In Re: BRANDON L. PHILLIPS
Bar No.: 12264
Case No.: OBC16-1406
Filed: August 8, 2017

LETTER OF REPRIMAND

Mr. Phillips:

On Friday May 12, 2017, a Hearing Panel of the Southern Nevada Disciplinary Panel convened to determine whether your conduct at a taxation hearing which occurred on August 11, 2016, and subsequent actions violated the Rules of Professional Conduct.

You appeared on behalf of a taxpayer at the initial taxation hearing. Prior to the initial tax hearing you believed your role at the hearing was to assist the taxpayer's original counsel in representing the taxpayer and to learn more about taxation hearings. However, after the taxpayer's original counsel was not permitted to conduct the hearing because he was not a lawyer, you took over as lead counsel and conducted the hearing on behalf of the taxpayer.

At the conclusion of the hearing, the matter was reset so that the taxpayer could provide additional information to the presiding judge. Although you testified that you believed the taxpayer to be your client, you did not communicate with the taxpayer following the hearing did not inform the taxpayer that her original counsel was not a lawyer and could not represent her and did not attend the taxpayer's subsequent hearing. On or about December 7, 2016, you submitted a letter indicating that you were withdrawing from the matter.

Rule of Professional Conduct 1.1 (Competence) requires that: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Your conduct did not meet this minimum standard as you failed to communicate with the taxpayer, including failing to inform the taxpayer that her original retained counsel was not even a lawyer and failed to attend the follow-up hearing.

As such, you violated Rule of Professional Conduct 1.1 (Competence) and are hereby REPRIMANDED.

In Re: WILLIAM SWAFFORD
Bar No.: 11469
Case No.: 71844
Filed: September 11, 2017

ORDER OF SUSPENSION

Attorney suspended six months and one day following violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), and RPC 8.4(d) (misconduct).

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney William Swafford be suspended for six months and one day to run consecutive to his prior suspension based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), and RPC 8.4(d) (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Swafford committed the violations charged. *In re Discipline of Drakulich,* 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Swafford failed to answer the complaint and a default was entered (The complaint and notice of intent to proceed on a default basis were served on Swafford via regular and certified mail at his SCR 79 address and a Chicago address he had previously provided to the State Bar, as well as emailed to him. Swafford was personally served a notice of the disciplinary hearing and he appeared at the hearing.). SCR 105(2). The record therefore establishes that Swafford violated the above-referenced rules by failing to timely file a pleading on behalf of a client, adequately plead the client's claims, communicate with the client, deposit the client's funds into his trust account, and refund the client his unearned fees.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must … exercise independent judgment," the panel's recommendation is 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).

Swafford knowingly violated duties owed to his client (competence, diligence, communication, fees, and safekeeping property). The client was injured because his action was not properly pleaded, he had to retain new counsel to amend the pleading and proceed with the action, and he did not receive a refund of unearned fees. The baseline sanction for Swafford's misconduct, before consideration of 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 2013) ("Suspension is generally appropriate when … a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client …").

The panel found one aggravating circumstance (prior discipline) and five mitigating circumstances (personal and emotional problems, cooperative attitude toward the

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bar proceeding, remorse, inexperience in the practice of law, and mental disability). SCR 102.5. Specifically, Swafford was undergoing active medical treatment for a severe medical condition during his representation of the client and both his father and his uncle were diagnosed with terminal illnesses. Considering the numerous mitigating circumstances, the recommended suspension appears appropriate, even though this is Swafford's second discipline for similar misconduct. Additionally, the requirement that Swafford obtain a fitness-for-duty evaluation before seeking reinstatement 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) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby suspend attorney William Swafford from the practice of law in Nevada for a period of six months and one day commencing from the date of this order. Before applying for reinstatement, Swafford must obtain a fitness-for-duty evaluation from a competent, licensed neurologist. Swafford shall participate in any fee dispute arbitration proceeding instituted by his client and shall abide by any award issued thereby. Further, Swafford shall pay the costs of the bar proceedings, including $2,500 pursuant to SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: ROBERT DOMICO
Bar No.: 6272
Case No.: OBC15-0964
Filed: September 20, 2017

PUBLIC REPRIMAND

Mr. Domico:

Mario Murguia complained that as his attorney, you had a conflict of interest by representing him both as his attorney and realtor. According to Murguia, you first met when you worked for the firm of Dixon and Truman. You handled all his legal needs, which were primarily for his business.

