

In Re: BRETT J. MARSHALL
Bar No.: 9116
Case No.: 71352
Filed: April 20, 2017

ORDER OF SUSPENSION

Attorney suspended for one year, stayed six months, based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(b) (bar admission and disciplinary matters), RPC 8.4 (misconduct) and SCR 79.

A Southern Nevada Disciplinary Board hearing panel recommended attorney Brett Marshall be suspended for one year, stayed six months, conditioned on payment of restitution and placement on probation for three years. Marshall was found to have violated RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 8.1(b) (bar admission and disciplinary matters), RPC 8.4 (misconduct) and SCR 79.

This matter was submitted to the court for decision based on the record, as no briefs were filed. The court record established that Marshall violated the above-referenced rules by accepting a litigation matter he conceded he was ill-equipped to handle, pursuing a separate litigation matter even though the matter was statutorily required to proceed through arbitration, failing to communicate with his clients, accepting fees for work he did not complete, failing to safekeep those fees until he had earned them, failing to keep his client files secured, failing to timely respond to some bar grievances and failing to notify his clients or the state bar of his relocation. Marshall violated duties owed to his clients (competence, diligence, communication and safekeeping property) and the profession (failure to update his contact information). The conduct alleged in the complaint appears to have been negligent. The clients involved were injured as a result, primarily in that they received little or no legal services in exchange for the fees they paid to Marshall. Further, Marshall's failure to respond to discovery requests placed one client in a position where it was necessary for her to settle her litigation to avoid summary judgment, and Marshall's failure to complete the requested work resulted in the garnishment of other clients' wages.

The court noted that the hearing panel found the following aggravating circumstances under SCR 102.5(1):

- Prior disciplinary offenses (A letter of reprimand issued on March 9, 2012, related to Marshall's representation of a client while employed by a fraudulent loan modification company, and a letter of reprimand issued on March 14, 2012, related to his failure to communicate with a client or file a bankruptcy on behalf of the client after accepting payment from the client.),
- Pattern of misconduct, Multiple offenses, and Substantial experience in the practice of law.

The panel also found four mitigating circumstances under SCR 102.5(2):

- Absence of dishonest or selfish motive,
- Personal or emotional problems,

- Timely good faith effort to make restitution or to rectify consequences of misconduct, and
- Full and free disclosure to disciplinary authority or cooperative attitude toward proceeding.

Specifically, Marshall suffered a serious medical condition that required lengthy hospital stays over a six-month period of time and hindered his ability to practice law.

Considering these factors, the court agreed that suspension is warranted. Although the court further agreed that a stayed suspension of one year with a three-year probationary period is sufficient to serve the purpose of attorney discipline, the court believed that the purpose of attorney discipline is better served by staying the suspension for the entire term of the probationary period. The court agreed that the recommended conditions of probation are appropriate, whereby Marshall shall not have any further sustained violations of any Rule of Professional Conduct and shall have a mentor who files quarterly reports with the state bar. However, the court expressed concern that the recommended discipline does not address Marshall's testimony that he did not see a reason to track the work he completed on flat-fee client matters, and that he believed that keeping his client files with a non-attorney friend was an appropriate way to secure such files. Thus, to adequately protect the public, the courts and the legal profession, the court found Marshall should also be required to complete two CLE credits in the areas of ethics or law practice management, in addition to normal CLE requirements, for each year during his probationary period.

Accordingly, the court suspended attorney Brett J. Marshall from the practice of law in Nevada for a period of one year. That suspension is stayed, and Marshall is placed on probation for three years from the date of this order subject to the following conditions:

1. He shall pay the restitution recommended by the hearing panel within six months;
2. No violation of any Rule of Professional Conduct is sustained against him during the probationary period;
3. He obtain a mentor approved by the state bar, and the mentor must file quarterly reports with the state bar; and
4. He complete two CLE credits in the areas of ethics or law practice management, in addition to normal CLE requirements, for each year of his probationary period.

Marshall shall also pay the costs of the disciplinary proceedings, including fees in the amount of \$2,500, as invoiced by the state bar within 30 days of the receipt of the state bar's invoice.

In Re: LOREN C. DATLOF
Bar No.: 10331
Case No.: 71579
Filed: May 5, 2017

Order Approving Conditional Guilty Plea Agreement

Attorney suspended for one year, commencing January 1, 2017, following a conditional guilty plea agreement in which the attorney admitted to violations of RPC 1.3 (diligence), RPC 1.16 (declining or terminating

representation), RPC 3.4 (fairness to opposing party and counsel) and RPC 8.4 (misconduct).

A Southern Nevada Disciplinary Board hearing panel recommended the acceptance of a conditional guilty plea from attorney Loren Datlof.

