

Bar Counsel Report

In Re: PETER A. TOMAINO
Bar No.: 1380
Case No.: 79186
Filed: 11/14/2019

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review of a Northern 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 Peter A. Tomaino. Under the agreement, Tomaino admitted to violating RPC 5.3 (responsibilities regarding nonlawyer assistants) and RPC 1.15 (safekeeping property) and agreed to a one-year suspension stayed for two years subject to certain conditions.

Tomaino has admitted to the facts and violations as part of his plea agreement. The record therefore establishes that Tomaino violated the above-listed rules by commingling personal funds in his trust account, mostly by failing to pay himself costs out of that account, and by failing to supervise an employee resulting in the employee misappropriating over \$11,000 out of the trust account. However, because Tomaino retained such a large amount of personal funds in his trust account, it appears that no client was injured by his employee's misappropriation.

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 or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Tomaino has admitted that he knowingly violated duties to his clients (safekeeping property) and to the legal profession (responsibilities regarding nonlawyer assistants). While none of Tomaino's clients appear to have been harmed, there was potential for client injury as a result of Tomaino's commingling funds in his trust account and his failure to supervise an employee with access to that account. Thus, 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 4.12 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."). The record supports the panel's findings of one aggravating circumstance (substantial experience in the practice of law) and four mitigating circumstances (absence of prior disciplinary record, absence of dishonest or selfish motive, full and free disclosure to disciplinary authority

and cooperative attitude toward proceeding, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Peter A. Tomaino for one year. The suspension is stayed for two years subject to the following conditions: (1) Tomaino shall employ an accountant to reconcile his accounts as described in the guilty plea agreement, (2) he shall retain any funds in his trust account that are not identified as unpaid client funds for the entire period of the two-year stay, (3) he shall pay any funds identified by the accountant as belonging to a client or a lienholder no later than 30 days after such identification, (4) he shall employ an accountant on a monthly basis as described in the guilty plea agreement and provide monthly reports prepared by the accountant to the State Bar for the first year of the stay and quarterly reports to the State Bar for the second year of the stay, (5) he shall not receive discipline for any grievances reported to the State Bar related to any post-guilty plea agreement conduct through the expiration of the two-year stay, (6) he shall complete two CLE credits in the area of IOLTA trust account management/maintenance or law office management in each year that the suspension is stayed and provide documentation of the completed CLE credits to the State Bar no later than the anniversary date of this order each year, and (7) he shall pay the costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days from the date of this order. The parties shall comply with SCR 121.1.

It is so ORDERED.¹

In Re: CHRISTOPHER D. SULLIVAN
Bar No.: 8278
Case No.: 79439
Filed: 11/14/2019

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 Christopher D. Sullivan. Under the agreement, Sullivan admitted to violating RPC 1.15 (safekeeping property) and RPC 5.3 (responsibilities regarding nonlawyer assistants). He agreed to a six-month-and-one-day suspension, stayed for one year, subject to certain conditions.

Sullivan admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes that Sullivan violated RPC 1.15 by failing to timely remove trust funds earned by his law firm, by removing earned funds directly from the trust account without first placing them in a personal bank account, and by failing to timely pay liens for two personal injury clients. The record further establishes that Sullivan violated RPC 5.3 by failing to supervise a nonlawyer assistant, which allowed the assistant to falsify documents and checks in order to steal money from Sullivan's firm and

clients. The issue for this court is whether the agreed-upon discipline 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) (explaining the 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 or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Sullivan admitted to knowingly violating the above-listed rules and causing injury and the potential for further injury to clients. The baseline sanction before considering aggravating and mitigating factors is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass’n 2018) (providing that suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client). The record supports the panel’s finding of one aggravating factor (prior disciplinary history) and six mitigating factors (absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to the disciplinary authority or cooperative attitude toward the proceedings, interim rehabilitation, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate. Accordingly, we hereby suspend attorney Christopher Sullivan from the practice of law for six months and one day from the date of this order, stayed for one year subject to the following conditions. Sullivan shall be on probation for one year from the date of this order, during which time he will employ, at his own expense, a qualified CPA, to be approved by the State Bar. That CPA will report to the State Bar as follows:

