

## SUPREME COURT OF NEVADA

**In Re: Elizabeth T. Zagajeski**  
**Bar No.: 10808**  
**Docket No.: 69549**  
**Filed: February 17, 2016**

### ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO SOUTHERN NEVADA DISCIPLINARY BOARD

*Attorney temporarily suspended following multiple misdemeanor convictions. Case referred to the Southern Nevada Disciplinary Board for a hearing.*

A Southern Nevada Disciplinary Board hearing panel petitioned the court under SCR 111(4) for the temporary suspension of Elizabeth Zagajeski's license following a number of misdemeanor convictions, including battery, two convictions for domestic violence, failure to appear after admission to bail or release without bail (two convictions), and issuance of a check without sufficient funds. Zagajeski has been put on administrative suspension for failing to comply with mandatory reporting obligations, pay annual bar license fees, and to comply with mandatory continuing legal education requirements.

The court found that battery and failure to appear are not considered serious offenses, as defined by SCR 111(6), but the issuance of a check without sufficient funds does, as it connotes misrepresentation or fraud. Therefore, the court determined that, under SCR 111(7), automatic temporary suspension was required. The court imposed the temporary suspension and referred the matter to the Southern Nevada Disciplinary Board to determine the extent of the discipline to be imposed.

**In Re: Richard C. Sipan**  
**Bar No.: 3155**  
**Docket No.: 69439**  
**FILED: February 19, 2016**

### ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

*Attorney suspended for four years, retroactive to January 2015, following admissions of more than 136 violations of the Rules of Professional Conduct.*

A Southern Nevada Disciplinary Board hearing panel recommended a conditional guilty plea agreement for attorney Richard Sipan. Under the agreement, Sipan admitted to 136 violations of the Rules of Professional Conduct stemming from 15 grievances: RPC 1.3 (diligence) (15 violations); RPC 1.4 (communication) (15 violations); RPC 1.5 (fees) (15 violations); RPC 1.15 (safekeeping property) (15 violations); RPC 5.3 (responsibilities regarding non-lawyer assistants) (15 violations); RPC 5.4 (professional independence of a lawyer) (15 violations); RPC 5.5 (unauthorized practice of law) (15 violations); RPC 7.1(b) (communications concerning a lawyer's services) (15 violations); RPC 8.1(b) (bar admission and disciplinary matters) (one violation); and RPC 8.4 (misconduct) (15 violations).

The admitted violations stem from Sipan's involvement with a business enterprise that advertised nationally as a law firm specializing in real estate law, but was actually a telemarketing operation that used a deceptive mailer, designed to look like a bank or government notice, to entice consumers to call in order to receive a promised restructure loan. Sipan's lack of supervision or control over non-lawyer employees and client money resulted in significant harm to clients.

The court agreed that a four-year suspension, as recommended by the hearing panel, was sufficient and appropriate. The court therefore imposed a four-year suspension, retroactive to January 6, 2015. Additionally, the court ordered Sipan to pay the costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within 90 days of receipt of the state bar's bill of costs.

**In Re: Karlon Kidder**  
**Bar No.: 11622**  
**Docket No.: 68964**  
**Filed: January 7, 2016**

### ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

*Attorney suspended for one year, with the last nine months stayed, following admission of multiple violations of the Rules of Professional Conduct.*

A Northern Nevada Disciplinary Board hearing panel recommended approval of a conditional guilty plea for attorney Karlon Kidder. As part of the agreement, Kidder admitted to a number of violations, including RPC 1.5 (fees), RPC 1.7 (conflict of interest: current clients), RPC 3.3 (candor toward the tribunal), RPC 3.4 (fairness to opposing party and counsel), RPC 5.3 (responsibilities regarding non-lawyer assistants), RPC 5.5 (unauthorized practice of law) and RPC 8.4 (misconduct).

The agreement provided for a one-year suspension with the last nine months stayed, subject to the following conditions:

1. Kidder shall execute and comply with the mentoring agreement that will remain in effect for two years;
2. He shall not make any appearances in any federal courts for six months following approval of the suspension by the Nevada Supreme Court; and
3. Kidder must pay \$750 to the state bar for the costs of the disciplinary proceeding.

The court approved the guilty plea as stated.

**Justices Douglas and Saitta dissented:** *We would reject the conditional guilty plea agreement because the agreed-upon discipline is not sufficient.*

**In Re: Richard P. Schulze III,**  
**Bar No.: 5767**  
**Docket No.: 68480**  
**Filed: December 23, 2015**

**ORDER OF SUSPENSION**

*Attorney suspended for one year following violations related to conflict of interest (current clients, candor toward the tribunal and misconduct); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice.*

A Northern Nevada Disciplinary Board hearing panel recommended attorney Richard Schulze be reprimanded and suspended for six months after finding he violated RPC 1.7(a)(1), (2) (conflict of interest: current clients), RPC 3.3 (candor toward the tribunal), and RPC 8.4(c), (d) (misconduct: engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and engaging in conduct that is prejudicial to the administration of justice).