Murguia indicated that he was looking at possibly listing a piece of vacant land that he owned to see what it was worth. You told him you had a real estate license and would list his property. Murguia signed an authorization to allow you to sell the property on April 12, 2013.

Nevada Rule of Professional Conduct 1.8(a) states, "A lawyer shall not enter into a business transaction with a client… Unless: (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can reasonably be understood by the client; (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."

You failed to advise Murguia in writing about the desirability of seeking independent counsel for the transaction, or give him a reasonable time to seek independent counsel. Murguia never gave informed consent in writing to the essential terms of the agreement and an understanding of your role.

Murguia signed a second similar authorization to allow you to sell the property on December 20, 2013. Again, you failed to advise Murguia in writing about the desirability of seeking independent counsel for the transaction, or give him a reasonable time to seek independent counsel. Furthermore, Murguia never gave informed consent in writing to the essential terms of the agreement and an understanding of your role. As such, you violated Rule of Professional Conduct (RPC) 1.8 (Conflict of Interest: Current Clients: Specific Rules) and are hereby **PUBLICLY REPRIMANDED.**

In Re: TORY D. ALLEN
Bar No.: 12680
Case No.: OBC17-0125
Filed: September 28, 2017

PUBLIC REPRIMAND

Mr. Allen:

You met with a Client ("the Client") for an initial consultation on August 13, 2015. The Client sought assistance in collecting funds from his ex-wife. You and the client executed a Retainer Agreement and the Client deposited a $10,000 retainer with you. You did not deposit the $10,000 retainer into your IOLTA trust account, instead depositing the funds into your business account. You did not hold the $10,000 in funds until you had earned them.

Five days later, you met with the Client to discuss and review additional information including a spreadsheet of expenses relating to the Client's case. You allege that the following day, you began drafting a demand letter to the Client's ex-wife. Eleven days after the initial consultation, the Client instructed you to hold off on any further work because he was offered repayment from his ex-wife. The Client copied you on a series of e-mails regarding the repayment plans, which you copied to the Client's file. After approximately two more weeks, you did no further work on the Client's behalf in the matter.

The Retainer Agreement stated that you would provide the client with a bill on a monthly basis. However, the Client has never received a monthly statement, or accounting, from you. You did not earn $7,537 of the $10,000 deposited by the Client. You have not refunded the monies in the approximately 19 months since the Client terminated the representation. This is despite multiple requests, made between September 2015 and February 2016, from the client to provide a refund and an accounting of fees earned. You did assert that you had earned some portion of the retainer and suggest that the Client file a fee dispute with the state bar and let the disagreement be resolved in that manner, but that proceeding would not have involved the undisputed refund amount of $7,537.

Pursuant to RPC 1.15 (Safekeeping of Property), you had a duty to safekeep the retainer funds paid by the Client. This duty includes depositing the unearned funds in a trust account separate from your own funds until they are earned, promptly returning any unearned funds to the client, and providing the client with an accounting of the funds upon request. You knowingly violated RPC 1.15 (Safekeeping of Property) by your failure to (i) properly deposit and hold the retainer funds until earned, (ii) promptly return unearned funds to the client and (iii) provide the client with an accounting of earned funds upon request.

Pursuant to RPC 1.16 (Declining or Terminating Representation), you had a duty to refund unearned advanced fees to a client upon the client's termination of the representation. You also knowingly violated RPC 1.16 (Declining or Terminating Representation) when you failed to return the unearned advanced fees of $7,537 to the client. The client has been actually injured by your failure to properly hold the retainer funds when you initially received them and by your failure to return the unearned retainer funds of $7,537 for more than 17 months.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.15 (Safekeeping of Property) and RPC 1.16 (Declining or Terminating Representation) and are hereby **PUBLICLY REPRIMANDED** and required to refund the $7,537 to the client. You are also required to pay $1,500, plus the hard costs of the disciplinary proceeding, as provided for in SCR 120.

