Bar Counsel Report

In Re: ALEXIS A. PLUNKETT
Bar No.: 11245
Case No.: 79075
Filed: 11/08/2019

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 Alexis A. Plunkett be suspended from the practice of law for five years and one day based on violations of RPC 3.3(a)(1) (candor towards the tribunal), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (engaging in conduct which is prejudicial to the administration of justice). The panel further recommends that Plunkett be required to pay the costs of the disciplinary proceedings.

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

Having reviewed the record on appeal, we conclude that there is substantial evidence to support the panel's findings that Plunkett violated RPC 3.3(a)(1) and RPC 8.4(b)-(d). *See Sowers,* 129 Nev. at 105, 294 P.3d at 432; *Ogawa,* 125 Nev. at 668, 221 P.3d at 704. Plunkett was convicted, via a guilty plea, of a felony for using a cell phone with client inmates housed at Clark County Detention Center. Further, evidence in the record showed that Plunkett allowed a client inmate housed with the Nevada Department of Corrections to touch her in a sexual manner in violation of that department's policies. Plunkett also made false statements regarding these actions to the State Bar, to a Las Vegas Metropolitan Police Department detective, and in federal court proceedings. Accordingly, we agree with the hearing panel that Plunkett committed the violations set forth above.

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). Plunkett knowingly violated duties owed to the public (criminal act reflecting adversely on fitness to be a lawyer) and to the legal system (candor to the court; conduct prejudicial to the administration of justice; and conduct involving dishonesty, fraud, deceit, or misrepresentation). Her misconduct injured the profession and the legal system, especially when taking into consideration her position as a criminal defense attorney and the nature of her misconduct, but more importantly, she caused great injury to her clients. As a result of Plunkett's actions, her clients faced additional criminal charges and, if convicted, will possibly have to serve additional jail time. The seriousness of this injury cannot be overstated. Based on the foregoing, and before considering aggravating and mitigating factors, the baseline sanction is disbarment. *See* Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 5.11(a)-(b) (Am. Bar Ass'n 2018) (Disbarment is generally appropriate when ... a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, [or] misrepresentation ... or ... engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.").

We are not convinced that the mitigating factor warrants less severe discipline. The record supports the aggravating factors (substantial experience in the practice of law and illegal conduct) and one of the mitigating factors (no prior discipline) found by the panel, but we disagree with the panel's conclusion that Plunkett showed remorse. As such, we conclude that disbarment is appropriate to serve the purpose of attorney discipline to protect 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), and reject the panel's recommendation of a five-year-and-one-day suspension. We agree, however, with the panel's recommendation to impose the costs of the disciplinary proceeding on Plunkett as it is required under SCR 120(1) and the costs are supported by the record.

Accordingly, we hereby disbar attorney Alexis A. Plunkett from the practice of law in Nevada. Pursuant to SCR 102(1), disbarment is irrevocable. Plunkett shall pay administrative costs in the amount of $3,000 as provided in SCR 120(3), plus any costs for the disciplinary proceedings as specified in SCR 120(1) and set forth in the State Bar's Memorandum of Costs dated June 25, 2019. The State Bar shall comply with SCR 121.1.[1]

It is so ORDERED.

In Re: JAMES W. PENGILLY
Bar No.: 6085
Case No.: 79315
Filed: 11/07/2019

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to grant suspended attorney James W. Pengilly's petition for reinstatement. This court previously suspended Pengilly for six months and one day for violating RPC 8.4(d) (misconduct) when, during a deposition, he "used vulgarities, called the deponent derogatory names, aggressively interrupted the deponent and opposing counsel, answered questions for the deponent, ... repeatedly made inappropriate statements on the record," and "displayed a firearm he had holstered on his hip to the deponent and opposing counsel." *In re Discipline of Pengilly,* Docket No. 74316 (Order of Suspension, Sept. 7, 2018). Pengilly filed his petition for reinstatement on March 25, 2019, after his suspension ended. Following a hearing, the panel unanimously recommended that he be reinstated to the practice of law.

Based on our de novo review,[2] we agree with the panel's conclusion that Pengilly has satisfied his burden of proof in seeking reinstatement. *See* SCR 116(2) (providing that an attorney seeking reinstatement must demonstrate compliance with certain criteria "by clear and convincing evidence"); *Application of Wright,* 75 Nev. 111, 112-13, 335 P.2d 609, 610 (1959) (reviewing a petition of reinstatement de novo). We therefore grant the petition for reinstatement.