- Account Journal(s): The CPA will verify that Sullivan has records for his IOLTA or client trust accounts that track all deposits and disbursements through the account and associate each such transaction with a client. Sullivan will maintain account journal(s) independently from bank statements.
- Client Ledgers: The CPA will also verify that Sullivan has a ledger detailing every monetary transaction and the balance of monies held for each client. Sullivan will give an accounting to each client after every receipt of funds or any disbursement.
- Audit Trail: The CPA will verify that Sullivan keeps copies of all deposit slips, bank statements, checkbook stubs, cancelled checks, and client checks to create an audit trail relating to all transactions to or from a client trust account, including an audit trail for expenses billed to a client from Sullivan.
- Reconciliation: The CPA will reconcile Sullivan’s Account Journal and Client Ledgers with the Audit Trail and bank statements monthly. The CPA will note any discrepancy between those documents.

- CPA Reports: The CPA will verify Sullivan’s compliance with this agreement and report its findings from its reconciliations to the State Bar monthly with the first report due 30 days after the date of this order.

Sullivan shall, unless otherwise directed by the client or in the client agreement, make prompt disbursements from his clients’ trust account. For a contingency fee, Sullivan will not withdraw his fees before paying the client and lienholders. Sullivan will promptly disburse settlement proceeds to the client and lienholders simultaneously with Sullivan’s earned fees. For advanced fees and other matters, Sullivan will withdraw fees earned from the trust account for costs and expenses he paid for the client’s benefit promptly upon incurring such costs and with supporting receipts or other proof of payment.

If bar counsel determines Sullivan has breached a term of the conditional guilty plea agreement or committed a separate violation of RPC 1.15 or RPC 5.3 during the probationary period, the parties shall follow the procedure outlined in the hearing panel’s recommendation. If the hearing panel ultimately finds Sullivan committed a breach without justification, the panel shall terminate the conditional guilty plea agreement, remove the stay, and impose the six-month-and-one-day suspension.² Sullivan waives any right to have this court review the breach proceedings unless the panel’s decision is arbitrary and capricious. Any future misconduct that triggers a breach hearing and sanction pursuant to this order shall not act as issue or claim preclusion against the Bar and may result in additional sanctions through a separate proceeding. Sullivan shall pay \$2,721 in restitution to Alfred Wiley within 30 days from the date of this order or, if Wiley cannot be located, to the State Bar Client Security Fund. Finally, Sullivan shall pay the costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.³

In Re: JEREMY T. BERGSTROM
Bar No.: 6904
Case No.: 79205
Filed: 11/14/2019

**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 Jeremy T. Bergstrom. Under the agreement, Bergstrom admitted to two violations of RPC 1.1 (competence), four violations of RPC 1.3 (diligence), four violations of RPC 1.4 (communication), four violations

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of RPC 3.2 (expediting litigation), one violation of RPC 5.1 (responsibilities of partners, managers, and supervisory lawyers), and one violation of RPC 8.4 (misconduct). He also agreed to a six-month-and-one-day suspension with 60 days of the suspension stayed for a period of one year subject to certain conditions.

Bergstrom has admitted to the facts and violations as part of his plea agreement. The record therefore establishes that Bergstrom violated the above-listed rules by failing to perform legal services for which he was retained in four different actions, resulting in judgments against his clients, and by failing to communicate with those clients. He also failed to properly supervise an associate attorney in the handling of one of those cases and promised the clients payment for the judgments, but then failed to provide payment.

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 or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Bergstrom has admitted to negligently violating duties owed to his clients (competence, diligence, and communication) and to the legal profession (responsibilities of partners, managers, and supervisory lawyers; and misconduct). Bergstrom’s clients were injured as judgments were entered against them. Thus, 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 4.42 (Am. Bar Ass’n 2017) (“Suspension is generally appropriate when ... a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.”). The record supports the panel’s findings of five aggravating circumstances (prior disciplinary offense, pattern of misconduct, multiple offenses, substantial experience in the practice of law, and indifference to making restitution) and two mitigating circumstances (absence of dishonest or selfish motive and full and free disclosure to disciplinary authority or cooperative attitude toward proceedings). Considering all four factors, we conclude that the agreed upon discipline is appropriate.

