

In Re: Fred Kennedy
Bar No.: 2269
Case Nos.: SG11-1345, SG12-1534 and
SG13-1778 Effective Date: March 14, 2016

PUBLIC REPRIMAND

To Fred W. Kennedy:

"Your client attended an initial consultation with you to discuss a possible loan modification. He disclosed that he had been in bankruptcy and that he and his wife were very behind with their mortgage and HOA payments, and wasn't sure if a loan modification was possible. You assured the client that despite his current situation, he could get a loan modification. You told him that the banks, under the new laws, had to work with homeowners and that you, as an attorney, could get them a much better loan payment.

Based on your representations, the client retained your services. You did not provide him with a fee agreement. At the time of retention, the client provided you all of his loan paperwork as requested. The client made an initial payment of \$1,000 at the time of retention and continued to make \$1,000 payments until he paid a total of \$4,250.

After he completed his payments, you stopped communicating with him. The client kept sending you communications he was receiving from the bank, but received no response. Even after advising your office of a foreclosure notice placed on the door of his home, he still didn't receive any communication from you. Finally, the client demanded a sit-down meeting with you. He stated at this meeting that you made statements contrary to those made during the initial consultation, but said that your office would still work to try to save his home.

Your client's home was sold and the locks were changed. He personally negotiated a \$3,000 cash for keys exchange with the real estate company.

The client waited at your office for two hours to see you, to find out how the house could be sold without the mediation you promised him. You got angry with the client and told him he didn't deserve a modification and that he should be happy he got to live in the house without a payment for as long as he did. You refused to give him any money back.

A second client met with you for a free consultation in March 2011 to discuss his options for a loan modification. You told this client during this consultation that you had done many modifications over the last two years and had not lost one house.

You quoted the client a sum of \$4,100 and told him that the process would not begin until a Notice of Default was received. He retained your services and paid you the sum of \$4,100 over the next few months.

The client subsequently decided not to pursue his loan modification, due to a change in his personal circumstances. He sent you a letter notifying you of these changed circumstances and requested a partial refund. He received no response. The client began leaving numerous messages for you, but received no return phone call. He tried to schedule a meeting with you, but was told by your assistant that you would not meet with him until you spoke together on the phone. The client left more phone messages for you that were never returned. About six months later, he finally met with you. You refused to give the client any money back, and called him an idiot for

moving out of the house, because he could have stayed there for free.

On December 23, 2013, the state bar sent you a letter demanding a response to the grievance, including a copy of the client's file. You did not provide the file as requested.

Instead of responding to the allegations and providing the requested documents, you paid the second client in exchange for a withdrawal of the grievance. You claimed you thought a bar grievance was the same as a fee dispute and that you acted appropriately in negotiating a partial payment while demanding a dismissal. In total, you paid the client a sum of \$3,000 prior to your formal hearing.

A third client filed a grievance with the state bar stating that she retained your services to assist her with an appeal to the Supreme Court regarding the revocation of her parental rights. She did not have any documentation regarding retention or payment of funds.

On November 14, 2012, the state bar sent a letter asking you to respond to the allegations. The bar received no response. On March 5, 2013, the bar sent a certified letter demanding a response and advising you that failure to respond would result in the matter being referred to a screening panel of the Southern Nevada Disciplinary Board, which would consider the complaint on the assumption that all of the allegations were true and that the panel would be asked to consider your failure to respond to the state bar as a separate disciplinary violation pursuant to Rule of Professional Conduct 8.1(b) (Bar Admission and Disciplinary Matters). No response was received.

On April 5, 2013, the state bar sent you one more letter, demanding a response to the allegations raised by the third client. No response was received. You later testified that your wife, who performs work at your office, determined that the letters from the bar didn't require a response, so she failed to alert you that any of them had arrived.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.14 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees) and RPC 8.1(b) (Bar Admission and Disciplinary Matters) and are hereby **PUBLICLY REPRIMANDED.**"

(This discipline was issued as part of a Supreme Court Order that included a stayed suspension published in a previous edition of *Nevada Lawyer*.)

