

In Re: MARC J. RANDAZZA
Bar No.: 12265
Case No.: 76453
Filed: 10/10/2018

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 Marc J. Randazza. Under the agreement, Randazza admitted to violating RPC 1.8(a) (conflict of interest: current clients: specific rules) and RPC 5.6 (restrictions on right to practice) in exchange for a 12-month suspension, stayed for a period of 18 months subject to conditions.

Randazza has admitted to the facts and the violations alleged in two counts set forth in the amended complaint.¹ The record therefore establishes that Randazza violated the above-listed rules by loaning money to his client without informing the client in writing of the desirability of obtaining independent counsel, and by negotiating with opposing counsel to receive, as part of a settlement, a retainer for future legal services.

As Randazza 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. *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).

Randazza has admitted to violating duties owed to his client (conflict of interest) and the legal profession (restrictions on right to practice), and the admitted facts reflect that the misconduct was knowing. His conduct may have caused a delay in the disbursement of settlement funds to his client. The baseline sanction for both rule violations, before considering aggravating and mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.32 (Am. Bar Ass'n 2017) (providing that suspension is appropriate when a lawyer "knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client"); *id.* Standard 7.2 (providing that suspension is appropriate when a lawyer "knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system"). The record supports one aggravating circumstance (substantial experience in the practice of law) and three mitigating circumstances (absence of prior disciplinary record, full and free disclosure to disciplinary authority or cooperative attitude toward proceeding, and delay in disciplinary proceedings). Considering all the factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend Marc J. Randazza for 12 months, stayed for 18 months commencing on the date of this

order, subject to the following conditions: (1) Randazza shall "stay out of trouble" during the probationary period, "meaning that he will have no new grievance arising out of conduct post-dating the date of the plea which results in the imposition of actual discipline (a Letter of Reprimand or above, SCR 102) against him"; (2) he shall successfully complete 20 hours of CLE in ethics in addition to his normal CLE requirements during the probationary period; (3) he shall seek the advice and approval of an independent and unaffiliated ethics attorney in the relevant jurisdiction before obtaining any conflicts of interest waivers during the probationary period; and (4) he shall pay the actual costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days of this court's order, if he has not done so already. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: WILLIAM K. ERRICO
Bar No.: 6633
Case No.: 73995
Filed: 10/10/2018

ORDER OF DISBARMENT

This is an automatic review under SCR 105(3)(b) of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney William Errico be disbarred based on violations of RPC 1.2 (scope of representation), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.7 (conflicts of interest: current clients), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation), RPC 3.1 (meritorious claims and contentions), RPC 3.2 (expediting litigation), RPC 3.3 (candor toward the tribunal), RPC 4.1 (truthfulness in statements to others), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct). The hearing panel also recommends that Errico be required to pay restitution.²

This matter involves three complaints related to eight grievance files opened between 2010 and 2014. On June 5, 2017, Errico stipulated for purposes of the disciplinary proceedings that the evidence offered by the State Bar established the violations alleged in the complaints by clear and convincing evidence and that the violations warranted disbarment. In sum, the evidence offered by the State Bar establishes that over several years Errico failed to properly disburse settlements funds; misappropriated settlement funds for his own use; failed to communicate with his clients about the status of their cases and the distribution of their settlement funds; and misrepresented information about settlement funds he had received to courts (in interpleader actions), lienholders, and the State Bar. Consistent with the stipulation and the evidence in the record, the State Bar established by clear and convincing evidence that Errico violated the rules referenced above. See SCR 105(3)(b) (providing that this court "employ[s] a deferential standard of review with respect to [the hearing panel's] findings of fact"); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (indicating that on appeal from a judgment in a civil action, this court will not set aside findings of fact unless they are clearly erroneous or not supported by substantial evidence); see also *In re Discipline of Drakulich*,

111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (explaining that the State Bar has the burden of showing by clear and convincing evidence that an attorney committed the violations charged).

Although we must exercise our independent judgment as to the appropriate discipline, SCR 105(3)(b) (adopting de novo standard), the hearing 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). Considering those factors and Errico's stipulation, we agree that disbarment is warranted in order 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) (explaining that the purpose of attorney discipline is to protect the public, the courts, and the legal profession); Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass'n 2017) ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). We disagree, however, that restitution can be imposed as discipline in conjunction with disbarment.