Accordingly, James W. Pengilly is hereby reinstated to the practice of law in Nevada. Pengilly shall pay the costs of the reinstatement proceeding, including $2,500 under SCR 120, within 30 days of this order, if he has not done so already.[3]

It is so ORDERED.

In Re: MALIK W. AHMAD
Bar No.: 10305
Case No.: 78425
Filed: 11/07/2019

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Malik W. Ahmad be suspended for one year based on violations of RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct).[4]

We employ a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and thus, will not set them aside unless they are clearly erroneous or not supported by substantial evidence, *see generally Sowers v. Forest Hills Subdivision,* 129 Nev. 99, 105, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa,* 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). In contrast, we review de novo a disciplinary panel's conclusions of law and recommended discipline. SCR 105(3)(b).

As an initial matter, Ahmad argues that this matter must be dismissed because the hearing panel's order was untimely and because the hearing panel abused its discretion in admitting into evidence copies of his bank records. We are not persuaded by either argument. While SCR 105(2)(e) requires a written decision within 30 days of the conclusion of the hearing, it does not require dismissal of a matter when a written order is not entered within that time. Further, dismissal would be inappropriate here as Ahmad at least partially caused the delay in the filing of the written decision. Further, because Ahmad failed to timely object to the admission of copies of his bank records, the hearing panel did not abuse its discretion in admitting those records. *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.,* 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (providing that this court generally reviews a decision to admit evidence for an abuse of discretion); *see* SCR 110; *Hankins v. Adm'r Of Veteran's Affairs,* 92 Nev. 578, 579-80, 555 P.2d 483, 484 (1976) (providing that testimony of a custodian of records is unnecessary when the record's authenticity and use in the regular course of business are demonstrated).

The State Bar has the burden of showing by clear and convincing evidence that Ahmad committed the violations charged. *In re Discipline of Drakulich,* 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's findings of fact in this matter as they are supported by substantial evidence and are not clearly erroneous. After the opposing party was sanctioned in bankruptcy court, Ahmad received payment of the sanctioned amount, including $21,000 in late fees, on behalf of his clients. Ahmad acknowledged that he failed to inform his clients of the amount he received and that he retained the $21,000. While he argues he was owed that amount for legal work, there is no written contract in the record whereby the clients agreed to pay him that amount for legal work. *See* RPC 1.5(c) (requiring a contingency fee agreement to be in writing and signed by the client). Further, the record contains emails between Ahmad and the clients in which the clients communicated their belief that they would not be charged additional attorney fees and Ahmad did not correct that belief in responding to the emails. The client also testified that she had a difficult time communicating with Ahmad. Thus, we agree with the panel's conclusions that the State Bar established by clear and convincing evidence that Ahmad violated the above-listed rules.

In determining whether the panel's recommended discipline is appropriate, 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*

CONTINUED ON PAGE 38

Bar Counsel Report

CONTINUED FROM PAGE 37

Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne,* 104 Nev. 114, 213, 756 P.2d 464, 527-28 (1988) (noting the purpose of attorney discipline).

Ahmad violated duties owed to his clients (communication, fees, and safekeeping property) and the profession (misconduct). Ahmad's mental state was intentional as he purposefully did not inform his clients of the amount they had received so as to avoid a fee dispute. The clients were harmed because they were not provided their funds and they were never informed of the amount they had received or provided an invoice from Ahmad documenting his billed hours so they were unable to contest whether he earned the full amount he retained. The baseline sanction for Ahmad's conduct, before consideration of aggravating and mitigating circumstances, is disbarment. *See* Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 4.11 (Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). The record supports the panel's findings of four aggravating circumstances (prior discipline, dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, and vulnerability of the victim) and two mitigating circumstances (personal or emotional problems and physical disability). While Ahmad asserts additional mitigating circumstances should apply and that certain aggravating circumstances were wrongly applied, the record does not support those arguments. Considering all of the factors, including Ahmad's personal problems and physical disability, and the fact that Ahmad may be entitled to some of the retained funds as attorney fees, we agree with the panel that a downward deviation from the baseline sanction of disbarment is appropriate and that a one-year suspension serves the purpose of attorney discipline.