In Re: RYAN A. MENDENHALL
Bar No.: 9435
Case No.: 72763
Filed: September 27, 2017

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended two years following admissions of multiple violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (terminating representation), RPC 5.5 (unauthorized practice of law), RPC 8.1 (disciplinary matters), and RPC 8.4 (misconduct).

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 Ryan A. Mendenhall. Under this agreement, Mendenhall admitted to multiple violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (terminating representation), RPC 5.5 (unauthorized practice of law), RPC 8.1 (disciplinary matters), and RPC 8.4 (misconduct). The agreement provides for a two-year suspension, the payment of all back child support owed by Mendenhall, payment of $6000 in restitution, his attendance at a fee dispute program and payment of any resulting award, and payment of $2500 in fees plus the actual costs of the disciplinary proceeding.

Mendenhall has admitted to the facts and violations alleged in the consolidated complaints. The record therefore establishes that Mendenhall continued to practice law after he was suspended for failing to pay his annual fees. The record further establishes that Mendenhall failed to pay child support for over a year. Finally, the record establishes that after Mendenhall's bar license was reinstated, he accepted money from three different clients without providing the promised legal services and also failed to keep the clients apprised as to the status of their cases.

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). In this case, Mendenhall violated duties owed to his clients (diligence, communication, fees, competence, and terminating representation) and the profession (unauthorized practice of law and disciplinary matters). Mendenhall's mental state was mixed. While he was aware of his suspension, he believed that he was reinstated once he paid the amounts owed (Mendenhall remained CLE suspended after paying the owed fees). Once fully reinstated, however, Mendenhall proceeded to take clients' money without providing proper legal representation. There was actual injury to the profession because Mendenhall's unauthorized practice of law and lack of response to the bar's investigation were detrimental to the integrity and standing of the bar. Additionally, there was actual harm to clients in that they paid for services they did not receive.

The panel found three aggravating factors (pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and five mitigating factors (absence of prior disciplinary record, personal or emotional problems, character and reputation, interim rehabilitation, and remorse).

Based on the most serious instance of misconduct at issue, *see Compendium of Professional Responsibility Rules and Standards* 452 (Am. Bar Ass'n 2016) ("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. At Standard 4.42 (providing that suspension is appropriate when an attorney knowingly fails to perform services for a client or engages in a pattern of neglect that causes injury or potential injury to a client). In light of the foregoing and the mitigating circumstances, we conclude that the agreed upon two-year suspension is appropriate. The duration of the suspension along with the other conditions imposed 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,

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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 Ryan A. Mendenhall from the practice of law in Nevada for a period of two years commencing from the date of this order. Before petitioning for reinstatement, Mendenhall shall pay all back child support and be current on his child support payments, pay restitution of $4000 to Maria Herrera and $2000 to Antonio Flores, and attend a fee dispute program with his former client Edith Serrano Flores and pay any resulting fee award. Additionally, Mendenhall shall pay the costs of the disciplinary proceedings, plus fees in the amount of $2500, within 30 days of the date of this order. SCR 120. The parties shall comply with SCR 115 and SCR 121.1. It is so ORDERED.

In Re: ADAM S. KUTNER
Bar No.: 4310
Filed: November 16, 2017

PUBLIC REPRIMAND

Mr. Kutner:

On Wednesday June 27, 2017, a Formal Hearing Panel of the Southern Nevada Disciplinary Board convened to determine whether certain actions by you violated the Rules of Professional Conduct ("RPC").

COUNT 1 / OBC15-0309

In the first matter, you represented your clients in a personal injury matter after they were injured in a motor vehicle accident. When your clients came to your office they met with nonlawyer employees and signed retainer agreements without speaking to a lawyer regarding their claims.