As Errico observes in his filing with this court, SCR 102 does not mention imposing restitution with disbarment. We recently addressed a similar issue with respect to imposing a monetary sanction as a form of discipline in conjunction with a suspension. *In re Discipline of Reade*, 133 Nev., Adv. Op. 87, 405 P.3d 105 (2017). Unlike the monetary sanction addressed in *Reade*, restitution is a recognized form of attorney discipline for misconduct involving misappropriation of client property or failure to refund fees for which no services were provided. See ABA Standards, *supra*, at 453-54 (providing for "sanctions and remedies" in addition to disbarment suspension, and censure, including restitution, appointment of a receiver, conditions on practice, and additional CLE requirements); Model R. Lawyer Disciplinary Enf t 10(a)(6) (providing that "[m]isconduct shall be grounds for one or more of" the sanctions identified in a list that includes "restitution to persons financially injured" (emphasis added)). Also unlike a monetary sanction, restitution generally serves the purpose of attorney discipline to protect the public and the profession by showing the attorney's rehabilitation and fitness to resume or continue the practice of law. See *Sorensen v. State Bar*, 804 P.2d 44, 49 (Cal. 1991); *People v. Flores*, 804 P.2d 192, 195 (Colo. 1991). But when disbarment is permanent, as it is in Nevada, imposing additional forms of discipline does not further the purpose of attorney discipline—the public and profession are fully protected because the attorney is permanently removed from the practice of law, making rehabilitation irrelevant. Of the few other states with permanent disbarment, only Kentucky has expressly considered whether restitution can be imposed with permanent disbarment, observing that its rules do not allow any conditions with permanent disbarment and that a disbarred attorney is no longer subject to the court's direct supervision such that a remedy for injured clients "is more appropriately addressed" in

a civil action for damages.³ *Ky. Bar Ass'n v. Chesley*, 393 S.W.3d 584, 602 (Ky. 2013). Considering that SCR 102 does not provide for restitution in conjunction with permanent disbarment and that restitution does not further the purpose of attorney discipline when an attorney has been permanently disbarred, we cannot impose the recommended restitution in this matter regardless of the parties' stipulation as to the amount of restitution.⁴

We hereby disbar attorney William Errico from the practice of law in Nevada. Pursuant to SCR 102(1), disbarment is irrevocable. Errico shall pay administrative costs in the amount of \$3,000 as provided in SCR 120(3), plus any costs for the disciplinary proceeding as specified in SCR 120(1) and set forth in the State Bar's Memorandum of Costs dated September 11, 2017. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: REINSTATEMENT OF SCOTT M. HOLPER
Bar No.: 9587
Case No.: 76882
Filed: 10/18/2018

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to grant suspended attorney Scott M. Holper's petition for reinstatement.

This court suspended Holper from the practice of law for six months with three months stayed' for one year conditioned on Holper: (1) completing 20 hours of continuing legal education (CLE) in addition to the annual requirement, 10 related to ethics and 10 related to law office management or client relations; (2) having no grievance resulting in discipline during his probation period; (3) paying \$2,185.57 in restitution; and (4) paying the costs of the disciplinary proceedings plus \$2,500 in fees. *In re Discipline of Holper*, Docket No. 72014 (Order of Suspension, September 28, 2017). During the probationary period, he was further suspended for six months and one day commencing from the same date as the prior suspension, September 28, 2017, and required to pay the costs from that disciplinary proceeding plus \$2,500 in fees. *In re Discipline of Holper*, Docket No. 74903 (Order Approving Conditional Guilty Plea Agreement and Suspending Attorney, April 27, 2018). Holper's suspension term has passed and a panel has recommended he be reinstated to the practice of law in Nevada subject to certain conditions.

Based on our de novo review,⁵ we agree with the panel's conclusions that Holper has satisfied his burden in seeking reinstatement by clear and convincing evidence. See SCR 116(2); *Application of Wright*, 75 Nev. 111, 112-13, 335 P.3d 609, 610 (1959) (reviewing a petition of reinstatement de novo). We therefore approve the panel's recommendation that the petition be granted and Holper be reinstated subject to certain conditions.

Accordingly, Scott M. Holper is hereby reinstated to the practice of the law in Nevada on the following conditions: Holper shall (1) continue treatment with Paula Kinchen

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for one year; (2) seek anger management treatment, as agreed to by the parties; (3) obtain a sponsor; (4) have a legal professional mentor for one year; and (5) submit quarterly reports to the State Bar regarding his compliance with these conditions. Additionally, Holper shall pay the costs of the reinstatement proceeding, including \$2,500 under SCR 120, within 30 days of this order.

It is so ORDERED.

In Re: SCOTT C. DORMAN
Bar No.: 13108
Case No.: 76156
Filed: 10/18/2018

ORDER DENYING RECIPROCAL DISCIPLINE AND SUSPENDING ATTORNEY

This is a petition for reciprocal discipline of attorney Scott C. Dorman pursuant to SCR 114. Dorman has been disbarred from the practice of law in North Carolina. He did not self-report the disbarment to the Nevada State Bar, but he has filed an opposition to the petition.