Accordingly, we hereby suspend attorney Jeremy T. Bergstrom for six months and one day commencing from the date of this order. The last 60 days of that suspension shall be stayed for one year subject to the following conditions: (1) Bergstrom shall pay \$34,422.88 in restitution to List and Associates during his actual suspension; (2) he shall obtain a mentor with a minimum of five years of experience in law office management to review his office procedures during his actual suspension to ensure he has implemented appropriate safeguards to avoid recurrence of his misconduct, provide a report stating he has done so before the expiration of his actual suspension, and have the

mentor review his caseload and filings monthly, as described in the guilty plea agreement during the probationary period; (3) he shall remain free from any RPC violations during the probationary period and any alleged violation shall be handled as described in the guilty plea agreement; (4) within 30 days of the expiration of his actual suspension, he shall formally request a reinstatement hearing in the form of a petition that substantially complies with the requirements of SCR 116, and the hearing panel who recommended approval of his guilty plea, or an ad hoc panel if the hearing panel is unavailable, will consider the petition to determine if he has shown by clear and convincing evidence satisfaction of the conditions he was required to complete during his actual suspension and whether the 60-day stayed suspension should be imposed; and (5) he shall pay the costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days from the date of this order, if he has not done so already. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.⁴

In Re: MATTHEW Q. CALLISTER
Bar No.: 1396
Case Nos.: SG10-0448 + 14
Filed: 11/14/2019

PUBLIC REPRIMAND

To Matthew Q. Callister:

This Reprimand is issued upon your successful completion of a five (5) year probation pursuant to a Conditional Guilty Plea in Exchange for a State Form of Discipline for a Stayed Suspension. SCR 113.

Between 2008 and 2010, you were pursuing class action lawsuits against several banks concerning their mortgage and lending practices. It was apparent to the Panel that your approach to these litigations was focused on the end game and not the individual clients. While you were well-intended, you did not always listen to the goals of your foreclosure/loan modification clients and did not adequately communicate your strategy to them individually. Your communication was often sporadic or non-existent, and it was difficult to parcel out what work you did on each individual’s behalf in many cases. The Panel also saw a pattern of practice were [sic] you took on cases with little likelihood of success, and did not sufficiently manage the goals and expectations of representation with the clients. The \$3,000 to \$5,000 you charged each client in the class actions was not an insubstantial sum, and you did not adequately account that you earned that fee for each of them.

The Panel was also concerned about your business arrangement and attendant supervision of *Homefront*, a nonlawyer loan modification business owned and operated by two individuals whom you eventually hired as non-lawyer

assistant employees [sic] your law practice after HomeFront was dissolved.

The seven (7) counts summarized below arise from loan modification and foreclosure representation:

