

Bar Counsel Report

In Re: MICHAEL R. PANDULLO
Bar No.: 10707
Case No.: 79873
Filed: 03/23/2020

ORDER OF SUSPENSION

This is an automatic review under SCR 105(3)(b) of a Southern Nevada Disciplinary Board hearing panel's amended recommendation that attorney Michael R. Pandullo be suspended from the practice of law for six months and one day for violating Nevada Rules of Professional Conduct 1.1 (competence), 1.16 (declining or terminating representation), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), and 8.1(b) (bar admission and disciplinary matters). The panel also recommends that Pandullo pay restitution to two clients and the costs of the disciplinary proceeding. Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The facts and charges alleged in the complaint are deemed admitted because Pandullo failed to answer the complaint and a default was entered.¹ The admitted facts establish that Pandullo violated the above-referenced rules by knowingly failing to appear for court hearings for multiple clients and knowingly failing to respond to multiple clients' requests for information. Pandullo also failed to respond to the State Bar's lawful requests for information regarding five grievances it received from clients and members of the bar regarding Pandullo's conduct.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must ... exercise independent judgment," the panel's recommendation is 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 the duties Pandullo violated, that he acted knowingly, and that his conduct resulted in serious injury with the potential for further serious injury to his clients, the public, and the profession, the baseline sanction before factoring aggravating and mitigating circumstances is disbarment. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.41 (Am. Bar Ass'n 2018) (providing that disbarment is generally appropriate when a lawyer "causes serious or potentially serious injury to a client" by abandoning the practice, "knowingly fail[ing] to perform services for a client," or "engag[ing] in

a pattern of neglect with respect to client matters"). The record supports the panel's findings of four aggravating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law), and one mitigating circumstance (personal or emotional problems).

Considering the factors outlined in *Lerner*, including the aggravating and mitigating circumstances, and because disbarment is irrevocable in Nevada, see SCR 102(1), unlike in many other states, see Brian Finkelstein, *Should Permanent Disbarment Be Permanent?*, 20 Geo. J. Legal Ethics 587, 590-91 (2007) (recognizing that the majority of states permit reinstatement after disbarment), we agree with the hearing panel's recommendation for departure from the baseline sanction of disbarment in the form of a significant suspension that will require Pandullo to seek reinstatement before resuming practice. Given the number and seriousness of the violations and the fact that Pandullo attributed his failure to perform legal services and his effective abandonment of his clients to personal and emotional problems, we conclude that before seeking reinstatement, he must participate in the Nevada Lawyers Assistance Program (NLAP) and comply with any treatment recommendations. With this condition for reinstatement, we conclude that the recommended six-month-and-one-day suspension is appropriate 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) (recognizing that the purpose of attorney discipline is to protect the public, courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby suspend attorney Michael R. Pandullo from the practice of law in Nevada for a period of six months and one day commencing from the date of this order. Further, Pandullo shall pay \$1,200 in restitution to client Peter Carasco and \$500 in restitution to client Micah Johnstone and the costs of the bar proceedings, plus \$2,500 in administrative costs pursuant to SCR 120, within 30 days of the date of this order. Before seeking reinstatement, Pandullo must participate in the NLAP and comply with any treatment recommendations. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

1. The State Bar sent the complaint, designation of hearing panel members, and notice of intent to take a default to Pandullo's SCR 79 address and an alternate address by regular and certified mail, and subsequently sent a copy of the notice of the formal hearing, summary of evidence, and designation of witnesses to those addresses and a newly discovered address. The State Bar also called Pandullo by phone and sent those documents to his email address, but received no response. Pandullo appeared at the formal disciplinary hearing and the panel chair found there was no basis for setting aside the default. Pandullo offered testimony as to a mitigating circumstance but chose not to question witnesses, although he was allowed to do so.

TIP FROM THE BAR COUNSEL

Ethical Responsibilities to Prepare for a Cybersecurity Breach

In 2016, hackers obtained more than 11.5 million documents from the Panama-based law firm Mossack Fonseca and leaked them to the public.

The hackers obtained 2.6 terabytes of data, which is more than the documents from the Edward Snowden leaks and the 2010 WikiLeaks combined.

The fallout was titanic. Clients such as Iceland Prime Minister Sigmundur David Gunnlaugsson and Minister of Industry for Spain Jose Manuel Soria resigned after their information became public.

Many lawyers, especially those in the gaming industry, hold vast amounts of sensitive electronic data and personal information about their clients. The attorney-client relationship cannot exist without confidentiality and privacy. According to a 2016 ABA Legal Technology Survey Report, only 30.7 percent of all law firms included a data security clause in their representation agreements.

Pursuant to Rule of Professional Conduct (RPC) 1.6(a), lawyers shall not reveal information related to the representation of a client unless that client gives informed consent. But what happens when your firm suffers a cybersecurity breach?

During a cybersecurity breach, hackers illegally access your clients' sensitive information to potentially harm your client. Lawyers are ethically required to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information relating to the representation of a client. RPC 1.6(c). Lawyers must also act competently to preserve confidentiality. See RPC 1.1.

Cybersecurity is constantly evolving. What are reasonable measures in today's digital world? Look to NRS 603A, the Center for Internet Security Inc., or the National Institute of Standards and Technology of the U.S. Department of Commerce for some direction. Basic protocols include keeping software up to date, practicing good password management, encrypting sensitive data, installing anti-virus protection and maintaining a healthy suspicion of phishing and other internet scams. Diligent and prudent lawyers will research and implement the latest security measures and ensure that their office staff knows and follows those policies and procedures.

If a lawyer falls victim to a security breach, then the lawyer may be subject to discipline or even personal liability. See RPC 1.6(c); NRS 603A.215(3). But don't put your head in the sand. Lawyers must notify their clients immediately. See RPC 1.4. Clients need to know that their sensitive information is out in the public. No one wants that hit to their reputation, but your duty to your clients is paramount. RPC 1.7(a)(2).

PRO BONO *Honor Roll*

The State Bar of Nevada Board of Governors and the Nevada Supreme Court Access to Justice Commission extend a special thanks to attorneys who generously accepted cases or participated in an Ask-A-Lawyer event through the Legal Aid Center of Southern Nevada, Nevada Legal Services, Southern Nevada Senior Law Program, Volunteer Attorneys for Rural Nevadans (VARN) or Washoe Legal Services. One case can change many lives - www.onepromisenevada.org.

Attorneys who accepted new pro bono cases:

Alyssa Aklestad	Emily M. McFarling
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Lawrence Balanovsky	Racheal H. Mastel
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James M. Davis	Christine Owen
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Paul E. Larsen	Dan R. Waite
Debbie Leonard	Brittany L Walker
Brittany M. Llewellyn	Shannon R. Wilson
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Attorneys who participated in Ask-A-Lawyer, Lawyer in the Library or other clinics:

Andriea A. Aden	Colton T. Loretz
Alyssa Aklestad	Adam P. McMillen
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