Additionally, the retainer agreement contained the following provision: "That I …do hereby appoint, make and constitute ADAM S. KUTNER AND ASSOCIATES, of the City of Las Vegas, County of Clark, State of Nevada, to be my true and lawful attorney-in-fact, for me and in my name and on my behalf to receive and receipt for any and all sums of money, to deposit in their trust account any and all monies received by them, and generally to act for me in all matters including signing settlement releases pertaining to my claim … "

This provision purportedly allowed your office to sign settlement agreements for your clients without having consulted with them.

After signing the retainer agreements your clients made multiple attempts to contact you at your office without success. Instead of speaking with an attorney, they continued to speak only with non-lawyer employees.

Ultimately, one of your non-lawyer employees signed a settlement agreement using the power of attorney. This agreement had not been discussed with your client. Thereafter, another non-lawyer employee contacted your client to inform her that her case had settled.

When the client refused to accept the settlement, she was told, again by non-lawyer employees, that there were no alternatives to accepting the agreement. When the client complained to office staff she was once again allowed to speak only with non-lawyer employees.

As such, you violated RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct), and you are hereby REPRIMANDED.

COUNT 2 / OBC15-0604

In this matter you agreed to represent your client after she slipped and fell while at a local casino. As with the previous matter, this client did not meet with an attorney during the initial consultation.

Ultimately, there was decision to withdraw from the matter. This decision was not effectively communicated to your client and the client learned of the decision only when she was reviewing her medical records.

As such, you violated RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct), and you are hereby REPRIMANDED.

COUNT 3 / OBC15-1291

In this matter you agreed to represent your client subsequent to a motor vehicle accident.

As with the other matters, the client did not meet with an attorney during the initial consultation. At the time of retention, the client signed a power of attorney that purportedly allowed your office to sign a settlement agreement without having consulted with the client.

In this matter your client discovered that your office had settled her case when she received a letter indicating that your office submitted the hospital bill to Medicare for payment. Specifically, when the client called your office it was only then that she was told that your firm had negotiated her case. As with the other case, the release had been signed by one of your nonlawyer employees and had not been discussed with the client.

After reading the settlement sheet, your client had concerns that not all of her medical bills had been paid from the proceeds of the settlement and contacted your office. When she attempted to speak with a lawyer from your office she was assisted only by non-lawyer employees.

To your credit, you later worked diligently with the client to resolve the situation. She subsequently sent the State Bar a letter indicating that she wished to withdraw the grievance that she filed against you. However, your actions in this matter constitute violations of RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.5

(Unauthorized Practice of Law), RPC 8.1 (Bar Admission and Disciplinary Matters) and RPC 8.4 (Misconduct), and you are hereby REPRIMANDED.

COUNT 4 / OBC16-0041

In this matter your office again agreed to represent the client without having her meet with an attorney, and used the power of attorney signed by the client to settle the matter without having consulted with the client.

Based upon this conduct, you violated RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct), and you are hereby REPRIMANDED.

COUNT 5 / OBC16-0613

In this matter your client sought representation subsequent to a motor vehicle accident.

Your client signed the initial retention paperwork, and thereafter your office held the file for several months while conducting an initial investigation and determining whether there was insurance coverage.

Thereafter your office was contacted by the passenger of the other vehicle who was involved in the accident and who subsequently retained your office. As such your office was then representing both sides involved in the accident.

Several months later your office contacted your initial client and informed him that you could not proceed with the representation due to a lack of insurance coverage. Thereafter, your office transferred the matter for the other client to the law firm of Fassett & Cardozo, and a complaint was filed in District Court against your original client.

On May 25, 2016, the State Bar sent your office a letter of investigation regarding this matter. On June 9, 2016, Fassett & Cardozo moved to withdraw from the matter involving the other client. This motion never mentioned the conflict of interest in the case, instead maintaining that "an irreconcilable impasse" had occurred with the client, which necessitated the withdrawal.

Based upon this conduct, you violated RPC 1.7 (Conflict of Interest: Current Clients), RPC 1.9 (Duties to Former Clients), and RPC 1.18 (Duties to Perspective Clients), and you are hereby REPRIMANDED.