Under the agreement, Datlof admitted to violations of RPC 1.3 (diligence), RPC 1.16 (declining or terminating representation), RPC 3.4 (fairness to opposing party and counsel) and RPC 8.4 (misconduct). The agreement provides for a one-year suspension commencing January 1, 2017, the day he voluntarily agreed to suspend his practice, the payment of \$2,802.48 in restitution and the payment of the costs of the disciplinary proceedings.

Under the agreement, Datlof admitted to the facts and allegations in the complaint, including failing to respond to discovery, to file a prearbitration brief or to appear at an arbitration, and also by filing a meritless request for a trial de novo.

Furthermore, the record established Datlof violated duties owed to his clients (diligence, declining or terminating representation) and the profession (fairness to opposing party and counsel). The admitted violations reflect negligence or knowing misconduct. The clients were harmed by the dismissal of their case because of Datlof's failure to respond to discovery, file a necessary hearing brief or appear at the arbitration. Further, the opposing party was harmed by having to file a motion to strike the meritless trial de novo request after Datlof had failed to pursue the action at arbitration.

Considering the duties violated, the injury caused by Datlof's misconduct, and the aggravating and mitigating circumstances, including Datlof's previous disciplinary action involving similar violations, the court concluded that the guilty plea agreement should be approved. Accordingly, the court suspended attorney Loren C. Datlof from the practice of law in Nevada for a period of one year, retroactive to January 1, 2017, the day on which Datlof voluntarily agreed to suspend his practice. (Datlof will be subject to the remaining portion of his discipline outlined in *In re Discipline of Datlof*, Docket No. 67882 (Order Approving Amended Conditional Guilty Plea Agreement, Dec. 2, 2015), upon his reinstatement.) Further, Datlof shall pay \$2,802.48 in restitution to his clients, if they have already paid the subject judgment, or to opposing counsel if his clients have yet to pay the judgment. Datlof shall also pay the costs of the disciplinary proceedings, plus fees in the amount of \$2,500 as invoiced by the state bar within 30 days from the date of this order.

KEVIN L. JENSEN

Bar No.: 8132

Re: Grievance File No. OBC 17-0068

LETTER OF REPRIMAND

To Kevin L. Jensen:

"A screening panel of the Southern Nevada Disciplinary Board convened on April 4, 2017, to consider the above-referenced grievance against you. The panel concluded that you violated the Rules of Professional Conduct (RPCs), and that you should be reprimanded. This letter constitutes delivery of that reprimand. You were originally licensed to practice law in Nevada on October 11, 2002, but were suspended by the Nevada Supreme Court on December 28, 2012, for failure to comply with CLE requirements. You have never rectified that suspension and remain suspended as of this date.

The grievant alleges that his company, FRIAS Transportation, a Las Vegas limousine company, received a

letter from you advising that you are representing a plaintiff in a personal injury case against FRIAS for an accident that occurred in Las Vegas, where FRIAS is located. The grievant discovered, via the State Bar of Nevada's website, that you were suspended from practicing law in Nevada.

On January 9, 2017, you sent a letter to FRIAS, advising them that you represented Heather Barrett in a claim against the company. The bar sent you a letter of investigation, resulting in an irate telephone call from you to the state bar investigator, during which you described your outrage at the state bar for acting upon FRIAS's spurious grievance. After you spoke with assistant bar counsel, you submitted your response, which included a six-page, single-spaced letter that was received on February 7, 2017.

You explained that you were hired by an Arizona resident who was involved in a traffic collision with a FRIAS vehicle in Las Vegas on November 17, 2016. The Las Vegas Metro Police Department records you provided indicate that the matter was a 'name exchange only,' with a reference number of 161117-0987. Your client alleges that she sustained physical injuries in that accident and hired you to represent her in a personal injury action. You submitted her medical bills to Allstate Insurance, which declined payment. On January 9, 2017, you sent your letter of representation to FRIAS, kicking off this instant grievance. You stated that when you take on representation of a personal injury client, you 'always' send a letter of representation to the opposing party, that this often involves sending a letter out of state, and that this practice is: 'particularly the case when I am dealing with an insurance company.' You claimed that if the case had reached the point at which the filing of a lawsuit was required, you would associate with local counsel or help the client find an attorney in that jurisdiction. You also provided a copy of the retainer agreement between yourself and the client.

The practice of law has been defined by the Nevada Supreme Court as applying the law to specific facts. (In the *Matter of Discipline of Glen Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008)). It does not matter whether this is done inside or outside a courtroom. RPC 5.5 (Unauthorized Practice of Law) prohibits the unauthorized practice of law. In this case, you accepted a personal injury case within Nevada jurisdiction in violation of that rule.