Dorman's North Carolina misconduct arises from his representation of two clients. He failed to file pleadings in a divorce action or withdraw from the action, and after having remarried, the client discovered eight years later that he was never divorced. Dorman also accepted fees, court costs, and traffic fines from a client, but then he failed to deposit the amount received from the client in his trust account, appear on the client's behalf at a hearing, pay the client's court costs and fine, return the client's calls after the client was forced to pay the costs and fine himself, or refund the client's money.

Having considered the petition for reciprocal discipline and Dorman's opposition, we conclude that discipline is warranted, but that "the misconduct established warrants substantially different discipline in this state," SCR 114(4)(c), and thus deny the petition for reciprocal discipline.⁶ In particular, we conclude that disbarment is not warranted because disbarment in Nevada is not equivalent to the disbarment imposed on Dorman in North Carolina, as disbarment in Nevada is irrevocable while in North Carolina an attorney may seek reinstatement after five years. Compare SCR 102(1) with 27 NCAC 01B.0129 of North Carolina's State Bar Discipline & Disability Rules. Thus, we conclude that a five-year suspension is more appropriate than disbarment.

Accordingly, we deny the petition for reciprocal discipline, but suspend Scott C. Dorman from the practice of law in Nevada for five years from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: DISABILITY INACTIVE STATUS OF DALE E. HALEY
Bar No.: 571
Case No.: 77076
Filed: 10/18/2018

ORDER TRANSFERRING ATTORNEY TO DISABILITY INACTIVE STATUS

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

Haley shall comply with SCR 115 as required by SCR 117(7); if Haley is unable or fails to comply, the State bar shall proceed under SCR 118. The State Bar shall effect notice of this order as required by SCR 121.1 and bar counsel shall provide this court with proof that notice has been served.⁷

It is so ORDERED.

In Re: DOUGLAS J. GARDNER
Bar No.: 4609
Case No.: 77063
Filed: 11/09/2018

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 Douglas J. Gardner. Under the agreement, Gardner admitted to violating RPC 1.15 (safekeeping property) and agreed to a 24-month suspension, with all but the first 3 months stayed for a period of 2 years with conditions.

Gardner has admitted to the facts and violation as part of his plea agreement. The record therefore establishes that Gardner violated RPC 1.15 (safekeeping property) by having his trust account out-of-balance on three occasions, depositing personal funds into his trust account, and making personal payments from his trust account.

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).

Gardner has admitted that he violated his duty to his clients to safekeep their property. His mental state was knowing as

he acknowledged that he had poor record keeping habits. One of Gardner's clients may have actually been harmed, but regardless, Gardner's personal use of his trust account exposed additional clients to potential injury. 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 four aggravating circumstances (pattern of misconduct, multiple offenses, vulnerability of victim, and substantial experience in the practice of law) and seven mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to disciplinary authority or cooperative attitude toward proceedings, character and reputation, physical disability, and remorse). Considering all four factors, we conclude that the agreed upon discipline is appropriate.

Accordingly, we hereby suspend attorney Douglas J. Gardner for 24 months, with all but the first 3 months stayed, commencing from the date of this order. Further, Gardner is placed on probation for two years as of the date of this order subject to the following conditions: (1) if Gardner is unable to provide proof of payment of \$21,955.32 to Hedy Calabrese, he shall pay her that amount within the probationary period; (2) Gardner shall provide quarterly documentation to the State Bar as agreed upon in the plea agreement; (3) during his probation, he shall complete six live CLE hours relating to law office management, in addition to the annual CLE requirements, unless the State Bar agrees to an alternative format for those CLE hours; and (4) he shall pay the costs of the bar proceeding, including \$2,500 under SCR 120, within 120 days from receipt of the State Bar's invoice. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

LUCAS A. GROWER

Bar No.: 11384

Grievance File No.: OBC18-0362

Filed: 09/21/2018

LETTER OF REPRIMAND

To Lucas A. Grower:

A Screening Panel of the Southern Nevada Disciplinary Board has considered the above-referenced grievance initiated by your former client, Frances Manuel. The Panel concluded that you failed to comply with the Rules of Professional Conduct and that a Letter of Reprimand is appropriate. This letter shall constitute delivery of that reprimand.

As you know, you represented Ms. Manuel in a civil action related to her surgery in or about November 2015 and her subsequent treatment at HealthSouth Rehabilitation Hospital of Las Vegas.

