

**In Re: Jeffrey P. Aylward**  
**Bar No.: 7983**  
**Supreme Court Case No.: 71049**  
**Filed: October 21, 2016**

## ORDER OF SUSPENSION

***Attorney suspended for three years following violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(h) (bar admission and disciplinary matters) and RPC 8.4 (misconduct).***

A Southern Nevada Disciplinary Board hearing panel recommended attorney Jeffrey Aylward be suspended for three years based on multiple violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(h) (bar admission and disciplinary matters) and RPC 8.4 (misconduct). Aylward is currently serving an administrative suspension for both failure to comply with Continuing Legal Education requirements and failure to pay bar dues. The matter was submitted to the court for decision based on the record; Aylward failed to answer the complaint, and a default was entered.

The court found that Aylward violated RPC 1.1, RPC 1.3, RPC 1.4, RPC 1.5 and RPC 1.15 by agreeing to represent, and accepting fees from, three clients in separate matters over a two-year period of time and then failing to perform the work he was retained to do, failing to keep his clients informed as to the status of their matters, and being unresponsive to the clients' efforts to contact him or recoup their money. By violating those rules, Aylward violated RPC 8.4(a). Additionally, the record established that Aylward failed to cooperate with the disciplinary investigation into the three grievances, thereby violating RPC 8.1(b).

The court also found that Aylward's misconduct caused actual injury to his clients. He arguably acted with intent to delay the disciplinary proceedings when he failed to cooperate during the investigation, particularly after he met with a representative of bar counsel's office and obtained an extension of time to respond to the grievances and to provide documentation about a purported medical condition. The court agreed that Aylward's failure to cooperate in the disciplinary investigation "violated one of his most fundamental duties as a professional," *In re Riddle*, 857 P.2d 1233, 1235-36 (Ariz. 1993), and threatened the self-regulating disciplinary system that is crucial to the legal profession. The court noted that his failure to cooperate also

constituted an aggravating circumstance, in addition to other aggravating circumstances found by the hearing panel – dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law and indifference toward making restitution – were supported by the record. The hearing panel also found an aggravating circumstance based on prior disciplinary offenses. The court concluded that finding was not supported by the record. Additionally, the court noted that Aylward's suspension for failing to pay bar dues and provide the disclosures required by SCR 79 was an administrative, not a disciplinary, suspension.

The court found that the three-year suspension the hearing panel recommended was warranted. The court also ordered Aylward to pay the cost of disciplinary proceedings, plus \$2,000 for bar staff salaries, within 30 days. Prior to seeking reinstatement, Aylward must also pay restitution to the grievants, in the amounts identified in the hearing panel's written decision, and reimburse the Clients' Security Fund for any amounts paid to the grievants. The court declined to impose a restriction on solo practice and access to client funds as a condition of reinstatement, as recommended by the panel, preferring that such a condition be addressed at the time of a reinstatement petition.

**In Re: Michael J. Toigo**  
**Bar No.: 1260**  
**Filed: October 21, 2016**

## ORDER OF SUSPENSION

***Attorney suspended for six months and one day following findings of violations of RPC 1.6(c) (confidentiality), RPC 1.15(a) (safekeeping property) and RPC 8.1(b) (bar admission and disciplinary matters).***

A Southern Nevada Disciplinary Board hearing panel recommended attorney Michael Toigo be suspended from the practice of law for one year, after finding he was in violation of RPC 1.6(c) (confidentiality), RPC 1.15(a) (safekeeping property) and RPC 8.1(b) (bar admission and disciplinary matters). The matter was submitted to the court for decision based on the record; Toigo failed to answer the complaint and a default was entered.

The record established that Toigo violated RPC 1.6(c) and RPC 1.15(a) by leaving a large number of client files in his home office after he was evicted,

allowing others potential access to the files. He also violated RPC 8.1(b) by failing to cooperate with the disciplinary investigation.

The court found that that the misconduct was knowing or at least negligent. Leaving client files where they could be accessed by others had the potential to injure clients, although there is no evidence in this case of an actual injury. Additionally, Toigo's failure to cooperate in the disciplinary investigation "violated one of his most fundamental duties as a professional," *In re Riddle*, 857 P.2d 1233, 1235-36 (Ariz. 1993), and threatened the self-regulating disciplinary system that is crucial to the legal profession. In mitigation, the court noted Toigo had no previous discipline in nearly 40 years of practice.

The court found that suspension was warranted for a period of six months and one day, commencing from the date of this order. Toigo shall pay the costs of the disciplinary proceedings, excluding staff salaries, within 30 days. Toigo also must petition for reinstatement.

Justice Douglas dissented, saying he would follow the panel's recommendation.

### **In Re: Diana Hillewaert**

**Bar No.: 8815**

**Case No.: 70987**

**Filed: November 10, 2016**

## **ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT**

***Attorney suspended 60 days, stayed for 24 months, after admission of violations of RPC 1.3 (diligence), RPC 1.4 (communication) and RPC 3.2 (expediting litigation).***

A Northern Nevada Disciplinary Board hearing panel recommended a conditional guilty plea agreement for attorney Diana Hillewaert for violations of RPC 1.3 (diligence), RPC 1.4 (communication) and RPC 3.2 (expediting litigation).