Based on the foregoing you are hereby REPRIMANDED for violation of RPC 5.5 (Unauthorized Practice of Law). We 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."

NIKOLL NIKCI

Bar No.: 10699

Case No.: OBC15-1375

LETTER OF PUBLIC REPRIMAND

To Nikoll Nikci:

"The complainant treated one of your clients in September 2011, on a lien basis. In July 2015, the matter settled, and you contacted the doctor to inform him of such.

By September 2015, the doctor still had not received payment on the lien, and as such, he called you to discuss the matter. You never returned this phone call. Later, the complainant had his staff contact your client directly, who then

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told the doctor's staff that she had received nothing from the case. As such, the doctor filed a grievance against you.

While it is true that you did pay your client as required, despite her allegations otherwise, you did not pay the doctor on his valid lien, and you disbursed the monies that should have gone to the doctor to your client. It was your position that the doctor's fees would have been handled through the bankruptcy proceeding that your client had filed, but the fact that your client was in bankruptcy did not eliminate your responsibility to safekeep the money at issue and to communicate with the doctor regarding this matter.

The panel appreciated the fact that you have taken responsibility for this matter and the fact that you have agreed to pay the amount of the lien from your own funds. Nonetheless, you violated Rule of Professional Conduct (RPC) 1.4 (communication), for failing to timely communicate with the doctor and are hereby PUBLICLY REPRIMANDED."

KURT C. LAMBETH

Bar No.: 6390

Case No.: OBC15-0947

LETTER OF PUBLIC REPRIMAND

To Kurt C. Lambeth:

"Your client was involved in a car accident on January 2, 2015. She then retained you to represent her. At the time, your office was located at 624 S. 10th Street.

Thereafter, you relocated and began working for Premier Legal Group. On March 18, 2015, you asked your client to sign a retainer agreement with Premier Legal Group. On July 7, 2015, you settled the case and presented your client with a settlement check for \$12,000. The settlement check was made payable to your client only. You asked your client to deposit the settlement funds into her personal account at U.S. Bank, which she did. You accompanied your client to U.S. Bank for this transaction.

While at the bank, you asked the teller when the funds would be available. The teller told you that \$4,800 would be available on July 9, and \$7,000 would be available on July 15, 2015. You then instructed your client to give you checks to pay the three medical liens and another to pay your fee. Your client gave you four blank checks, but asked you to check with her prior to cashing the checks, to ensure there were adequate funds in the account.

On July 9, 2015, your client contacted U.S. Bank to ensure that she had funds to pay one of her personal bills. She was told she did. Later that afternoon, she attempted to make a payment, but it was declined. She called the bank and was advised that a check for \$3,960 had been cashed at the same branch location she visited with you. This check reflected the attorney fees you had taken for the representation.

Your client then called the branch location at which she deposited the check and was advised that you came in and cashed the check for \$3,960. Your client immediately called you and instructed you to return the money and the blank checks she had given you. You went to your client's place of work with a personal check and told her to cash it the next day. Your client

ultimately paid the medical bills herself and provided proof to the state bar of the same.

As such, you violated Rule of Professional Conduct I.15 (safekeeping property), for failing to adequately use established protocols for safekeeping funds that should have been kept in a trust account, and are hereby PUBLICLY REPRIMANDED."

RESIGNATIONS

No discipline pending.

Resignation Petitioner	Bar No.	Supreme Court Case No.
Silverberg, Scott H.	13761	72852
Kellison, Craig M.	2061	72854
Aebi, Ana Colon	600	72855
McFetridge, George. William. Jr	7442	72857
Baker, Ralph E.	3909	72858
Herberg, Peter E.	7010	72859
Bork, Robert A.	1820	72860
Bell, Kenneth Gary	1693	72861
Thomas, Kaaran E.	7193	72862

TIPS FROM THE OFFICE OF BAR COUNSEL

I'm opening my own law firm and I am concerned about the cost of a domain for my email. Can I use a "gmail" address?

Using them may be cheap (even free) and easy, but public domains also carry a greater risk for data mining and hacking. Therefore, your best bet is to use a private domain email address. This will help protect both you and your clients.

RPC 1.6 requires that a lawyer maintain confidentiality pertaining to client information and communication. However, if an attorney's email is hosted by a public/non-secure domain, such as "[@gmail.com](mailto:example@gmail.com)," "[@aol.com](mailto:example@aol.com)" or "[@yahoo.com](mailto:example@yahoo.com)," the domain is less secure, meaning that client communication conducted within that domain is also less secure. A private email domain, e.g. "[@superlawyer.com](mailto:example@superlawyer.com)" or "[@lawfirmname.com](mailto:example@lawfirmname.com)," will help your firm protect client confidentiality.



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DAY 2 | August 16th

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DAY 3 | August 17th

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