual costs of the disciplinary proceeding as authorized by SCR 120(1) and set forth in the State Bar's memorandum of costs within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.<sup>7</sup>

**It is so ORDERED.**

**In Re: ERIK C. SEVERINO**  
**Bar No.: 10221**  
**Case No.: 76213**  
**Filed: 09/07/2018**

#### ORDER IMPOSING RECIPROCAL DISCIPLINE

*This is a petition under SCR 114 for reciprocal discipline of attorney Erik C. Severino, based on his reprimand in Arizona. Severino did not self-report his Arizona discipline as required by SCR 114(1) and he has not responded to the petition. See SCR 114(3).*

Severino was reprimanded in Arizona on April 25, 2018. Severino had expanded his law practice to Arizona and hired a non-attorney office manager as well as an Arizona-barred attorney. Severino admitted to the Arizona court that he failed to diligently manage the cases in that office; failed to properly supervise the office manager; allowed improper fee-splitting with the office manager; and, in at least one instance, accepted money from a client and then failed to perform any legal work. Based on these facts, Severino admitted to having violated Arizona rules of professional conduct equivalent to Nevada's RPC 1.3 (diligence); RPC 5.3(a) (responsibilities regarding nonlawyer assistants); RPC 7.2(n) (advertising: fee-splitting); and RPC 8.4(d) (misconduct prejudicial to the administration of justice). No aggravating or mitigating circumstances were found.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that at least one of four factors is present: (1) the procedure in the other jurisdiction denied the attorney due process; (2) there is such an infirmity of proof of the misconduct in other jurisdictions that this court cannot accept the other court's decision; (3) substantially different discipline is warranted in this state; or (4) the established misconduct does not constitute misconduct under the rules of this state. None of the exceptions apply to this case and so we grant the petition for reciprocal discipline. Accordingly, we hereby publicly reprimand Severino for his violations of the rules of professional conduct. The State Bar shall comply with SCR 121.1.

**It is so ORDERED.**

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**In Re: LAYNE F. BARNEY**  
**Bar No.: 6563**  
**Case No.: 75941**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA

*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 Layne Barney. Under this agreement, Barney admitted to violating RPC 1.3 (diligence); RPC 1.4 (communication); RPC 1.15 (safekeeping property); and RPC 3.2 (expediting litigation). The agreement provides for a three-year suspension with all but one year stayed, compliance with certain terms during the three-year suspension, and payment of \$2,500 in fees plus the actual costs of the disciplinary proceeding.*

Barney admitted to the facts alleged in the complaint. The record therefore establishes that Barney misappropriated client funds, failed to diligently pursue his clients' claims, and failed to keep in communication with his clients regarding their cases. In determining the appropriate discipline for these violations, we weigh four factors: "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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

In this case, Barney knowingly violated duties owed to his clients and duties owed to the legal system. There was actual injury, and the potential for further injury, to the clients as Barney misappropriated their money for personal use<sup>8</sup> and otherwise failed to disperse funds to them in a timely fashion, and also failed to communicate with them regarding their cases. The legal system was also injured because Barney's failure to diligently prosecute his clients' cases caused them to linger on district court dockets for years. The panel found and the record supports three aggravating factors (pattern of misconduct, vulnerability of the victim, and substantial experience in the practice of law) and four mitigating factors (absence of prior disciplinary record, personal or emotional problems, timely good faith effort to make restitution, and imposition of other penalties or sanctions).

In consideration of the foregoing factors, we conclude that the agreed-upon three year suspension, with all but the first year stayed, is appropriate. The duration of the actual suspension along with the conditions imposed on the stayed suspension and reinstatement are sufficient to serve the purpose of attorney discipline—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). Thus, we conclude that the guilty plea agreement should be approved. See SCR 113(1).

Accordingly, we hereby suspend attorney Layne Barney from the practice of law in Nevada for a period of three years, with all but the first year stayed, commencing from the date of this order. As a condition of the stay and a requirement for reinstatement, within 30 days of the date of this court's order, Barney shall facilitate with the district court the return of any and all property, including stocks and personal belongings, from the Linda Tye Trust to Robert Tye and Jeffrey Tye as allocated pursuant to the terms and conditions of that trust and shall facilitate the transfer of the trust's real property located on Twining Avenue to Jeffrey Tye with the district court.<sup>9</sup> To be reinstated Barney must also provide evidence of continued medical treatment for his mental conditions, including proof of continued use of prescribed medications. If reinstated, a reinstatement panel should consider recommendations for the continued monitoring of Barney's medical treatment during the stayed portion of his suspension. Barney shall also pay the actual costs of the disciplinary proceeding, including \$2,500 under SCR 120(3), within 30 days of the date of

this court's order, if he has not already done so. The parties shall comply with SCR 115 and SCR 121.1.