In Re: Adam S. Kutner
Bar No.: 4310
Case No.: SG14-0418
Effective Date: August 12, 2016

PUBLIC REPRIMAND

To Adam S. Kutner:

"This public reprimand is issued pursuant to a 'Conditional Guilty Plea' you entered on July 22, 2016.

On or about December 3, 2013, your law office was retained to represent two individuals (mother and daughter) involved in a hit-and-run car accident a few days before.

Your law office prepared legal documents and mailed them to one of the clients (the mother), and on or about December 12, 2013, that client signed and notarized these documents and returned them to your office. This client did not hear again from your firm for months, and an employee of your firm told the other client (the daughter)

in March 2014 that you could not pursue the mother's injury case because of a delay in medical treatment; that was an inaccurate statement.

In communicating with the other client (daughter), the client attempted multiple times to contact your firm to address her own case and clear up why her mother hadn't heard from you. She had difficulty communicating with your firm, could not reach you, and it took weeks for her to hear back from one of your employees about the status of her case.

Rule of Professional Conduct 1.4 (Communication) states in part that '[a] lawyer shall ... [k]eep the client reasonably informed about the status of the matter ...' and '[p]romptly comply with reasonable requests for information ...' You failed to do that in this matter, and acknowledged in writing to the state bar that this grievance was based upon 'poor communication.'

Pursuant to negotiation and your 'Conditional Guilty Plea,' in light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.4 (Communication) in this instance and are hereby **PUBLICLY REPRIMANDED.**"

In Re: Bradley M. Ballard

Bar No.: 4912

Case No.: OBC15-0562

Effective Date: August 19, 2016

PUBLIC REPRIMAND

To Bradley M. Ballard:

"A client retained you to represent her in a lawsuit pending in the Eighth Judicial District Court. The retainer agreement stated the client was to pay you a retainer of \$2,500, your hourly billable rate was \$150, you would provide the client with monthly billing statements and the retainer funds were to be applied to fees and costs as they were incurred, beginning with the first invoice.

The lawsuit was regarding a car and had been filed by your client's ex-mother-in-law. Prior to retaining you, the client had filed an answer in the lawsuit. When she retained you, there was an arbitration deadline looming. Upon retention, you immediately began analyzing the client's options in defending against the lawsuit and prepared a draft Arbitration Hearing brief. You expended no less than 18 hours of billable time over the course of the first nine days of the representation.

Shortly after the client retained you, her ex-mother-in-law was convinced to drop the lawsuit by other family members. She informed you of the intention to drop the lawsuit and requested a refund of the retainer monies.

Because of the representation that the lawsuit would be dropped, you prepared a Stipulation and Order for Dismissal on her behalf. That stipulation was signed by the opposing party's counsel and ultimately accepted and filed by the court on December 3, 2013.

In February 2014, she attempted to contact you to get retainer monies returned.

On February 6, 2014, you emailed the client to apologize for not responding sooner and to explain that the refund would be sent out no later than February 7, 2014.

The client did not receive the refund by February 12, 2014, and therefore, emailed you to ask about the refund monies. You did not respond to the February 12, 2014 email and so, on March 3, 2014, she emailed you again. You promptly responded to that email and indicated that the check you sent was never cashed, and therefore, you were stopping payment on it and reissuing a check to her. You asked the client to confirm her address. That same day, she replied by

email with her address, which was the same address on the Retainer Agreement.

However, you did not send the refund check in March 2014. You did not reply to her next six emails, over the course of three months, which continued to request a status on the refund.

The client contacted you again, approximately seven months later, and left a message at your office regarding the refund check. On April 1, 2015, you emailed her to apologize for the delay in resending the refund. You promised to send the refund the next day, via certified mail to the address previously provided. On April 3, 2015, the client emailed confirming that the address was correct. You emailed her that same day, stating that the refund had been sent and providing a certified mail tracking number. She received, by certified mail, a partial retainer refund check in the amount of \$800.