Accordingly, we hereby suspend attorney Malik W. Ahmad from the practice of law in Nevada for one year from the date of this order.[5] Ahmad shall participate in fee dispute arbitration and any award ordered through that arbitration must be paid as restitution within 90 days of the arbitration decision. Additionally, Ahmad shall pay the costs of the disciplinary proceedings as accounted for in the State Bar's memorandum of costs, including $2,500 under SCR 120, within 30 days from the date of this order.[6] The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: BRIAN MOQUIN
California Bar No.: 257583
Case No.: 78946
Filed: 10/21/2019

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT AND ENJOINING ATTORNEY FROM PRACTICING LAW IN NEVADA

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 California-licensed attorney Brian Moquin. Under the agreement, Moquin admitted to violating RPC 1.13 [sic] (diligence), RPC 1.4 (communication), and RPC 1.16 (declining or terminating representation) during his pro hac vice representation of a plaintiff in Nevada state court. The agreement provides for a two-year injunction on his practice of law in Nevada and requires him to pay the costs of the disciplinary proceeding.

Moquin has admitted to the facts and violations alleged in the complaint. The record therefore establishes that Moquin, who was admitted to practice law in this state pro hac vice to represent a plaintiff in a single matter proceeding in Nevada State District Court, failed to comply with NRCP 16.1 disclosure and discovery requirements and related court orders. Subsequently, on the defendant's unopposed motion, the district court dismissed the action with prejudice as a sanction for the discovery violations. Additionally, Moquin failed to adequately communicate with the client about the status of the case and after the client retained new counsel to pursue a motion for relief from the judgment, Moquin failed to provide new counsel with the client file and other documents that he had agreed to provide, which may have supported setting aside the judgment. As Moquin has 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).

Based on our review of the record, we conclude that the guilty plea agreement should be approved. *See* SCR 113(1); *see also* SCR 99(1); *Matter of Discipline of Droz,* 123 Nev. 163, 167-68, 160 P.3d 881, 884 (2007) (observing that this court has jurisdiction to impose discipline on an attorney practicing with pro hac vice status regardless of the fact he is not a member of the Nevada State Bar). Considering the duties violated, Moquin's mental state (knowing), the injury caused (dismissal of action with prejudice), the aggravating circumstance (substantial experience in the practice of law), and the mitigating circumstance (absence of prior discipline), we agree that a two-year injunction on the practice of law in Nevada is appropriate. *See In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008) (identifying four factors that must be weighed in determining the appropriate discipline — "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"); *cf.* ABA Standards for Imposing Lawyer Sanctions, *Compendium of Prof. Responsibility Rules and Standards,* Standard 4.42(a) (Am. Bar Ass'n 2017) (providing that suspension is appropriate when "a lawyer knowingly fails to perform services for a client and causes injury").

Accordingly, Moquin is hereby enjoined from the practice of law in Nevada for two years from the date of this order. Should Moquin wish to practice law in Nevada after that time, either as a Nevada attorney or through pro hac vice admission, he must disclose this disciplinary matter in any applications he may submit to the pertinent Nevada court or the State Bar of Nevada. As agreed, Moquin must pay the actual costs of the disciplinary proceedings, including $2,500 under SCR 120, within 90 days from the date of this order.

It is so ORDERED.

HARDESTY, J., with whom PARRAGUIRRE and SILVER, JJ., agree, dissenting:

I disagree that prohibiting Moquin from applying for admission to the Nevada Bar or seeking pro hac vice admission for two years is sufficient discipline, considering Moquin's admitted lack of diligence and communication, the gravity of the client's loss, and Moquin's knowing mental state. *See In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008) (listing factors to be weighed in an attorney discipline determination); *In re Discipline of Schaefer,* 117 Nev. 496, 515, 25 P.3d 191, 204 (2001) (noting that "this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment"). I therefore dissent.

The record establishes that Moquin was retained to represent a client in an action concerning breach of commercial lease agreements and in August 2014, Moquin arranged with a Nevada-licensed attorney to have a complaint filed in the Second Judicial District alleging damages of roughly $15 million plus interest. Moquin, who was admitted pro hac vice as the client's counsel, repeatedly failed to comply with NRCP 16.1 discovery requirements during the three-plus years that this matter was pending. In particular, he failed to provide (1) a damages computation in the initial disclosures, or any time thereafter despite the defendants numerous requests for that information and court orders compelling such disclosure; (2) a proper expert witness disclosure; and (3) documents that responded to the defendants' discovery requests. Despite failing to comply with the district court's May 2017 order requiring service of the still undisclosed damages computation, Moquin filed a summary judgment motion with new damages categories and figures based on previously undisclosed documents and expert witness opinions. The defendants then filed a motion to dismiss the complaint as a sanction for discovery violations, which Moquin did not oppose within the extended time for doing so. In granting the motion and dismissing the complaint with prejudice, the district court pointed to the repeated failures to comply with orders and egregious discovery violations that persisted throughout the litigation.