**It is so ORDERED.**

**In Re: BRANDON B. SMITH**  
**Bar No.: 7916**  
**Case No.: 75823**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

*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 Brandon B. Smith.<sup>10</sup> Under the agreement, Smith admitted to violating RPC 8.4(b) (misconduct: criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) and has agreed to a four-year suspension, with conditions on his reinstatement.*

Smith has admitted to the facts and violation alleged in the complaint. The record therefore establishes that Smith violated RPC 8.4(b) as he was convicted of five misdemeanors and one felony between December 12, 2011, and January 8, 2015. Smith was convicted of two separate incidents of misdemeanor battery domestic violence, two separate incidents of driving under the influence, and one instance of contempt of court. Additionally, Smith was convicted of battery by strangulation (category C felony) and sentenced to 19 to 48 months in prison. He was released on parole on October 14, 2016.

In determining the appropriate discipline, we weigh four factors: "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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Smith admitted that he knowingly violated his duty to the public to maintain personal integrity. Further, he admitted that his clients were at risk of injury, including interference with adequate representation in their criminal defense, as a result of Smith's alcoholism and representation of at least one client while intoxicated. There are four aggravating circumstances (pattern of misconduct, multiple offenses, substantial experience in the practice of law, and illegal conduct) and eight mitigating circumstances (absence of a prior disciplinary record; absence of a dishonest or selfish motive; current cooperative attitude toward the proceeding; mental disability or chemical dependence including alcoholism; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions, in this case incarceration; and remorse). SCR 102.5.

The baseline sanction before considering aggravating and mitigating circumstances is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 5.12 (Am. Bar Ass'n 2015) ("Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct ... that seriously adversely reflects on the lawyer's fitness to practice."). Considering all four factors, we conclude that a four-year suspension, retroactive to Smith's parole date, and the agreed-upon reinstatement conditions are sufficient to serve the purpose of attorney discipline. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (providing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney). Therefore, we conclude that the guilty plea agreement should be approved. See SCR 113(1).

Accordingly, we hereby suspend attorney Brandon B. Smith from the practice of law in Nevada for a period of four years from October 14, 2016. Before applying for reinstatement Smith must:

1. Pay the actual costs of the bar proceeding including \$2,500 under SCR 120 within 30 days of the date of this court's order, if he has not already done so.
2. Comply with required terms of his current parole, including any counseling deemed necessary by P&P; obtain a successful discharge; and provide proof of that successful discharge.
3. Refrain from criminal conduct.
4. Refrain from use of alcohol.
5. Complete four hours of Continuing Legal Education (CLE) during each year of the suspension, exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence. These hours shall be attended live by Smith, will be reported directly to the Office of Bar Counsel, and are in addition to standard Nevada State Bar CLE requirements.
6. Engage in no conduct constituting a violation of the Nevada Rules of Professional Conduct.

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

**It is so ORDERED.**

**In Re: D. BRIAN BOGCESS**  
**Bar No.: 4537**  
**Case No.: 75883**  
**Filed: 09/07/2018**

#### ORDER APPROVING CONDITIONAL GUILTY PLEA

*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 in exchange for a stated form of discipline for attorney D. Brian Boggess. Under this agreement, Boggess admitted to violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.16 (declining or terminating representation), and RPC 3.2 (expediting litigation). The agreement provides for a two-year suspension, stayed for one year on the condition that Boggess continue his probation from a previous discipline case, comply with other specified conditions during the stayed suspension, and pay \$2,500 in fees plus the actual costs of the disciplinary proceedings.*

Boggess has admitted to the facts supporting these violations. The record therefore establishes that Boggess failed to diligently pursue a client's claims by failing to file a complaint in one case and causing another of the client's cases to be administratively closed. Further, Boggess failed to adequately communicate with his client despite her repeated attempts to contact him by phone, email, and in person.

In determining the appropriate discipline, we weigh four factors: "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 Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). In this case, Boggess violated duties owed to his client by not acting with reasonable diligence and promptness in representing her. Boggess' mental state was knowing as he knew his ongoing failure to advance his client's cases could cause her injury, although he lacked any intent to harm her. Boggess' conduct resulted in actual injury to the client because her cases were unreasonably delayed and because her inability to communicate with Boggess caused her aggravation and worry. There is also the potential for further injury as the client's case is at

risk of dismissal for being filed beyond the statute of limitations and not timely served, and the delays may create difficulty in the client proving her claims. The panel adopted the parties' agreed-upon aggravating factors (prior disciplinary history and substantial experience in the practice of the law) and mitigating factors (absence of dishonest or selfish motive, personal or emotional problems, full and free disclosure to the disciplinary authority or cooperative attitude, and remorse).