You pleaded your civil complaint, filed on January 19, 2017, as a general negligence case on the primary theory that HealthSouth had been negligent in hiring the nurse who allegedly harmed your client in December 2015.

During the State Bar's investigation, you indicated that a medical malpractice claim was not pursued because neither you nor Ms. Manuel could afford the costs of bringing such an action, particularly the expense of obtaining the required affidavit from a medical expert. Therefore, you proceeded with her lawsuit based on a negligence theory.

Ultimately, the District Court judge ruled that HealthSouth was a healthcare provider which was "rendering services" to Ms. Manuel when her injuries occurred. Therefore, her claim was time barred because it was filed more than one year after she discovered her injury, and the judge granted the defendant's motion to dismiss the complaint.

The Screening Panel felt that when you realized that neither you nor your client could fund a medical malpractice claim, you should have declined the representation and allowed her to seek an attorney or law firm with the resources to handle her case.

Rule of Professional Conduct 1.1 (Competence) requires an attorney to provide competent representation which requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

By failing to recognize that the actions of Ms. Manuel's health care provider would surely trigger time limitations applied to medical malpractice cases, and then choosing to move forward on negligence theories, her action was dismissed.

Accordingly, you are hereby **Reprimanded** for violating RPC 1.1 (Competence). You also are assessed costs of \$1,500 pursuant to Supreme Court Rule 120 (Costs).

**RESIGNATIONS
(VOLUNTARY, NO DISCIPLINE PENDING)**

S.C.R. 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this Rule:

NAME	BAR NO.	ORDER NO.	FILED
Thomas G. Ryan	9378	76986	10/03/2018
William W. Seegmiller	3598	76987	10/03/2018
Marguerite A. Kirk	6380	76983	10/03/2018

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1. In exchange for Randazza's guilty plea, the State Bar agreed to dismiss the remaining seven counts in the amended complaint.
2. On June 14, 2016, pursuant to a petition filed by the State Bar under SCR 102(4), this court temporarily suspended Errico from the practice of law and restricted his handling of client funds pending resolution of this disciplinary matter. *In re Discipline of Errico*, Docket No. 70438 (Order of Temporary Suspension, June 14, 2016).
3. Oregon also has permanent disbarment, but its rules expressly authorize restitution in conjunction with disbarment. Or. State Bar R. P. 6.1(a). And while the Ohio Supreme Court has imposed restitution with permanent disbarment in at least two reported decisions, neither of those decisions discussed the authority for or purpose of doing so. See *Columbus Bar Ass'n v. Magee*, No. 2017-1737, 2018 WL 3943032 (Ohio Aug. 16, 2018); *Cleveland Metro. Bar Ass'n v. Cicirella*, 979 NE. 2d 244 (Ohio 2012).
4. We acknowledge that this court has imposed restitution with disbarment after it made disbarment permanent in 2007. See, e.g., *In re Discipline of Morishita*, Docket No. 74280 (Order of Disbarment, March 9, 2018); *In re Discipline of Graham*, Docket No. 72693 (Order of Disbarment, Sept. 11, 2017); *In re Discipline of Harris*, Docket No. 71636 (Order of Disbarment, June 13, 2017); *In re Discipline of Chandler*, Docket Nos. 62790, 64798 (Order of Disbarment, Sept. 24, 2014). But our authority for and the purpose served by doing so were not raised in those cases, many of which were not contested.
5. Holper submits this matter to the court on the record, and we accordingly review it without briefing or oral argument. SCR 116(2).
6. While Dorman argues that the proceeding in North Carolina violated his due process rights, we conclude that the North Carolina proceeding was not "so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." SCR 114(4)(a).
7. This order shall be public, but all other documents filed with the court in this matter shall remain confidential. SCR 121(7), (12); see also SCR 117(2). 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

A potential client sits down in your office and proceeds to tell a horror story involving prior counsel. If what your potential client says is true, prior counsel violated multiple rules of professional conduct. So what do you do?

Nevada Rule of Professional Conduct 8.3 states:

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

While this language seems relatively clear, the rule does raise several questions.

What does it mean to know?

In the context of RPC 8.3, a lawyer is generally considered to "know" of a violation when "the supporting evidence is such that a reasonable lawyer under the circumstances would form a firm belief that the conduct in question more likely than not occurred."¹

When must the misconduct be reported?

The misconduct should be reported promptly, as failure to do so would defeat the goal of public protection.

What needs to be reported?

This element of the rule requires the application of professional judgment, and while no one likes a tattle-tale, maintaining the integrity of the profession is the obligation of every attorney. Viewed in this framework, the rule benefits us all.

1. *In re Riehlmann*, 891 So. 2d 1239 (La. 2005) at 1247.