In 1994, Ralph and Barbara Preece created a special needs trust that provided for the care of their son, James Preece, who suffered a brain injury at birth, resulting in diminished mental capacities. Preece maintained employment but required constant care. After Ralph and Barbara's death, Cheryl Bayler eventually became Preece's sole guardian. In September 2006, Schulze began representing Bayler in her capacity as Preece's guardian. On April 24, 2007, the district court appointed Schulze as trustee of the Preece trust, subject to certain conditions, including an annual accounting of the trust and the development of a budget for Preece's expenses. Neither a budget consistent with the district court's order, nor an accounting, was filed between April 2007 and January 2012.

In the summer of 2009, Bayler told Schulze that she intended to move to Wyoming with Preece. Schulze advised Bayler that she needed court approval to remove Preece from Nevada because of the possible detrimental effects such a move could have on him. Schulze testified at the disciplinary

hearing that Bayler terminated his representation at that time. Shortly after Bayler and Preece moved to Wyoming, Schulze took measures to sell Preece and Bayler's residence, which was owned by the trust. He did not notify or seek permission from the district court to sell the residence because he did not believe that he had a duty to do so.

The proceeds of the sale were deposited into the trust. In September 2009, Schulze paid Bayler for costs related to the move to Wyoming and rent for their new home. Schulze continued to pay Bayler \$3,000 monthly, for her services as guardian. Several months later, in January 2010, there was a domestic disturbance at Bayler and Preece's residence, resulting in Preece's removal from the home and admission to a psychiatric hospital. Preece was eventually moved to a group home. Schulze paid the costs of Preece's hospitalization and stay at the group home in the amount of \$26,000. Schulze also continued to pay Bayler her caretaking fee of approximately \$3,000 per month, in spite of the fact that Preece did not live with her during that time, based on Bayler's assurances that Preece would soon be living with her again. However, Preece never moved back in with Bayler.

In January 2011, nearly one year after Preece was removed from Bayler's care, Schulze informed Bayler that he would no longer pay her caretaking fee. In January 2012, he filed a report and accounting of the trust and, for the first time, advised the district court of Bayler and Preece's move to Wyoming and sale of the Nevada residence. In addition to his trustee fees (\$400 per month) Schulze requested additional attorney fees and termination of the guardianship, pursuant to NRS 159.191. The report showed that, inconsistent with Schulze's assertion that Bayler terminated his representation in 2009, a substantial amount of his request for additional fees related to "post-termination" work that could only be related to his continued representation of Bayler.

Between 2007 and 2008, the trust was valued at approximately \$450,000. In June 2012, the trust held approximately \$140,000 in assets. Schulze's January 2012 report concerned the district court and it launched an investigation

into Schulze's handling of the trust and Bayler's actions as guardian. Following the investigation, the district court removed Bayler as Preece's guardian and Schulze as trustee and appointed the Washoe County Public Guardian as guardian and trustee. The court also issued a contempt order for Schulze and Bayler, and found that Schulze had minimized the fact that his failure to submit accountings had contributed to a "massive waste" of trust funds. The court ruled he had also made attempts to minimize and prevaricate in order to focus the blame for his not reporting onto Bayler or the court itself; these attempts were belied by the evidence.

Schulze was sentenced to two terms of 10 days in jail and suspended from the practice of law for three years, on the condition that he repaid funds expended by the trust between 2007 and 2012. Schulze had repaid \$26,223.41 as of the time of the disciplinary hearing.

The panel found that Schulze violated RPC 1.7(a)(1), (2) (conflict of interest: current clients), RPC 3.3 (candor toward the tribunal), and RPC 8.4(c), (d) (misconduct: engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in conduct that is prejudicial to the administration of justice). The panel did not identify any specific aggravating factors but noted that Schulze expressed little remorse. It did give some weight to mitigation evidence showing that several of Schulze's family members experienced severe health issues, among them the deaths of his mother and brother and ongoing medical issues involving his wife. The panel recommended a six-month stayed suspension and a public reprimand. It agreed to reconvene to determine the necessity of additional discipline if Schulze became the subject of additional complaints during his suspension. The panel also recommended that Schulze pay the costs of the proceeding, excluding Bar Counsel and staff salaries.

The court found that the evidence supported the panel's findings of misconduct but believed the recommended discipline was inappropriate, given the significant depletion of the trust fund put in

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place for the care and support of a vulnerable, mentally disabled person, and Schulze's lack of candor with the district court. The court noted that, to his credit, Schulze had repaid some of the trust, but believed that did not excuse or diminish the harm he caused through his actions. The court therefore suspended Schulze for one year and ordered him to pay the costs of the disciplinary proceeding, excluding Bar Counsel and staff salaries.

