

Bar Counsel Report

In Re: ALLAN P. CAPPS
Bar No.: 4939
Case No.: 81914
Filed: 12/23/2020

ORDER OF DISBARMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that Allan P. Capps be suspended for five years and one day based on violations of RPC 1.15 (safekeeping property), RPC 8.1 (disciplinary matters), and RPC 8.4 (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Capps committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Capps failed to answer the complaint and a default was entered.¹ SCR 105(2). The record therefore establishes that Capps violated the above-referenced rules by misappropriating \$183,976.01 in client funds and failing to respond to the State Bar's inquiries.

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).

Capps violated duties owed to his clients (safekeeping property), the profession (failure to respond to lawful requests for information by a disciplinary authority), and the public (misconduct). Capps' mental state appears to have been intentional or knowing as he made false statements to the State Bar regarding client funds. His misconduct harmed his clients by causing them financial loss. Capps' failure to cooperate with the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system.

The baseline sanction for Capps' misconduct, 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 (Am. Bar Ass'n 2017) (recommending disbarment when 'a lawyer knowingly converts client property and causes injury or potential injury to a client'). The panel found and the record

supports six aggravating circumstances (dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and misconduct amounting to illegal conduct) and one mitigating circumstance (absence of prior discipline). Considering all the factors, including the balance of aggravating and mitigating circumstances and the scope of the misconduct, we conclude they do not support the recommended downward deviation from the baseline sanction of disbarment. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession).

Accordingly, we hereby disbar attorney Allan P. Capps from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Capps shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days from the date of this order.

It is so ORDERED.

In Re: AARON A. AQUINO
Bar No.: 117722
Case No.: 82162
Filed: 12/23/2020

ORDER IMPOSING TEMPORARY SUSPENSION AND RESTRICTING HANDLING OF FUNDS

This is a petition by the State Bar for an order temporarily suspending attorney Aaron A. Aquino from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation show that Aquino appears to have misappropriated client funds.

SCR 102(4)(b) provides, in pertinent part:

On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

In addition, SCR 102(4)(c) provides that we may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Aquino poses a substantial threat of serious harm to the public, and that his immediate temporary suspension is warranted under SCR 102(4)(b). We further conclude that Aquino's handling of funds should be restricted.

Accordingly, attorney Aaron A. Aquino is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against him. Under SCR 102(4)(d), Aquino is precluded from accepting new cases immediately upon service of this order, but he may continue to represent existing clients for a period of 15 days from service of this order. In addition, pursuant to SCR 102(4)(b)-(d), we impose the following conditions on Aquino's handling of funds:

1. All proceeds from Aquino's practice of law and all fees and other funds received from or on behalf of his clients shall, from the date of service of this order, be deposited into a trust account from which no withdrawals may be made by Aaron A. Aquino except upon written approval of bar counsel; and
2. Aaron A. Aquino is prohibited from withdrawing any funds from any and all accounts in any way relating to his law practice, including but not limited to his general and trust accounts, except upon written approval of bar counsel.

The State Bar shall immediately serve Aquino with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Aquino's place of employment or residence, or by publication. When served on either Aquino or a depository in which he maintains an account, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order. See SCR 102(4)(c). Aquino shall comply with the provisions of SCR 115.²

It is so ORDERED.

In Re: ANTONY M. SANTOS
Bar No.: 11265
Case No.: 81919
Filed: 12/23/2020

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Antony M. Santos be disbarred 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 1.16 (declining or terminating representation), RPC 5.4 (professional independence of a lawyer), RPC 8.1 (disciplinary matters), and RPC 8.4 (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Santos committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and

charges alleged in the complaint are deemed admitted because Santos failed to answer the complaint and a default was entered.³ SCR 105(2). The record therefore establishes that Santos violated the above-referenced rules by accepting fees for legal services and not providing those services, directing the client to pay a non-lawyer for legal services, failing to communicate with the client or properly withdraw from representation, commingling client funds with operating funds, converting client funds for his personal use, and failing to respond to inquiries from the State Bar.

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 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).