The baseline sanction for the misconduct at issue, before considering aggravating and mitigating circumstances, is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2017) (providing that suspension is appropriate when an attorney "knowingly fails to perform services for a client and causes injury or potential injury to a client" or "engages in a pattern of neglect and causes injury or potential injury to a client"). In light of the foregoing, we conclude that the agreed upon two-year suspension, stayed for one year, is appropriate. The stayed suspension along with the conditions imposed during the stay are sufficient to serve the purpose of attorney discipline—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). Thus, we conclude that the guilty plea agreement should be approved. See SCR 113(1) ("The tendered plea is subject to final approval or rejection by the supreme court if the stated form of discipline includes disbarment or suspension.").

Accordingly, we hereby suspend attorney D. Brian Boggess from the practice of law in Nevada for two years, commencing from the date of this order. That suspension is stayed for one year, subject to Boggess' compliance with the following conditions:

- The probation resulting from *In re Discipline of Boggess*, Docket No. 69152 (Order Approving Conditional Guilty Plea Agreement, Jan. 22, 2016) shall continue. In particular, Boggess shall complete the mandated audit of his account, and pay any individuals who have suffered a financial loss. Additionally, Boggess is to provide itemized statements for his trust account to the State Bar. If Boggess fails to pay any outstanding restitution identified by the audit, he will be in violation of this order and imposition of the stayed suspension will result.
- Boggess shall remain free from any violations of the Rules of Professional Conduct during his stayed suspension period. If Boggess is alleged to have committed a violation of the Rules of Professional Conduct during the stayed suspension, then that matter shall be handled in accordance with the procedures established in SCR 105.
- If a screening panel recommends that the matter proceed to a formal hearing then the parties shall make all reasonable attempts to reconvene the hearing panel that heard this case to review the new allegations at the same time as they review Boggess for possible revocation.
- If the original hearing panel is not available, then the parties shall stipulate to the placement of an ad hoc panel member subject to the parties' peremptory objections pursuant to SCR 105(2)(a).
- If Boggess completes the required audit of his trust account and pays all restitution identified by the audit, he may request early termination of his suspension, if he is in compliance with all other terms.

Boggess is further ordered to pay administrative costs in the amount of \$2,500 plus the costs associated with the disciplinary proceedings within thirty days from the date of this order, if he has not already done so. The parties shall comply with SCR 115 and SCR 121.1.<sup>11</sup>

**It is so ORDERED.**

*continued on page 42*

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**In Re: DOUGLAS L. MONSON**  
**Bar No.: 7829**  
**Case No.: 76630**  
**Filed: 09/21/2018**

#### ORDER TRANSFERRING ATTORNEY TO DISABILITY INACTIVE STATUS

The State Bar and attorney Douglas Monson have petitioned this court for an order transferring Monson to disability inactive status. See SCR 117(2). Having reviewed the petition and supporting documents, we conclude that the relief requested in the petition is warranted under the circumstances. Accordingly, Monson is transferred to disability inactive status. He may not resume active status until he files a petition for reinstatement as provided in SCR 117(4) and is reinstated by order of this court. In light of this order, any pending disciplinary proceedings against Monson are suspended. SCR 117(2).

Monson shall comply with SCR 115 as required by SCR 117(7), if he is able to do so. If Monson is unable to comply with SCR 115 or fails to do so, bar counsel shall proceed under SCR 118. See SCR 117(7). The State Bar shall comply with SCR 121.1 and bar counsel shall provide this court with proof that notice has been served.<sup>12</sup>

**It is so ORDERED.**

**CARL E. G. ARNOLD**  
**Bar No.: 8358**  
**Greivance File No.: Obc18-0724**  
**Filed: 08/24/2018**

#### LETTER OF REPRIMAND

To Carl E. G. Arnold:

In September 2017, you were appointed to represent Jesus Robles in the Nevada Supreme Court [to] appeal his criminal conviction. On October 3, 2017, the Supreme Court entered an Order Setting Briefing Schedule for Robles' appeal. You were directed to, within twenty days, file and serve a transcript request form or certificate that no transcripts would be requested, and a docketing statement. You also were directed to, within 120 days, to [sic] file and serve the Opening Statement and Appendix.