The conditional guilty plea agreement also acknowledges that had the disciplinary matter proceeded to a formal hearing, the State Bar would have presented testimony that Moquin failed to adequately communicate with the client about the status of the case and blamed delays on opposing counsel instead of his own lack of diligence in meeting discovery obligations, while Moquin would have testified that he kept the client informed about the progress of the case. Regardless, Moquin's communication shortcomings continued beyond that, as he failed to meaningfully respond to the client's numerous requests for his file and other documents that Moquin had agreed to provide to assist the client in salvaging the case. Because Moquin never gave the client the complete file or the documents to show that his neglect in handling the case may have been excusable, the district court denied the clients NRCP 60(b) motion for relief from the dismissal order, and the client was thus never able to test his complaint on the merits.

When we are faced with misconduct by an attorney practicing in Nevada without a Nevada law license, we do not have the benefit of all the sanctions available to us in responding to the same misconduct by a Nevada-licensed attorney. *See Matter of Discipline of Droz,* 123 Nev. 163, 168, 160 P.3d 881, 885 (2007) (acknowledging limitations on discipline that can be imposed on an attorney who engages in misconduct in Nevada but does not have a Nevada law license). In particular, we cannot impose the traditional forms of attorney discipline that directly affect an attorney's licensure, such as suspension and disbarment, on a non-Nevada-licensed attorney. *See id.* (discussing case where Indiana court observed that a "law license issued by California was not subject to sanction by the Indiana court"). As a result, when we look to the ABA Standards for Imposing Lawyer Sanctions for guidance in determining the appropriate discipline, we must keep in mind that those standards are focused on the appropriate discipline for an attorney who is licensed in the jurisdiction and in many instances recommend discipline that cannot be imposed on an attorney who is not licensed in the jurisdiction. Thus, when considering the appropriate discipline for misconduct by a non-Nevada-licensed attorney for which the ABA Standards call for a sanction directly affecting licensure, we must be aware of the shortcomings in the standards and "fashion practice limitations through our injunctive and equitable powers that are equivalent to license suspension, disbarment, or other sanctions related to an attorney's license." *Attorney Disciplinary Bd. v. Carpenter,* 781 N.W.2d 263, 269-70 (Iowa 2010). Doing so is important not just to protect Nevada citizens but also to adequately convey to the licensing state the seriousness of the professional misconduct the attorney has committed in Nevada.

In my opinion, the conditional guilty plea agreement and hearing panel recommendation fall short of fashioning a practice limitation that is equivalent to the appropriate sanction if Moquin had a Nevada law license. I am particularly concerned with the reliance on ABA Standard 4.42 as the starting point. When an attorney "knowingly fails to perform services for a client," the line between suspension and disbarment under the ABA Standards depends on the level of injury to the client — "serious or potentially serious injury to a client warrants disbarment [sic] whereas "injury or potential injury to a client warrants suspension. [sic] *Compare* ABA

CONTINUED ON PAGE 40

Bar Counsel Report

CONTINUED FROM PAGE 39

Standard 4.41(b) (disbarment), *with* ABA Standard 4.42(a) (suspension). The record here suggests that the injury to Moquin's client was serious. In presenting the matter, bar counsel stated that this was a legally clear breach of contract matter, and although there is no guarantee that the client would have recovered, he should have had the benefit of diligent representation that would have allowed his claims to be heard. Bar counsel further explained that although Moquin did not provide an NRCP 16.1 damages computation, the claims were based on loss of lease payments of around $50,000 per month and the client was seeking millions of dollars in damages. As such, I believe the court is being asked to look to the wrong standard as a starting point to fashion a limit on Moquin's opportunity to practice in Nevada that would be equivalent to the license restrictions that would be placed on a Nevada-licensed attorney for similar misconduct. Based on the record currently before the court, I would look to ABA Standard 4.41(b) and fashion a limit on Moquin's practice that is equivalent to disbarment.

