In Re: VICKI GRECO
Bar No.: 8476
Case No.: 78384
Filed: 04/05/2019

ORDER OF DISBARMENT

This court suspended attorney Vicki Greco from the practice of law in Nevada on April 22, 2016, pursuant to a petition filed under SCR 102(4)(b) that demonstrated that she appeared to have misrepresented facts and submitted false evidence in judicial proceedings and failed to properly safe-keep client funds. *In re Discipline of Greco,* Docket No. 70067 (Order Imposing Temporary Suspension, April 22, 2016). Thereafter, the State Bar filed a complaint alleging that Greco had violated RPC 3.1 (meritorious claims and contentions), RPC 3.3 (candor toward the tribunal), RPC 3.4(a) (fairness to opposing party and counsel), RPC 4.1 (truthfulness in statements to others), and RPC 8.4 (misconduct).

The Southern Nevada Disciplinary Board has filed a petition for Greco's disbarment by consent. *See* SCR 112(2). Under SCR 112, an attorney who is facing a disciplinary proceeding may consent to disbarment by delivering an affidavit that complies with SCR 112(1)(a)-(d). Greco has done so. In particular, the affidavit acknowledges that she has pleaded guilty to three felony offenses and one gross misdemeanor offense related to her conduct in filing or assisting in filing false or forged records on behalf of clients in 91 cases and destroying or instructing others to remove and destroy the false/forged records located in client files and computer records in an effort to conceal her wrongdoing. She further acknowledges that the RPC violations alleged in the bar complaint are based on the conduct she admitted in the criminal case and that she could not successfully defend against the pending disciplinary charges.

Pursuant to SCR 112, attorney Vicki Greco is disbarred. Her disbarment is irrevocable. SCR 102(1). The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: SEAN L. BROHAWN
Bar No.: 7618
Case No.: 77967
Filed: 03/21/2019

ORDER APPROVING CONDITIONAL GUILTY PLEA

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Sean L. Brohawn. Under the agreement, Brohawn admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.2 (expediting litigation), RPC 8.1 (bar admission and discipline matters), and RPC 8.4 (misconduct). He agreed to an 18-month suspension to run concurrent with the 18-month suspension imposed in *In re Discipline of Brohawn,* Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018).

Brohawn has admitted to the facts and violations alleged in the complaint. The record therefore establishes that a client paid Brohawn to file a lawsuit against the State of Nevada and the Board of Cosmetology. The State filed a motion to dismiss the lawsuit. Brohawn did not tell the client about the motion and took no action to oppose it. The motion was granted, and Brohawn failed to tell the client that her lawsuit had been dismissed. When the client found out about the dismissal, Brohawn said it was due to a glitch and he would take care of it. He took no action, and the State moved for attorney fees. Brohawn did not tell the client about the motion for attorney fees and did not oppose it. The State was awarded attorney's fees. And when the State Bar contacted Brohawn regarding another matter, he failed to participate in the grievance process.

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

Brohawn admitted that he knowingly violated duties to his client (diligence, communication, and expediting litigation), and to the legal profession (bar admissions and disciplinary matters). He further admitted that his client was harmed because his failure to timely file documents in her lawsuit resulted in the matter being decided against her; moreover, she was required to pay attorney fees. The legal profession was harmed when Brohawn failed to participate in the grievance process regarding the other matter. Based on the most serious instance of misconduct at issue, Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards* 452 (Am Bar Ass'n 2017) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations."), the baseline sanction before considering aggravating and mitigating circumstances is suspension. *See id.* Standard 4.42 (providing that suspension is appropriate if a lawyer "knowingly fails to perform services for a client and causes injury or potential injury to a client"); 6.22 (providing that suspension is appropriate when the lawyer knows that he is violating a court order or rule and causes injury to a client). The record supports the panel's findings of three aggravating circumstances (multiple offenses, pattern of misconduct, and substantial experience in the practice of law) and one mitigating circumstance (mental disability). Considering all four factors, we conclude that the agreed-upon 18-month suspension to run concurrent with the suspension in Docket No. 73964 is appropriate.