On November 3, 2017, you filed a Motion for Extension of Time to File the Docketing Statement. On November 20, 2017, the Supreme Court granted your request and directed you to file and serve the docketing statement by November 27, 2017. In its Order, the Supreme Court noted that the transcript request-related forms also were overdue. Therefore, you were directed to file and serve the transcript request form or a certificate that no transcripts would be requested.

You filed the docketing statement on November 27, 2017. On December 20, 2017, the Supreme Court entered an Order to File Document which noted that you had failed to file and serve the transcript request form as previously directed. The Order gave you five days to file the transcript request form or a certificate that no transcripts would be requested, and also warned that failure to comply could result in imposition of sanctions.

On March 5, 2018, the Supreme Court entered an Order Conditionally Imposing Sanctions which stated that you had failed to file the transcript request form. The Court also noted that the Fast Track Statement and Appendix also were overdue. You were ordered to pay a \$250 sanction to the Supreme Court Law Library within eleven days. However, the sanction would be vacated automatically if, within eleven days, you filed the Docketing Statement, transcript request form, and the Opening Brief and

Appendix, or a motion to extend time. The Supreme Court cautioned that failure to file the required documents would result in your removal as counsel-of-record and referral to the State Bar for investigation.

On March 15, 2018, you filed a Motion for Extension of Time to file the Opening Brief and Appendix. On March 29, 2018, the Supreme Court entered an Order which noted that the docketing statement still had not been filed. Nonetheless, the Supreme Court vacated the conditional sanctions and directed you to file and serve the Docketing Statement and transcript request within five days, and file and serve the Opening Brief and Appendix within forty-five days. You again were warned that failure to timely file the Opening Brief and Appendix could result in sanctions, including removal as counsel-of-record and/or referral to the State Bar for investigation.

On April 4, 2018, you filed the transcript request form. On June 15, 2018, the Supreme Court entered an Order which stated that although You [sic] had filed the transcript request form, it did not comply with Nevada Rule of Appellate Procedure 9(a)(3)(C). The Order also noted that the Opening Brief and Appendix still had not been filed. Therefore, the Supreme Court removed you from the appeal and referred you to the State Bar for a disciplinary investigation.

This matter was brought before a Screening Panel of the Southern Nevada Disciplinary Board, which determined that – in light of the foregoing – you violated Rule of Professional Conduct 1.1 (Competence), RPC 1.3 (Diligence), RPC 3.2 (Expediting Litigation), and RPC 3.4(c) (Fairness of Opposing Party and Counsel). The Panel also agreed to assess against you costs in the amount of \$1,500 pursuant to Supreme Court Rule 120 (Costs).

**DOWON S. KANG**  
**Bar No.: 7042**  
**Greivance File No.: Obc18-0160**  
**Filed: 09/18/2018**

#### LETTER OF REPRIMAND

To Downon S. Kang:

On September 18, 2018, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel concluded that you violated the Rules of Professional Conduct and should be reprimanded. This letter shall constitute delivery of that reprimand.

You were retained by Juan Pedro Medina Uribe (Uribe) on or about May 22, 2013 for injuries allegedly sustained in an automobile accident on or about May 21, 2013. You began negotiations with the adverse insurance company shortly after you were retained. These negotiations were unsuccessful.

You filed a Complaint in the Eighth Judicial District Court on Uribe's behalf on May 19, 2015 in order to preserve the statute of limitations. Opposing counsel accepted service on behalf of the defendants. You afforded opposing counsel an open extension to answer the complaint because of issues with the proper naming of one of the defendants.

The above-referenced Complaint was dismissed on June 17, 2016. The Order of dismissal stated:

It appearing to the Court that this case has been pending for more that twelve (12) months and that no action has been taken for more that six (6) months preceding the date of this order:

NOW THEREFORE, the Court upon its own motion pursuant to EDCR 2.90, hereby ORDERS that this action be, and the same hereby is, dismissed without prejudice.

The Order allowed for either party to reinstate the complaint within thirty days by written request. You failed to request reinstatement in a timely manner due to a calendaring oversight. Additionally, because the statute of limitations had run shortly after the filing of the Complaint, Respondent was unable to refile on behalf of [sic] Uribe after the thirty-day reinstatement period.

Nevada Rule of Professional Conduct 1.3 (Diligence) requires a lawyer to act with reasonable diligence and promptness in representing a client. In this instance, you should have done more to ensure Uribe's case was timely pursued and you should not have failed to properly calendar the deadline to request reopening of the civil action.