Santos knowingly or intentionally violated duties owed to his clients (competence, diligence, communication, safekeeping property), to the profession (professional independence of a lawyer and failure to respond to inquiries from a disciplinary authority), and the public (misconduct). Santos's client suffered an actual injury as he did not receive the legal services for which he paid and Santos converted his funds. Santos's failure to cooperate in the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system. The baseline sanction for his misconduct, 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 (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.'). The record supports the hearing panel's findings of five aggravating circumstances (dishonest or selfish motive, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders, substantial experience in the practice of law, and refusal to acknowledge the wrongful nature of conduct) and one mitigating circumstance (absence of prior discipline). Considering that less than \$5,000 was misappropriated here; this matter involved a single instance affecting one client, who apparently was Santos' only client at the time; the absence of any prior discipline; and that Santos may be struggling with an illness, we conclude a downward deviation from the baseline sanction of disbarment is warranted.

Accordingly, we suspend attorney Antony M. Santos from the practice of law in Nevada for five years and one

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day commencing from the date of this order. Santos shall pay restitution to his client. He shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: JUDITH H. BRAECKLEIN
Bar No.: 3322
Case No.: 81828
Filed: 01/11/2021

ORDER OF SUSPENSION

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 Judith H. Braecklein. Under the agreement, Braecklein admitted to violating RPC 5.5 (Unauthorized Practice of Law) and RPC 8.1 (Bar Admission and Disciplinary Matters), and agreed to a four-year suspension and the payment of costs.

Braecklein has admitted to the facts and violations as part of her guilty plea agreement. The record therefore establishes that Braecklein violated the above-referenced rules by (1) appearing in court multiple times on behalf of a client in a criminal matter while she was suspended, and (2) failing to meaningfully address the State Bar's letter of inquiry regarding that matter by omitting material information and providing false statements of material fact.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. 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).

Braecklein knowingly violated duties owed to her client, the profession, and the public, resulting in injury or potential injury to all. The baseline sanction for her misconduct, before considering aggravating and mitigating circumstances, is disbarment. See *Standards for Imposing Lawyer Sanctions, Compendium, of Professional Responsibility Rules and Standards*, Standard 8.1 (Am. Bar Ass'n 2017) (providing that disbarment is generally appropriate when a lawyer "knowingly violates the terms of a prior disciplinary order" or "has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct" when

"such violation causes injury or potential injury to a client, the public, the legal system, or the profession"). Here, we agree that the balance of mitigating and aggravating circumstances warrants a lengthy suspension rather than disbarment, which in Nevada is permanent, SCR 102(1). In particular, the parties and the majority of the hearing panel members agreed that Braecklein's absence of a dishonest or selfish motive, physical disability, remorse, and the imposition of other penalties or sanctions, including that she retake the bar exam and MPRE before reinstatement, mitigated the misconduct, and outweighed the aggravating circumstances (substantial experience in the practice of law, prior disciplinary offenses, multiple offenses, and a pattern of misconduct). In finding a pattern of misconduct and multiple offenses, the panel observed that Braecklein's continued practice of law while suspended involved one client in a DUI matter. Considering all the factors, we conclude that the agreed-upon and recommended discipline is appropriate and serves the purpose of attorney discipline. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession).

Accordingly, we hereby suspend attorney Judith H. Braecklein from the practice of law in Nevada for four years commencing from the date of this order. Braecklein must also become current with her continuing legal education obligations, as determined by the Nevada CLE Board; retake the Nevada Bar exam and the MPRE; pay the outstanding costs balance from her previous disciplinary matter, if any; and submit quarterly reports to bar counsel confirming that she has not engaged in or assisted others in engaging in the unauthorized practice of law in Nevada. Further, Braecklein must pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120 within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: M. LANI ESTEBAN-TRINIDAD
Bar No.: 6967
Case No.: 81917
Filed: 12/23/2020

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 M. Lani Esteban-Trinidad. Under the agreement, Esteban-Trinidad admitted to violating RPC

1.15 (safekeeping property) and RPC 8.4 (misconduct) and agreed to a three-year suspension from the practice of law retroactive to July 5, 2019, the date of her suspension for similar RPC 1.15 violations.