The client assumed the refund would be for the entire \$2,500, since she believed she never received any documents from you indicating that she was charged for any work. You provided the state bar with an invoice showing your work over 18 hours in August 2013, and you reported that this invoice was provided to the client after the services were provided. However, you did not provide her with another copy of the invoice in response to her requests for a refund. You represented that, although you earned all of the monies paid, you agreed to provide a partial refund because you felt that she would not expect to have paid so much for the services provided and you hoped that a partial refund would remedy her dissatisfaction. However, there is no evidence that you conveyed this to the client.

This conduct violated Rule 1.4 (Communication) of the Nevada Rules of Professional Conduct (RPCs), because you failed to timely respond to your client's reasonable inquiries for information and to provide her sufficient information when you did respond to her.

Communication with the bar: On or about April 22, 2015, the client filed a grievance with the bar, stating that you failed to provide her with pertinent documents relating to her case, monthly billing statements, and you did not properly refund the retainer funds. On June 10, 2015, the state bar provided her complaint to you and requested a written response. No response was received.

On July 14, 2015, the bar sent you a copy of the prior correspondence, and indicated that if you failed to provide a response to the state bar, an investigation would be opened and additional proceeding under RPC 8.1 would be considered as a separate disciplinary violation. Although you received the correspondence, you still did not provide a response to the state bar.

On August 7, 2015, you were notified that the matter would be proceeding to a disciplinary panel. A complaint in this matter was filed on January 26, 2016. You failed to respond to the complaint until after you were served with a Notice of Entry of Default. When you did answer the complaint, you admitted your failure to timely send the refund, but you failed to provide information regarding the work done on behalf of the client. You also failed to provide Initial Disclosures by the deadline set in the Order After Initial Case Conference.

These failures to participate in the disciplinary process violated RPC 8.1(b) (Bar Admissions and Disciplinary Matters) and resulted in the disciplinary proceeding taking much longer to resolve.

Mitigating Factors: In mitigation, you were dealing with multiple health and personal issues during this time period, which

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contributed to your failures to adequately communicate with your client and the state bar. You also have no prior discipline.

In light of the foregoing, you are hereby **PUBLICLY REPRIMANDED** for violating RPC 1.4 (Communication) and RPC 8.1 (Bar Admissions and Disciplinary Matters) and ordered to pay \$1,500, plus the state bar's hard costs of the disciplinary proceeding, within 30 days of the issuance of this Public Reprimand."

In Re: Robert Bettinger
Bar No.: 3384
Case No.: SG14-0857
Effective Date: December 27, 2016

PUBLIC REPRIMAND

To Robert Bettinger:

"In 2012, you were approached by nonlawyer Robert Rose to assume the handling of various cases from former attorney Barry Levinson. One of those was a client's claims for personal injuries he sustained in a motor vehicle accident that occurred on or about March 6, 2011, with a Swedish national driving a rental car. You filed suit on the client's behalf March 5, 2013, and you ultimately withdrew as counsel of record in November 2013. Two different attorneys successively represented the client in the litigation, which was finally resolved in February 2016.

On December 19, 2012, the client signed paperwork with Peachtree Funding Northeast, LLC for a litigation loan against his personal injury case. The amount of the loan was \$3,000, and included additional fees and interest at a rate of 14.5 percent for each six-month period. You signed the acknowledgment attesting that the funds would be deposited into an IOLTA account. However, you requested that the funds be directly deposited into a personal account, although you assert that the account is used for income earned from your law practice. It appears that the funds were used to pay costs associated with his case, including fees to Mr. Rose, and that you did not benefit from the loan proceeds.

In further mitigation, beginning in April 2013, you experienced severe medical problems, including major surgery, cancer and a benign brain tumor that your doctor indicated may have hampered your ability to think clearly. You have also satisfied in full the lien by Peachtree Funding and the client has not incurred any expense as a result of the loan.

Nonetheless, it is important to recognize your duty to supervise nonlawyer assistants and ensure that your trust account is not used for improper purposes or exposes clients to potential injury. As such, you violated Rule of Professional Conduct (RPC) 1.15 (Safekeeping Property) and RPC 8.4(a) (Misconduct). You are hereby **PUBLICLY REPRIMANDED** for your actions."