Accordingly, we hereby suspend attorney Sean L. Brohawn from the practice of law in Nevada for a period of 18 months, to run concurrent with the suspension imposed in *In re Discipline of Brohawn,* Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018). Brohawn shall pay restitution to his former client in the amount of $2,000 within 60 days of the date of this order. In addition, Brohawn shall remedy the monetary consequence of his failure to respond, on his client's behalf, to the State of Nevada's motion for attorney fees, whether by having the judgment set aside and paying for the attorney fees and costs associated with such setting aside of the judgment, or otherwise extinguishing the requirement that the client pay $2,671.34 to the State of Nevada if it cannot be set aside. Further, Brohawn shall pay the actual costs of the disciplinary proceeding, including $2,500 under SCR 120 within 60 days of the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: ALEXIS A. PLUNKETT
Bar No.: 11245
Case No.: 78337
Filed: 04/05/2019

ORDER IMPOSING TEMPORARY SUSPENSION

This is a petition by the State Bar for an order temporarily suspending attorney Alexis Plunkett from the practice of law under SCR 102(4)(b), pending the resolution of formal disciplinary proceedings against her. The petition alleges that Plunkett has threatened or intimidated witnesses. Based on the petition and supporting documents, we conclude that the State Bar has made a sufficient showing that Plunkett "appears to be posing a substantial threat of serious harm to the public" and therefore her immediate temporary suspension is warranted. SCR 102(4)(b).

Attorney Alexis Plunkett is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against her. Plunkett is precluded from accepting new cases or continuing to represent existing clients immediately upon service of this order. *See* SCR 102(4)(d) (providing 15-day period to wind down representation of existing clients "unless the court orders otherwise"). The parties shall comply with SCR 115 and SCR 121.1.[1]

It is so ORDERED.

KAREN L. WINTERS
Bar No.: 3086
Grievance File No.: OBC18-0267
Dated: 02/25/2019

PUBLIC REPRIMAND

To Karen L. Winters:

In or about August, 2016, you represented Heidi Roach ("Roach") in amending her (and her husband's) Trust for a twelfth time. The amendment designated Ralph and Penny Grant as beneficiaries. The Grants also had financial Power of Attorney for Roach that was previously prepared by another attorney. At the time that the Trust was amended, Roach was approximately 83 years old.

On or about August 5, 2016, you received a letter from the Roaches' former counsel that the Roaches had previously been exploited by other caregivers and that he had concerns about the same thing happening with the Grants. However, the Roaches had informed you the Grants were longstanding friends whom they knew and trusted and that the Roaches did not want any family members or charities designated as the beneficiaries of their Estate.

Roach's husband passed away shortly after the Trust was amended.

In or about August, 2016, the Grants sold a yacht that the Roaches owned for approximately $383,000. In or about September, 2016, the Grants sold a mobile home park that the Roaches owned for approximately $625,000, with a promissory note for the majority of the sale proceeds. You knew about the sale of the mobile home park.

In October, 2016, the Grants transferred $525,000 out of Roach's bank account and put it in a Canadian bank account that did not bear Roach's name. You were not aware of this transfer at the time it occurred.

During this time period, Roach's health declined and she was residing in an assisted living facility no later than January, 2017. As of February, 2017, Roach's physician identified that she suffered from dementia.

In March, 2017, the Grants sold Roach's primary residence for $649,000.

In early April, 2017, Roach's bank denied two checks for $500,000 each that were made out to the Grants because the bank did not recognize the signature on the first check and the second check did not have the proper Power of Attorney signature. Roach's account had approximately $530,000 in it at the time; thus, had one of the checks been honored, Roach would have had almost nothing left of her own funds with which to support herself.

When the Grants brought Roach into the bank to discuss the denied checks, an employee of the bank insisted on speaking with Roach without the Grants present. He asked Roach about the Grants' access to Roach's funds at the bank. The employee reported that Roach stated she did not want the $500,000 to go to the Grants and she was upset about the loss of her home.

The Grants contacted you in April, 2017 (after the bank declined the checks), stating that Roach's bank was not honoring the financial Power of Attorney ("POA") and they were, therefore, unable to pay Roach's bills. In your experience, banks frequently do not honor POAs and will instead only recognize letters of guardianship. Therefore, you identified to the Grants that a guardianship would remedy the issue.