Hillewaert was representing multiple clients in a suit against their employer, filing a complaint, answering a cross complaint, proceeding with discovery and engaging opposing counsel in settlement negotiations. However, when opposing counsel stopped communicating with her, Hillewaert failed to take action and failed to respond to her clients' request for communication. When Hillewaert filed a request for hearing to set trial, nothing had been filed in the case between 2010 and 2016. Opposing counsel filed a motion to dismiss the lawsuit for lack of prosecution.

The agreement called for a 60-day suspension for Hillewaert, stayed for 24 months, subject to satisfying the following conditions during that period:

1. Meet with a mentor approved by bar counsel once a month to discuss Hillewaert's caseload, deadlines in her cases, the status of retainers and/or payments from clients, and any other matters relevant to diligently and expeditiously representing her clients;
2. Submit quarterly reports to bar counsel detailing when Hillewaert met with her mentor and any concerns the mentor has, including a status chart of Hillewaert's open cases; and
3. Refrain from engaging in any conduct that violates the Rules of Professional Conduct, and if discipline is issued as a result of Hillewaert's conduct during the stay period, then, absent a subsequent disciplinary panel's finding of mitigating factors that warrant continuation of the stay, the stay is lifted and the suspension is imposed.

Hillewaert also agreed to pay for the costs of the disciplinary proceeding in the amount of \$750, plus the court reporter and mailing costs, within 60 days.

Based on the court's review of the record, it concluded that the guilty plea agreement should be approved. Considering the duties violated, Hillewaert's state of mind (knowing), the injury to her clients (delay in their proceedings and potential dismissal of their lawsuit), the aggravating circumstance (prior discipline), the mitigating circumstances (absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and cooperative attitude toward the proceeding, inexperience in the practice of law, remorse, and acceptance of responsibility and intention to change her practice to avoid a similar occurrence in the future), the court agreed that the discipline set forth above was sufficient to serve the purpose of attorney discipline.

### **In Re: Julius M. Engel**

**Bar No.: 8057**

**Case No.: 71001**

## **ORDER IMPOSING RECIPROCAL DISCIPLINE**

Attorney suspended two years, with all but the first six months stayed, following discipline for violations by the California Bar.

Attorney Julius Engel was suspended by the California Bar after comingling client and personal funds in his client trust account, failing to maintain records to distinguish one client's money from another client's money, and for writing 126 checks and allowing eight automatic payments from the trust account for personal and business expenses in that period. He also agreed

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to represent a client in a bankruptcy action and accepted a retainer but never filed a petition on her behalf and refused her request for a refund. Further, Engel accepted \$1,750 from another client and filed a bankruptcy petition on her behalf, but never notified her of the need to pay the filing fee, which resulted in the bankruptcy petition being dismissed.

The California Supreme Court suspended Engel for two years, with all but the first six months of that suspension stayed, and placed him on probation for the duration of the stayed suspension. Engel was also required to pay restitution, submit quarterly reports and a final report during his probation, complete and pass the State Bar's Ethics School, complete and pass the state bar's Client Trust Accounting School, and pass the Multistate Professional Responsibility Examination.

Additionally, in his representation of two separate criminal defendants, he accepted payment from the defendants' relatives without first obtaining written consent to do so from the defendants. In considering this misconduct, the California Bar Court's Review Department concluded that Engel's multiple acts of misconduct, significant harm to his client and failure to accept responsibility were aggravating factors, but that his lack of prior discipline and his good character were mitigating factors.

The California Bar suspended Engel for two years, with all but the first six months stayed, and placed him on probation for the duration of the stayed suspension. Engel was also required to pay restitution to another client, submit quarterly reports and a final report during his probation, complete and pass the state bar's Ethics School, complete and pass the state bar's Client Trust Accounting School, and pass the Multistate Professional Responsibility Examination.

Engel self-reported the issue to the State Bar of Nevada, which is obligated to impose reciprocal discipline if certain exceptions do not apply. The court found that exceptions do not apply and suspended Engel for two years, with all but the first six months stayed. During the suspension, Engel is required to:

1. Comply with all Rules of Professional Conduct;
2. Submit quarterly reports to the state bar concerning whether he has complied with all Rules of Professional Conduct during the previous quarter;
3. Complete a minimum of six CLE classes in the areas of ethics and law practice management, in addition to the CLE hours he is ordinarily required to complete; and
4. Pass the Multistate Professional Responsibility Examination.

## TIPS FROM THE OFFICE OF BAR COUNSEL

**Q: A friend of mine was retained by a client to handle a bankruptcy case. My friend primarily handles family law and referred the client to me for the bankruptcy matter. Are we allowed to split the fee?**

This is a fairly straightforward situation, especially here in the Silver State.

The most important thing you can do is be sure that the client is aware of the arrangement, including the share each lawyer will get, and approves of it in writing. Nevada RPC 1.5(e). The fee itself must be reasonable as well. The fee will probably be considered reasonable if the amount that goes to the client doesn't change because of the referral arrangement.

The intent behind Nevada's rule is to get attorneys to refer clients to lawyers who are more experienced in particular areas of law. The Nevada rule is a little more favorable to fee splitting than the ABA model rule, which allows for fee splitting only in proportion to the work performed, or when each lawyer assumes joint responsibility for the representation.