1. Count 1, Harriet Strickland. Ms. Strickland did not care about the class action lawsuit and simply wanted a Home Affordable Modification Program (HAMP) modification. She paid you \$5,000 and dealt primarily with a non-lawyer. After becoming frustrated with the lack of progress and communication, she eventually sought help from Senator Reid's office. Strickland received her HAMP modification and a letter of apology from Bank of America referencing a letter from the Senator's office sent on her behalf. Your conduct in this count violated RPC 1.3 (Diligence); RPC 1.5 (fees); RPC 5.3 (Responsibilities Toward Nonlawyer Assistants); and RPC 8.4 (Misconduct).
2. Count 2, Joseph Cervantes. After a failed mediation, Mr. Cervantes paid you a \$2,500 retainer, \$1,000 of which was for judicial review. Your staff was unable to negotiate with the bank and you set the matter for judicial review. On the morning of hearing, you called Cervantes and persuaded him that judicial review would not be successful, promising to refund him his \$1,000. However, you failed to take the matter off calendar and did not refund Cervantes. He was also assessed the opposing parties' attorney fees. Your conduct in this count violated RPC 1.3 (Diligence); RPC 1.5 (fees); RPC 5.3 (Responsibilities Toward Nonlawyer Assistants); and RPC 8.4 (Misconduct).
3. Count 3, Cynthia Stockton. Ms. Stockton came to your firm after being victimized by a nonlawyer loan modification scam and finding out her lender was under investigation for predatory lending. Her consultation was handled exclusively by your non-lawyer assistant whom she paid \$3,000. Stockton did not thereafter meet with any attorney until much later when she demanded to meet with you personally. Ultimately, Stockton's mediation was denied because her foreclosure occurred prior to July 2009 and, in your words, there was nothing you could have done for her. This should have been identified at the time of consultation. Your conduct in this count violated RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 1.5 (Fees), RPC 1.7 (Conflict of Interest); RPC 5.3 (Supervising Nonlawyer Assistants); RPC 5.4 (Professional Independence of a Lawyer); RPC 5.5 (Assisting in the Unauthorized Practice of Law); and RPC 8.4 (Misconduct).
4. Count 4, Daniel Lopez. Mr. Lopez paid you \$4,000 for a loan modification. You had him sign a power of attorney naming your firm as well as your nonlawyer assistants and HomeFront on all matters related to his property. You obtained a trial modification, but Lopez missed some payments and you thereafter referred him to a bankruptcy attorney. Lopez grieved your communication was sporadic and poor, and his phone calls usually went unreturned. Your conduct in this count violated RPC 1.4 (Communication); RPC 1.5 (Fees), RPC 1.8 (Conflict of Interest); RPC 5.4 (Professional Independence of a Lawyer); and RPC 8.4 (Misconduct).
5. Count 7, Maurice Jung. Mr. Jung inherited a house from his mother that was subject to a reverse mortgage, which Jung was seeking to have converted since he was under the requisite sixty-two years of age. Bank of America refused to produce the note on the home or cooperate with him in any meaningful fashion. He paid you \$4,000 to assist him in this matter individually and, at your urging, he ultimately solicited other reverse mortgage clients for you so you could file a separate class action. You had zero experience with reverse mortgages and this matter had little likelihood of success from the outset. You failed to communicate with Jung in any meaningful way, ignoring his many calls and emails, and strung him along for over a year as fines and fees accumulated on the property, until you ultimately withdrew and blamed your shortfalls on the client. Mr. Jung ended up selling the home at a significant loss. Your conduct in this count violated RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 1.5 (Fees), RPC 3.2 (Expediting Litigation); and RPC 8.4 (Misconduct).
6. Count 9, Heather Roy. Ms. Roy retained your firm in a loan modification matter for \$3,500 and was signed up by a non-lawyer assistant. From the beginning she clear [sic] she could only avoid default if her payments were significantly lower, and she also wanted lower interest and a principle reduction. She never met with an attorney until the day of her mediation, when an unkempt and unprepared associate she'd never spoken to showed up. The mediation was unsuccessful and the associate told her she should default again to start the process over. At that point she called the firm to speak to a lawyer about a short sale, and was again routed to a nonlawyer who quoted her another \$1,500. Eventually an associate attorney in your office did the short sale for no additional fees. Your conduct in this count violated RPC

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- 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants); RPC 5.5 (Assisting another in the unauthorized practice of law); and RPC 8.4(d) (Misconduct).
7. Count 12, William and Gertraud Lackey. Mr. and Mrs. Lackey initially retained you in a loan modification matter and were signed up by a nonlawyer whom they paid \$3,700. Ultimately a staff attorney did attend mediation and successfully obtained a HAMP modification for them. Prior to the mediation, communication was nonexistent. Your conduct violated RPC 1.4 (Communication); RPC 1.7 (Conflict of Interest); RPC 5.3 (Supervising non-lawyer assistants); RPC 5.4 (Professional Independence of a Lawyer); RPC 5.5 (Assisting in the Unauthorized Practice of Law); and RPC 8.4 (Misconduct). It is noted you also handled a car accident and subsequent wrongful death case for these clients, however the Panel found the only misconduct in that action was your fee agreement.
8. Additionally, you were found to have committed misconduct in the six (6) counts below in other areas as follows:
- a. Count 5, Trust Account. The State Bar received notification that you had a \$290 shortage in trust to cover a check. The check was honored and you cured the overdraft the following day. The Bar found no other discrepancies or problems in your trust account records. Your conduct in this count violated RPC 1.15 (Safekeeping Property) and RPC 8.4 (Misconduct).
 - b. Count 8, Christopher Patrick and Kenneth Callahan. Patrick and Callahan obtained a default judgment against a mechanic and sought your assistance with enforcing the judgment. Ultimately you provided evidence of work performed, but the defendant was judgment proof. Your file did not, however, illustrate sufficient communication with the clients as their matter progressed, and you never provided any final dispositive letter to them explaining your determination that further action was futile given the defendant's financial status. Your conduct in this matter violated RPC 1.4 (Communication) and RPC 8.4(d) (Misconduct).
 - c. Count 10, Robert Simmons. You met Mr. Simmons at your home through a friend, at which point he told you about his custody battle with his ex-wife and her attempts to relocate out of state with his children against his wishes. While you deny you ever agreed to take this case *pro bono*, the evidence supports that you looked into this matter and only upon realizing how complicated it was did you months later have Simmons sign a retainer agreement and pay a fee, at which time you produced a retroactive bill. Your associate attorney thereafter competently represented Mr. Simmons. Your conduct in this matter prior to your associate's involvement violated RPC 1.2 (Scope of Representation); RPC 1.4 (Communication); RPC 6.1 (Pro Bono Representation; written fee agreement required); and RPC 8.4(d) (Misconduct).
 - d. Count 13, Kathy Arrington. Ms. Arrington retained you for \$5,000 to do an irrevocable living trust. Your communication was poor and you were dilatory in providing accountings as requested so she terminated your services. After she filed her bar complaint you refunded the unused portion of her retainer. Your conduct in this matter violated RPC 1.4 (Communication) and RPC 8.4 (Misconduct).
 - e. Count 14, Dr. Chang. Dr. Chang was the hospital anesthesiologist treating one of your clients due to an automobile accident in December 2009. While you claim you personally did not sign the lien where it appears your signature is affixed and don't recognize the fax number to which it was sent, the lien was also counter-signed by your then-office assistant. Further, Dr. Chang provided credible evidence of over 18 months' worth of calls to your office with messages left with several staff members and at least two faxes sent to you about this lien. Only after receipt of the Bar complaint did you pay the lien. Your conduct in this matter violated RPC 1.3 (Diligence); RPC 1.15 (Safekeeping Property); RPC 8.1 (Bar Admission and Disciplinary Matters); and RPC 8.4 (Misconduct).