Although you spoke with a national representative of the bank regarding the bank not honoring the POA, you did not speak to the bank employee that made the decision to not honor the Grants' POA. Your primary understanding of what happened at the bank was based on the Grant's [sic] representations to you.

You were also unaware, at the time, that despite having over $500,000 of Roach's funds in their bank account, the Grants were not paying Roach's bills and, instead, represented to you that they needed access to her accounts to be able to do so.

You spoke with Roach and believed that Roach wanted to proceed with a voluntary guardianship with the Grants serving as the guardians. Roach also made it clear at that time that she did not want any family members or the public guardian involved due to her past experiences with each. Although there is evidence to the contrary, you believed that Roach's wishes were not influenced by the Grants.

Therefore, you prepared an *ex parte* Petition for Appointment of Temporary and Permanent Guardian of the Estate on Roach's behalf. Included with the Petition was a declaration from Roach's healthcare provider that stated Roach suffered from dementia and did not comprehend the nature of her personal affairs.

On April 18, 2017, the Court held a hearing on the Petition and stated that the Petition would not be granted as filed because of the healthcare provider's statements regarding Roach's mental capabilities. You then revised the Petition so that the Grants could file the Petition *in pro per*.

On April 26, 2017, the Douglas County Sheriff's Department contacted you about issues with Roach's bank account and concerns with the Grants' check-writing. You understood that the telephone call was only to confirm the authority of the Grants' Power of Attorney. You did not alter

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your course regarding the Petition and you did not investigate further after the Sheriff contacted you.

You felt pressure to establish a guardianship so that Roach's outstanding bills could be paid and to do so in the most cost-effective manner because of the Grants' representation about Roach's mounting expenses.

On or about May 3, 2017, you filed the Grants' *pro per* Petition. You told the Grants to get their own counsel, but they indicated it was difficult to do so. You also referred the Grants to another attorney, but they ultimately did not retain him.

You recognized that it would be a conflict of interest to represent the Grants in filing the Petition. However, you failed to heed that your interactions with the Grants, as third parties, still created a substantial risk that your ability to fulfill your responsibilities to Roach would be limited, which is a conflict of interest as well. Further, Roach was not in a position to provide valid informed consent to proceed despite any conflict of interest.

On May 5, 2017, the Court issued a temporary guardianship order. The Order required all Roach's funds be held in a blocked account, with the Grants only having access to sufficient funds to pay Roach's monthly expenses. You retrieved a copy of the Order from the Court, and forwarded it to the Grants.

A hearing regarding permanent guardianship was set for June 20, 2017.

During the week of June 12, 2017, you learned that the Elder Protection Services ("EPS") had opened a matter regarding Roach based on concerns that the Grants were exploiting and taking money from Roach. After speaking with the EPS representative, you asked the Grants to provide all bank statements and documentation for Roach's accounts and monies for the time period during which the Grants held a POA and up to June 2017.

The day before the hearing on the permanent guardianship petition, the Grants informed you that Roach had gifted them $525,000 during the time the Grants held the POA. You told the Grants to immediately return the funds to Roach's blocked bank account. However, at the permanent guardianship hearing, you did not specifically tell the Court about the "$525,000 gift," your contact with the Douglas County Sheriff, or your contact from EPS. The Grants were granted permanent guardianship over Roach.

On July 6, 2017, Roach's niece, Nonine Freitas, filed an *ex parte* Motion for Order to Compel Production, Permit Discovery, and Suspend Power and for Petition for Co-Guardians to Appear and Answer Under Oath. A hearing on Freitas's Motion was held on August 3, 2017. Mid-hearing, Freitas and the Grants stipulated to the removal of the Grants as Roach's guardians and that the Grants would not have any physical visits with Roach until her primary physician provided a written determination that their visiting is in Roach's best interest. The Court's subsequent Order memorialized the agreement and added that the Grants were restrained from discussing financial accounts or property interests with Roach if they had any telephone contact with her.

Freitas was appointed Guardian of the Person of Roach and Nicole Thomas, Public Guardian, was appointed Guardian of the Estate of Roach. The Court's Order also relieved you as counsel for Roach and appointed new counsel for Roach.