Esteban-Trinidad has admitted to the facts and violations as part of her guilty plea agreement. The record therefore establishes that she (1) violated RPC 1.15 by commingling client and personal funds and using client funds for personal and business expenses, and (2) violated RPC 8.4 by continuing to commingle and use client funds in the same manner throughout the previous disciplinary proceedings until the effective date of the order suspending her for that misconduct.⁴

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. 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).

Based on the duties Esteban-Trinidad violated, and because she acted intentionally and her conduct resulted in actual or potential injury to her clients and the profession, the baseline sanction before considering aggravating and mitigating circumstances is disbarment. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass’n 2018) (providing that disbarment is “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 five aggravating circumstances (prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and four mitigating circumstances (personal or emotional problems, full and free disclosure to disciplinary authority/cooperative attitude, imposition of other penalties or sanctions, and remorse). Considering the factors outlined in *Lerner*, we agree with the hearing panel’s finding that the mitigating factors support a downward deviation from the baseline sanction and that the recommended discipline serves 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 M. Lani Esteban-Trinidad from the practice of law in Nevada for a period of three years, commencing from July 5, 2019, the effective date of the previous order suspending her for violating RPC 1.15 by commingling and misusing client funds. Additionally, Esteban-Trinidad agreed to retake the Nevada Bar exam and the MPRE pursuant to SCR 116(5) before seeking reinstatement. Finally, Esteban-Trinidad must

pay the costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days from the date of this order, if she has not already done so. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: K. ALEXANDRA MONACO
Bar No.: 9253
Case No.: 81749
Filed: 12/16/2020

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel’s recommendation that attorney K. Alexandra Monaco be suspended for three months, followed by an additional six-month-and-one-day suspension stayed for one year subject to certain conditions based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.9 (duties to former clients), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation), RPC 5.3 (responsibilities regarding nonlawyer assistants), and RPC 8.1 (disciplinary matters).

The State Bar has the burden of showing by clear and convincing evidence that Monaco 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 that Monaco violated the above listed rules as those findings are supported by substantial evidence and are not clearly erroneous. See SCR 105(3)(b); *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). Monaco failed to complete legal work for seven clients, refund their fees or return their files after her representation was terminated, safekeep client funds, and respond to the State Bar’s inquiries.

This court determines the appropriate discipline de novo. SCR 105(3)(b). In doing so, 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).

Monaco knowingly violated duties owed to her clients (competence, diligence, communication, and safekeeping property) and the profession (fees, declining or terminating representation, and failing to respond to State Bar inquiries). Her clients suffered actual or potential injury as their immigration matters were either

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not filed or delayed, despite having paid fees to Monaco. The baseline sanction before consideration of 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."); Standard 4.42 (providing suspension is appropriate when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client"); Standard 7.2 ("Suspension is generally 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 record supports the panel's findings of four aggravating circumstances (pattern of misconduct, refusal to acknowledge any wrongful conduct on her part, vulnerable victims, and substantial experience in the practice of law) and three mitigating circumstances (absence of prior disciplinary record, absence of dishonest or selfish motive, and some physical disabilities). Considering all of the factors, we conclude that the recommended discipline is appropriate.

Accordingly, we hereby suspend attorney K. Alexandra Monaco from the practice of law for three months commencing from the date of this order. Following the three-month actual suspension, Monaco shall be subject to a six-month-and-one-day suspension, stayed for one year subject to the conditions provided for in the hearing panel's order, which include meeting with a mentor, complying with binding fee dispute arbitration orders, and no new discipline. Additionally, Monaco shall pay the costs of the disciplinary proceeding, including \$2,500 mandated by SCR 120(3), within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: JOSE C. PALLARES
Bar No.: 9253
Case No.: 81749
Filed: 12/16/2020

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to reinstate suspended attorney Jose C. Pallares with certain conditions. As no briefs have been filed, this matter stands submitted for decision. SCR 116(2).

This court suspended Pallares from the practice of law for three years for violating RPC 1.3 (diligence), RPC 3.4(c) (fairness to opposing counsel: knowingly disobeying

an obligation under the rules of a tribunal), and RPC 8.4(d) (misconduct prejudicial to the administration of justice).