f. Count 15, Terry Padilla and Sheri Toft. Sisters Padilla and Toft retained you as their estate lawyer after the death of their father. Padilla was initially appointed Trustee. They alleged their two brothers were stealing, transferring, and/or destroying estate assets, which you confirmed appeared to be true. All that was left was a house. When the proceeds of the sale of the home came in, Padilla received the check as trustee and did not split it with her sister Toft. At that point Toft became adverse to Padilla, claiming Padilla stole Toft's portion of the proceeds. Toft then asked you to appoint her as successor Trustee, which you did without Padilla's knowledge or consent. This was a clear conflict of interest. Your communication with Padilla and Toft was poor during this entire representation, although you did significant work on their behalves. Your conduct in this matter violated RPC 1.2 (Scope of Representation); RPC 1.5 (Fees); RPC 1.7 (Conflict of Interest: Current clients); RPC 1.8 (Conflict of Interest: Special 8 Rules); and RPC 8.4(d) (Misconduct).

9. Finally, your fee agreements in use during the relevant time period violated the Rules of Professional Conduct as set forth below.

10. Fee Agreements. During the time period in question your fee agreements contained inappropriate language in four (4) general areas: at your sole discretion, a blanket authorization to consider all funds remitted earned upon receipt and for deposit in your general account; generic authorization to fee share with other legal professionals; a blanket authorization for you to proceed on any and all aspects of the representation without consulting the client further; and, a blanket prospective conflict of interest waiver. Your fee agreements as described violated RPC 1.2 (Scope of Representation), RPC 1.5 (Fees), RPC 1.7 (Conflict of Interest: Current Clients), RPC 1.8 (Conflict of Interest, Special Rules), RPC 1.9 (Duties to former clients), RPC 5.3 (Responsibilities Toward Nonlawyer Assistants), RPC 5.4 (Professional Independence), and RPC 8.4(d) (Misconduct). You corrected your fee agreements as part of your conditional guilty plea. Finally, your contingency fee agreements were also missing the disclaimer required by RPC 1.5(c)(5).

11. Count 6, Diana Hayes and Count 11, William Schmitt. The only misconduct in these two counts was your fee agreement language.

In aggravation, the Panel found: selfish motive SCR 102.5(1)(b); Pattern of misconduct SCR 102.5(1)(c); Multiple offenses SCR 102.5(1)(d); Refusal to acknowledge wrongful nature of misconduct SCR 102.5(1)(g); Vulnerability of victims SCR 102.5(1)(h); and Substantial experience in the practice of law SCR 102.5(1)(i).