In mitigation, you have taken appropriate steps to ensure this will not be a recurring problem and agreed to pay in full the outstanding lien held by Capital Lending, Ltd. within ninety (90) days of this Reprimand.

Accordingly, you are hereby **REPRIMANDED** for having violated Rule of Professional Conduct ("RPC") 1.3 (Diligence).

We trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

1. In addition to the notices and disclosures required by SCR 121.1, the Bar shall send a copy of this order to any other state bar wherein Ross is licensed to practice law.
2. This matter originally came before this court on a recommendation of disbarment for violations of RPC 1.8 (conflict of interest), RPC 8.1(b) (bar admission and disciplinary matters), and RPC 8.4 (misconduct) after a default was entered against Ginapp for failing to answer the complaint and he did not appear at the disciplinary hearing. We remanded the matter to allow Ginapp to pursue a motion to set aside the default with the appropriate chair. *In re Discipline of Ginapp*, Docket No. 71015 (Order of Limited Remand, October 24, 2017). The State Bar subsequently agreed to set aside the default and allow Ginapp to enter this conditional guilty plea.
3. Although the panel made findings of fact regarding other incidents between Pengilly and the deponent, the misconduct violation was based solely on Pengilly's actions at the deposition. As such, we need not address those findings or Pengilly's related arguments.
4. In addition to the notices and disclosures required by SCR 121.1, the State Bar shall send a copy of this order to any other state bar wherein Pengilly is licensed to practice law. The Honorable Ron Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.
5. Marcin is currently administratively suspended for failing to comply with continuing legal education requirements.
6. The State Bar sent the investigative inquiries, the bar complaint, the notice of intent to take a default, and other documents to Marcin through regular and certified mail to his SCR 79 address as well as through email. The State Bar also sent these documents to Marcin's residence in California, as well as other addresses where he might be located, but Marcin did not respond or appear at the disciplinary hearing. In addition, the State Bar attempted to serve Marcin with these documents at his new address listed on the California State Bar website but discovered that he had vacated that address months earlier.
7. In addition to the notices and disclosures required by SCR 121.1, the State Bar shall send a copy of this order to the State Bar of California, where Marcin also is licensed to practice law.

8. Barney has already repaid this money to the clients.
9. While Barney filed a petition seeking guidance from the district court on distributing trust assets, it does not appear that the district court has yet resolved the petition.
10. On July 21, 2015, this court temporarily suspended Smith under SCR 111(7), pending the disciplinary proceedings.
11. In addition to the notices and disclosures required by SCR 121.1, the Bar shall send a copy of this order to any other state bar wherein Boggess is licensed to practice law.
12. This order shall be public, but all other documents and proceedings in connection with this petition shall remain confidential, unless Monson waives confidentiality. SCR 121(7). This order constitutes our final disposition of this petition. Any further proceedings shall be docketed under a new docket number.

## TIPS FROM THE OFFICE OF BAR COUNSEL

### The Latest Swindle: STEALING THE WHOLE LAW FIRM

Yet another scam is targeting Nevada lawyers, but this time it isn't targeting trust accounts. This new racket steals the attorney's name and bar number, then poses as a legitimate law firm to bilk unsuspecting timeshare owners nationwide.

#### It works like this:

The owner of timeshare property is contacted by a Nevada "law firm" claiming to represent a property developer – usually based in Mexico – that wants to buy the timeshare. The out-of-the-blue solicitation offers more money than the timeshare is actually worth, so it gets the owner's attention.

The phony law firm offers to act as the intermediary for the transaction, and that the buyer will pay the attorney fees. The seller would only be responsible for certain small fees and costs, such as sales tax and other "incidentals."

The would-be seller looks up the law firm on the internet and finds a professional looking website with an office address in Las Vegas. When he or she calls the phone number, a receptionist answers and politely apologizes, saying that the attorney is unavailable as he is in court.

A check of the state bar's website shows that the listed attorney has an active law license.

Paperwork forwarded to the seller looks professional and uses lawyer-like syntax. The sales agreement also calls for the seller to pay his or her "costs" by wire transfer. After wiring the money, usually about \$9,000, both the funds and the law firm vanish. The phone number no longer works.

A Nevada-licensed attorney whose identity was hijacked for use in one of these scams actually lives and works in another state, but still maintains his Nevada license. He learned about the scam when victims tracked him down and started calling him. He has notified law enforcement agencies and is working with the internet host to take down the phony website.

One security expert suggests that attorneys periodically conduct internet searches for their own names and law firms. Such searches might uncover a scam like this one before too much harm is done, either to would-be clients or to a good attorney's reputation.