Even if ABA Standard 4.42(a) were the appropriate starting point, I am not convinced that the agreed-upon two-year injunction is equivalent to a license suspension. Moquin is merely being limited in his ability to apply for regular or pro hac vice admission for a two-year period. There is no suggestion, however, that Moquin ever intends to seek regular admission to the Nevada bar, so in that respect the two-year restriction is of little moment. And SCR 42(6)(a) already presumptively limits the number of pro hac vice admissions an attorney may be granted, thus diminishing the practical impact of a two-year restriction on any such admissions. We also cannot be sure what discipline, if any, will be imposed in California, where Moquin is licensed. In particular, while California law provides that this court's decision that a California-licensed attorney committed misconduct in Nevada is "conclusive evidence that the [California] licensee is culpable of professional misconduct in [California]," Cal. Bus. & Prof. Code § 6049.1(a), it does not require that California impose the same or similar discipline as this court, *see id.* § 6049.1(b)(1) (providing that the disciplinary board shall determine in an expedited proceeding "[t]he degree of discipline to impose"). For these reasons, I am concerned that the agreed-upon discipline approved by the majority does not sufficiently serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (recognizing that the purpose of attorney discipline is to protect the public, courts, and the legal profession). I would reject the conditional guilty plea agreement and remand for proceedings before a hearing panel so it may fully assess this matter and recommend discipline in light of the factors outlined in *Lerner* and consistent with the purpose of attorney discipline.

In Re: RYAN J. CANN
Bar No.: 11073
Case No.: OBC19-0856
Filed: 10/17/2019

LETTER OF REPRIMAND

To Ryan J. Cann:

On October 17, 2019, a Formal Hearing Panel of the Northern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

Factual Background

You were retained by Forrest Walser ("the client") to file a utility patent application with the United States Patent and Trademark Office ("USPTO"). That application was filed on September 27, 2017. On October 30, 2018, the USPTO sent an Office Action explaining that the client's utility patent application received a non-final rejection of all claims. On November 19, 2018, the client hired you to prepare and file an Office Action response to attempt to overcome the rejection for a total flat fee of $1,500. The client paid the fee in two installments. Pursuant to the USPTO, the Response to the Office Action was due on January 30, 2019, with a final deadline of April 30, 2019.

Once the client retained you to respond to the Office Action, you told him on seven different occasions that you would have the Response filed shortly. It wasn't until May 1, 2019, that you told the client that you had been out of the office due to "family problems" with your parents in Florida and had not yet filed the Response to the Office Action. This was after the USPTO's final deadline for filing the Response. You set another self-imposed deadline of May 8, 2019, to complete the Response to the Office Action. You failed to meet that deadline and on May 13, 2019, told the client that you would have it finished that week. The USPTO regards the client's patent application as abandoned as of June 7, 2019. You assert that the client's application can still be revived under 37 CFR §1.137, with the filing of the Response to the Office Action, payment of a fee, and an explanation of the unintentional delay.

The client claims that since May 30, 2019, he has been unable to get you to communicate with him, but he still wishes for you to finalize the response on his behalf.

Application of the Rules of Professional Conduct

Although the Rules of Professional Conduct do not require that a lawyer prevail on behalf of a client, Rule 1.3 (Diligence) of the Rules of Professional Conduct (RPC) requires that a lawyer act with reasonable diligence and promptness in representing a client. In this instance, you admittedly did not pursue the Response to the Office Action with reasonable diligence. You knowingly failed to file the Response before the USPTO's deadline. As a result, the client's application was deemed abandoned by the USPTO. Your breach of your obligations pursuant to RPC 1.3 (Diligence) has the potential to result in injury to the client if he does not have the opportunity to pursue his Patent Application. But the Patent Application can be revived

by filing the Response and the client continues to want you to complete the filing.

In addition, RPC 1.4 (Communication) requires a lawyer to (i) "keep the client reasonably informed about the status of the matter" and (ii) "promptly comply with reasonable requests for information." You knowingly failed to timely respond to the client's requests for information and/or attempts to make contact, particularly after the Response deadline was missed. However, you have re-engaged with the client and the client continues to want you to represent him. This indicates a lack of substantial injury to the client because of your failure to communicate.

Applicable Standards for Imposing Lawyer Sanctions

Standard 4.42 of the ABA Standards for Imposing Lawyer Sanctions provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client, or engages in a pattern of neglect, and causes injury or potential injury to a client. In this instance, you knew of the Response deadline and failed to meet it. You also failed to communicate with the client for a period of time, causing the client anxiety about his patent application. However, your misconduct involves only one patent application and the failure may be repairable. In addition, the injury to the client cannot be measured beyond the fact that he has been anxious about the status of his application and that he may lose the opportunity to try to patent his invention because of your lack of diligence. Thus, the injury is primarily a potential injury.