In mitigation, the Panel found: Absence of a prior disciplinary record SCR 102.5(2)(a); Subsequent cooperative attitude toward proceedings SCR 102.5(2)(e); Good character and reputation SCR 102.5(2)(g); Physical disability SCR 102.5(2)(h); Chemical dependency where medical evaluations support causality to the misconduct, that there is interim recovery, that the misconduct arrested as a result of recovery, and that reoccurrence is unlikely SCR 102.5(2)(i); and Interim rehabilitation SCR 102.5(2)(k).

The effect on your law practice during this time period is a serious matter and as such, you were subject to a five (5) year probation, under a law practice mentor and physician supervision, with a number of conditions. As part of your Plea agreement and probation, you have, *inter alia*, (1) refunded attorney's fees pursuant to the restitution agreement included in your Plea; (2) remained free from discipline; (3) submitted to binding fee dispute arbitration during the probation period; (4) taken additional continuing legal education in the areas of substance abuse and law office management over and above the requirements of SCR 210; and (5) cooperated fully and freely with the State Bar.

Based on the foregoing and having successfully completed your probation and all the requirements attendant thereto, you are hereby PUBLICLY REPRIMANDED.

1. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.
2. If the stay is lifted and Sullivan is suspended, the parties must comply with SCR 115.
3. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.
4. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.

MEET YOUR FINANCIAL HEROES

Annually, more than \$500 million is held in Nevada lawyer trust accounts. These financial institutions have agreed to pay favorable rates on all IOLTA accounts under deposit.

Leadership institutions pay premium rates.

The Nevada Bar Foundation grants more than 97% of the interest earned on these dollars - \$4.5 million - to statewide legal service organizations serving more than 37,000 Nevada families.

American First National Bank
Bank of America
Bank of George
Bank of the West
BMO Harris Bank
Citibank
City National Bank
East West Bank
Financial Horizons Credit Union
First Foundation Bank
First Savings Bank
First Security Bank of Nevada
Heritage Bank
JP Morgan Chase & Co.
Kirkwood Bank of Nevada
Lexicon Bank
Mutual of Omaha
Nevada State Bank
Northern Trust Bank
Pacific Premiere Bank
Plumas Bank
Silver State Schools Credit Union
Town and Country Bank
Umpqua Bank
US Bank
Valley Bank of Nevada (BNLV)
Washington Federal
Wells Fargo

LEADERSHIP INSTITUTIONS

Bank of Nevada

First Independent Bank

Meadows Bank

Nevada Bank & Trust

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TIP FROM THE BAR COUNSEL

LAW FIRM BREAKUP SEASON: What Needs to be Done and by Whom

Winter arrives in late December each year with two seasons in full swing: the holiday season and law firm breakup season.

The scenario for attorneys going their separate ways usually involves one of two dynamics, and both involve money.

In the first dynamic, a lawyer already has decided to leave but waits for the year-end bonus check. With money in hand, he or she vanishes for supposedly greener pastures.

The other scenario stars a somewhat satisfied attorney who gets livid at the smaller-than-expected bonus and does an immediate rage quit.

The employee/employer relationship might have ended, but both parties still probably have obligations to their clients. Issues include communication, the client's choice of counsel, and file retention or transfer.

RPC 1.4 (Communication) requires attorneys to keep clients reasonably informed about significant events in their legal matters. A change of counsel usually amounts to a significant event, and the client needs to be informed about the changes.

RPC 1.4 does not state who must notify the client, only that it should be done in a timely matter. In a way, the law firm and departing attorney have joint-and-several liability to make sure it's done.

If the firm and lawyer each want to keep the client, then the client makes the decision about with whom he or she will stay. Of course, if the departing attorney no longer wishes to be involved with the representation, then the client decides whether to stay with the firm or seek completely new counsel.

RPC 1.16 (Declining or Terminating Representation) states that upon termination of representation, an attorney must take steps to protect a client's interests. Such protections include – if a client decides to change legal counsel – transferring the file to the client or successor counsel unless the attorney is permitted to retain materials to the extent permitted by law.

Finally, law firms often become upset when, after the breakup, the departed attorney contacts his or her now-former client and asks to stay on the case. Although the law firm usually believes such communication constitutes solicitation, RPC 7.3 (Communication) permits such contact because the attorney had a prior professional relationship with that client.