On February 22, 2018, the Court issued an Order denying your request for attorney's fees, stating that the evidence showed you:

> provided legal advice to the Grants [the prior Guardians] including, but not limited to, advising them as to the requirement and amount of a guardianship bond, revising documents to add the requirement of a blocked account, answering other questions and revising documents based on information received from the Grants. [Respondent] never had a signed (by anyone) engagement agreement and had no waiver of conflict.

The Court's Order also found that you had violated your duty of candor to the Court (RPC 3.3) and that you acted with mixed loyalties (RPC 1.3 and RPC 1.7). The Court's Order stated that "had [you] fulfilled [your] duties to the Court and Ms. Roach, then the Grants would not have been appointed in the first place." The Court's Order also noted, however, that you did not work with intent to defraud Roach during your representation.

Violations of the Rules of Professional Conduct

You had a duty, pursuant to RPC 1.7 (Conflicts of Interest: Current Clients), to identify when there was a significant risk that your representation of one client would be materially limited by your responsibilities to another or your own personal interest and to withdraw from the representation or get informed consent, confirmed in writing, from your client before proceeding further. You knowingly[2] violated this duty when you failed to identify, or heed, the conflict inherent in assisting the Grants in obtaining the guardianship, even as third-parties, when you were tasked with advocating on behalf of Roach and when Roach was unable to give informed consent to otherwise proceed. You failed to put your ethical obligations first.

You also had a duty, pursuant to RPC 3.3 (Candor Towards the Tribunal), to refrain from knowingly making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law made to the tribunal by the lawyer. You knowingly violated this duty when you failed to clearly articulate the status of Roach's estate at the June 20, 2017 hearing.

These aforementioned violations (i) injured and/or could have significantly injured, your client, (ii) injured the integrity of the profession, and (iii) injured the efficiency of the judicial process.

Finally, you had a duty, pursuant to RPC 8.4(d) (Misconduct- prejudicial to the administration of justice), to refrain from engaging in conduct that is prejudicial to the administration of justice. You knowingly violated this duty when you failed to identify, or engage in, the conduct necessary to properly advocate on behalf of Roach and to allow the judicial process to properly operate. The judicial system was injured by this violation.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.7 (Conflict of Interest: Current Clients), RPC 3.3 (Candor Toward the Tribunal), and RPC 8.4(d) (Misconduct- prejudicial to the administration of justice) and are hereby **PUBLICLY REPRIMANDED.**

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1. This is our final disposition of this matter. Any new proceedings shall be docketed under a new docket number.
2. A knowing violation is one taken with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. This is different, and less severe, than acting intentionally.

TIPS FROM THE OFFICE OF BAR COUNSEL

PROTECTING CONFIDENTIAL CLIENT INFORMATION DURING DEPOSITION BREAKS

Under Nevada Rule of Civil Procedure (NRCP) 30, a party in a lawsuit is generally allowed to take the deposition of any person or party.[1] Attorneys often confer with clients during breaks in these depositions. But did you know that if you request the break, then you might waive your client's privilege to the information you discuss?

If an attorney requests a break during a deposition to discuss the deponent-client's testimony, then the attorney waives the attorney-client privilege.[2] This rule strikes a balance between the attorney-client privilege and witness coaching. The attorney-client privilege survives a routine deposition break, but a deponent-client waives that privilege when his or her attorney requests the break. Clients lose their confidentiality unless the attorney and deponent-client intend to discuss a privilege, to enforce a limitation ordered by the court or to present a motion under NRCP 30(d)(3).

Nevada Rule of Professional Conduct (RPC) 1.6(c) requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Attorneys must protect their clients against the inadvertent disclosure of information during requested deposition breaks.

To protect client confidences, an attorney should not request a break during a client's deposition to discuss the client's testimony. If an attorney wants to discuss with the client the possibility of asserting a privilege, then the attorney must later place on the record:

1. that a conference took place;
2. the subject of the conference; and
3. the result of the conference, i.e., whether to assert privilege or not.[3]

1. Except as otherwise provided in NRCP(a)(2).
2. Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court, 131 Nev. 140, 149, 347 P.3d 267, 273 (2015).
3. Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court, 131 Nev. 140, 149, 347 P.3d 267, 273 (2015).