In re Discipline of Pallares, Docket No. 70953 (Order Approving Conditional Guilty Plea Agreement, Jan. 20, 2017). Pallares filed his petition for reinstatement on April 24, 2020, after his suspension ended. Following a hearing, the panel unanimously recommended that he be reinstated to the practice of law with certain conditions.

Based on our de novo review, we agree with the panel's conclusions that Pallares has satisfied his burden in seeking reinstatement by clear and convincing evidence. SCR 116(2) (providing that an attorney seeking reinstatement must demonstrate compliance with certain criteria "by clear and convincing evidence"); *Application of Wright*, 7 5 Nev. 111, 112- 13, 335 P.2d 609, 610 (1959) (reviewing a petition for reinstatement de novo). We therefore approve the panel's recommendation that Pallares be reinstated. We also approve the conditions on reinstatement recommended by the panel, as set forth below.

Accordingly, Jose C. Pallares is hereby reinstated to the practice of law in Nevada. As a condition of his reinstatement, Pallares shall be prohibited from maintaining his own practice and shall instead be required to work under the supervision of another Nevada licensed attorney. Pallares shall also be required to notify the State Bar of any change(s) in employment within ten (10) days. Additionally, for three years from the date of this order, Pallares shall be required to complete double the required number of ethics and substance abuse CLE classes per year. Finally, Pallares shall pay the costs of the reinstatement proceeding, including \$2,500 under SCR 120, within 90 days from the date of this order, if he has not done so already.

It is so ORDERED.

ENDNOTES:

1. Capps responded to the State Bar's initial inquiry and stated that all client funds were kept safe. He then failed to respond to any of the State Bar's following inquiries. The complaint and the notice of intent to take a default were served on Capps via mail at his SCR 79 address and a second address and via email at his SCR 79 email address and a second email address. Personal service was also attempted on Capps three times, and despite the fact a neighbor confirmed the address was accurate and the service provider could hear a person quieting a barking dog inside the residence, there was no answer at the door.
2. This is our final disposition of this matter. Any new proceedings involving Aquino shall be docketed under a new docket number.
3. During the initial stage of the State Bar's investigation, Santos emailed the State Bar stating he was working on a response to the grievance. He never contacted the State Bar again. The complaint and notice of intent to take a default were served on Santos via regular and certified mail. Personal service was also unsuccessfully attempted.
4. This court approved a conditional guilty plea agreement, under which Esteban-Trinidad admitted to the RPC 1.15 violation and agreed to a six-month-and-one-day suspension. Discipline of Esteban-Trinidad, Docket No. 78379 (Order Approving Conditional Guilty Plea, July 5, 2019).

TIP

FROM THE BAR COUNSEL

Lawyers Must Remain Vigilant about Duty of Loyalty

Client loyalty is a paramount duty of a lawyer. It is so important that there are seven different Rules of Professional Conduct addressing conflicts that could impact a lawyer's duty of loyalty to their client. (See Rule 1.7- Rule 1.13 of the Nevada Rules of Professional Conduct).

Generally speaking, a lawyer must refrain from a representation where "the representation of one client will be directly adverse to another client" or "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

Independent contract work and loose associations between attorneys are swiftly becoming pandemic norms. They have accelerated the potential for an individual attorney to inadvertently violate their duty of loyalty. Irrespective of whether a lawyer is the direct contact for a particular client, every lawyer must guard against conflicted representation.

This means that each lawyer should keep a personal, searchable conflicts list and not rely on others to identify potential conflicts. The State Bar of Nevada's new Handle|BAR program has developed a suggested list of identifiers for a searchable conflicts list. You can find it at www.nvbar.org/handlebar-manage/. If a lawyer discovers a potential conflict but cannot communicate directly with a client to obtain informed consent and a waiver, then the lawyer should not accept that assignment.

Lawyers who share office space or support staff should take an extra step to maintain a joint conflicts list. Alternatively, or in addition, office- or staff-sharing lawyers should establish policies and procedures to address how to maintain client loyalty. This arrangement might include separate file cabinets or avoiding discussions about clients. Comments 2-4 of Rule 1.0 of the ABA Model Rules of Professional Conduct offer some guidance on office-sharing considerations.

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HON. TREVOR
ATKIN (RET.)

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