The Panel does not consider the unsubstantiated assertion of "family problems" as mitigation in this matter. It does take into consideration that (i) you have no prior discipline and (ii) you accepted responsibility for your misconduct. Therefore, the Panel finds that it is appropriate to apply ABA Standard 4.42 but use a downward deviation for the sanction.

REPRIMAND

Based on the foregoing, you are hereby REPRIMANDED for violating RPC 1.3 (Diligence) and RPC 1.4 (Communication). I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of $1,500.

In Re: RONALD C. GORSCHE
Bar No.: 12382
Case No.: OBC19-0967
Filed: 10/08/2019

LETTER OF REPRIMAND

To Ronald C. Gorsche:

On May 1, 2019, your bar license was suspended for non-compliance with mandatory continuing legal education (CLE) requirements. A copy of the notice or suspension was sent to your Supreme Court Rule (SCR) 79 email address, ron@gorschelaw.com.

On August 6, 2019, you emailed a traffic negotiation request to the Henderson Municipal Court from that same ron@gorschelaw.com email address.

On August 7, 2019, an employee of the court responded to your email, stating that the request had not been processed due to the suspension of your bar license.

On August 8, 2019, you made an appearance on behalf of a client at the Henderson Municipal Court attempting to resolve the traffic ticket.

Pursuant to Nevada Rule of Professional Conduct 5.5, a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. By appearing in the Henderson Municipal Court while your bar license was suspended, you violated the regulation of the legal profession in Nevada. You did so after having been sent notice to your registered email address that you were suspended, both from the State Bar and the Henderson Municipal Court. In so doing you caused injury or potential injury as the public relies on the standards or attorney licensing to ensure they are adequately represented when the choose to retain counsel.

Pursuant to ABA Standard 7.2, the baseline discipline for your misconduct would be suspension. "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation or a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." However, as you have no prior discipline, this screening panel has found it appropriate to grant a downward deviation from the baseline, and hereby REPRIMANDS you for your misconduct. In addition, within 30 days or this letter of reprimand, you are required to remit to the State Bar of Nevada the amount or $1,500 pursuant to Supreme Court Rule 120(3).

1. In addition to the notices and disclosures required by SCR 121.1, the State Bar shall also send a copy of this order to any other state bar, if any, wherein Plunkett is licensed to practice law.
2. This matter was submitted to the court on the record and we therefore review it without briefing or oral argument. *See* SCR 116(2).
3. The Honorable Ron Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.
4. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.
5. To the extent the parties additional arguments are not addressed herein, we conclude they do not warrant a different outcome.
6. We are not persuaded by Ahmad's argument that he should not have to pay the full amount listed in the memorandum because a portion of the listed costs are unreasonable. Because those costs are allocable to the disciplinary proceedings and the panel deemed them to be reasonable, we conclude that they were properly assessed against Ahmad. *See* SCR 120 (providing that the attorney subject to discipline will be assessed the allocable costs of the proceedings in addition to the $2,500 administrative costs required under SCR 120(3)).

TIP FROM THE BAR COUNSEL

Attorneys Must Take Local Counsel Duties Seriously to Avoid Sanctions

Pro hac vice admission requires a Nevada-licensed attorney to sponsor an applying attorney. Being local counsel for a specially admitted attorney can be an invaluable opportunity to witness attorneys in specialized areas of practice. It may seem like an easy task, but sponsoring another attorney can lead to sanctions if the Nevada-licensed attorney does not take the role seriously or devote enough time to the representation. Nevada Supreme Court Rule 42(14) requires the Nevada-licensed attorney to:

(i) be responsible for and actively participate in the representation in Nevada;
(ii) attend all matters in open court unless otherwise ordered; and
(iii) ensure compliance with all state and local procedural and ethical rules.

In essence, the court and all other attorneys in the case are relying on the sponsoring attorney to make sure that the case runs smoothly.

Nevada Rule of Professional Conduct 5.1 imputes ethical responsibility for the specially admitted attorney to the Nevada-licensed attorney. If the specially admitted attorney engages in misconduct, then the Nevada-licensed attorney may be sanctioned. The Nevada-licensed attorney is also responsible for mitigating or avoiding the consequences of the specially admitted attorney's misconduct. This likely means the Nevada-licensed attorney needs to review documents for filing, participate in discovery and participate in all hearings. Make sure the specially admitted attorney understands how involved local counsel will be and that you trust the specially admitted attorney to abide by the rules.

Pro hac vice sponsorship can give you a front-row seat to some great lawyering, but that opportunity comes with a responsibility that you cannot afford to overlook.