**In Re: Allen D. Gibson**  
**Bar No.: 2001**  
**Docket No.: No. 68767**  
**Filed: November 6, 2015**

**ORDER OF SUSPENSION**

*Attorney ordered suspended for period of six months and one day due to multiple rules violations.*

A Northern Nevada Disciplinary Board's hearing panel recommended a six month and one day suspension for attorney Allen Gibson after finding evidence he violated a number of rules of professional conduct, including 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) and RPC 8.1(b) (disciplinary matters). The violations were deemed admitted, because Gibson failed to respond to the initial complaint or appear at the formal hearing.

Gibson did not file an opening brief and the court determined that the recommended discipline was sufficient. It approved the panel's recommendation and suspended Gibson from the practice of law in Nevada for a period of six months and one day. Gibson must also pay the costs of the disciplinary proceeding (excluding Bar Counsel and staff salaries) within 30 days of receipt of the state bar's bill of costs.

**In Re: Robert Fry**  
**Bar No.: 702**  
**Docket No.: 67783**  
**Filed: October 22, 2015**

**Order Approving Conditional Guilty Plea Agreement**

*Attorney suspended for four years following review of conditional guilty plea agreement stemming from a felony conviction for harboring an alien and failure in his role as a veteran's fiduciary.*

A Northern Nevada Disciplinary Board hearing panel recommended approval of a conditional guilty plea for a four-year suspension for attorney Robert Fry.

Fry was convicted of a federal felony for harboring an alien, as well as misconduct while acting as a fiduciary on behalf of a disabled veteran, violations of RPC 1.8(a) (restrictions on business transactions between a lawyer and client), RPC 8.4(a) (misconduct) and RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). The suspension is retroactive to March 27, 2014, when Fry was temporarily suspended.

The agreement provides for a four-year suspension retroactive to the date that Fry was temporarily suspended under SCR 111 (March 27, 2014). The agreement further provides that as conditions to reinstatement, Fry will:

1. Take and pass the Multistate Professional Ethics and Responsibility Examination;
2. Comply with the conditions of probation set forth in his federal district court sentence, including 100 hours of community service;
3. Refrain from serving as a fiduciary for incompetent persons, a V.A. conservator, a guardian of any person or estate, or a personal representative throughout the course of his suspension and thereafter; and
4. Pay the costs of the investigation, preparation of hearing materials, and disciplinary hearings within six months.

The court approved the agreed-upon discipline retroactive to the date that Fry was temporarily suspended, conditional upon Fry's compliance with the conditions above.

**Justice Saitta dissented.**

*I dissent because the agreed-upon discipline is insufficient in relation to Fry's admitted conduct. I therefore would reject the conditional guilty plea agreement.*



Edward M. Bernstein and Associates is pleased to announce **Patti S. Wise, Esq.** has become a partner and shareholder of the firm.

Patti has been instrumental in assisting thousands of people with their accident and injury claims. In addition, Patti was one of the lead attorneys in the litigation against the Endoscopy Center of Southern Nevada. In 2011, Patti was trial Co-Counsel in *Washington v. Teva* which resulted in a \$104 million verdict (the 7th largest verdict in the United States).

**Resignations:  
 No Discipline Pending**

Attorney	Bar Number	Case Number
1. Sara J. Vance	5805	69682
2. Courtney L. Mitchell	9433	69683
3. Forest D. Morgan, III	10408	69681
4. Lisa Elaine Bittan	1819	69667
5. Janice Kay Dearman	9315	69671
6. James Eugene Fitzgerald	10039	69672
7. Nancy E. Killeen	3985	69673
8. Jeffrey C. Wilcox	4416	69674

# TIPS FROM THE OFFICE OF BAR COUNSEL

## The Question:

**My firm is considering changing the name of our firm after a named partner recently retired. I understand that the rules regarding naming firms are fairly restrictive. What is the best route?**

Rules 7.1 and 7.5 speak directly to firm names, and you actually have a bit more latitude than you might think. Essentially, your firm's name must not imply a connection to the government of the state—so, no “Firm of the Nevada Supreme Court”—or be misleading about the services the firm provides, such as implying bankruptcy or personal injury expertise without such specializations.

Aside from those issues, you're most likely fine. If you and another attorney share a last name, it is still fine to use your own name, as it remains yours. It's not first-come, first-serve access to your own name. Just don't try to imply direct connection to the other attorney if no such connection exists.

You also cannot exaggerate the size of your firm. As a solo practitioner, you can't be a law group, or otherwise create the mistaken impression that yours is a multi-attorney firm. If you're planning on hiring junior attorneys as soon as possible, then you may use a name that identifies you as such, but not if you're going to do so at some unspecified date in the future.

Our firm has thousands of partners.  
We call them clients.

Working together isn't just another way to discover the best solutions for our clients' employment and labor law needs, it's the only way we know.

At Littler, we take the time to learn about your company because exceptional client service starts with understanding your business.

For us, it's not just about getting familiar with your organization, it's about gaining a deep understanding of what you do and how you do it.

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