In Re: Nelson Cohen
Bar No.: 7657
Case No.: 71846
Filed: January 20, 2017

ORDER GRANTING PETITION FOR TEMPORARY SUSPENSION

Attorney temporarily suspended pending resolution of formal disciplinary proceedings.

The state bar petitioned the Supreme Court for an order to temporarily suspend attorney Nelson Cohen, pending resolution of formal disciplinary hearings. Cohen opposed the motion and argued that he is not currently causing great harm to the public. However, the court found the petition and documentation demonstrated Cohen appeared to have sought and obtained reimbursement from a client for expenses that were never incurred. The court temporarily suspended Cohen from the practice of law, pending resolution of formal disciplinary proceedings against him. Cohen is thus precluded from accepting new clients. In addition, the court imposed the following restrictions on Cohen's handling of client funds: Cohen is prohibited from withdrawing any funds from any and all accounts in any way relating to his law practice, including but not limited to any general and trust accounts, except upon written approval of Bar Counsel.

To the extent applicable, all proceeds from Cohen'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 Cohen except upon written approval of Bar Counsel.

In Re: Jose C. Pallares
Bar No.: 4020
Case No.: 70953
Filed: January 20, 2017

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended for three years following conditional guilty plea agreement. Attorney found to have violated RPC 1.3 (diligence), RPC 3.4(c) (fairness to opposing counsel—knowingly disobeying obligation under rules of a tribunal), and RPC 8.4(d) (misconduct—prejudicial to the administration of justice).

The Supreme Court agreed with the recommendation of a Southern Nevada Disciplinary Board panel to suspend attorney Jose Pallares for three years following a conditional guilty plea for violations of RPC 1.3 (diligence), RPC 3.4(c) (fairness to opposing counsel – knowingly disobeying obligation under rules of a tribunal) and RPC 8.4(d) (misconduct – prejudicial to the administration of justice).

Pallares represented two cousins, who were co-defendants in a criminal matter. After both pleaded guilty, Pallares filed an appeal to the Supreme Court on behalf of both cousins. He failed to file required rough draft transcript request forms, after which the court entered orders directing Pallares to file the forms or certificates that no transcripts were being requested within 10 days. Pallares did not comply with these orders, and he subsequently failed to file the fast track statements and appendices.

Consequently, the court entered orders conditionally imposing sanctions on Pallares (\$500 in each appeal) and directing him to file the required documents within eleven days. Approximately one month later, Pallares filed certificates of no transcript requests and untimely motions for extensions of time to file the fast track statements and appendices. This court granted Pallares' untimely motions and gave Pallares until December 24, 2014, to file the required documents. On January 28, 2015, Pallares filed the required documents, albeit with formatting deficiencies,

along with untimely motions for extensions of time in which to file those documents.

On February 23, 2015, the court entered orders denying Pallares' untimely motions for extensions of time, imposing additional sanctions against Pallares (\$1,000 additional in each appeal, representing a \$3,000 total sanction payable to the Supreme Court Law Library), removing Pallares as counsel for both appeals, and referring Pallares to the state bar for investigation. The underlying investigation and disciplinary proceeding ensued.

Pallares accepted a conditional guilty plea in exchange for a stated form of discipline that would have imposed a five-year suspension.

The disciplinary panel found two aggravating circumstances:

1. Pallares had prior disciplinary offenses (including a 90-day suspension and a two-year suspension), and
2. He had substantial experience in the practice of law. SCR 102.5(1).

The panel found, however, four mitigating circumstances:

1. Absence of a dishonest or selfish motive;
2. He made a full and free disclosure to the state bar, cooperated with the state bar's investigation and accepted responsibility for his actions;
3. He showed remorse for his actions; and
4. He had good character and reputation. SCR 102.5(2).

Believing the five-year suspension to be unnecessarily long, the panel modified the conditional guilty plea agreement and recommended Pallares be suspended for three years, but that upon successful reinstatement, Pallares would be prohibited from maintaining his own practice and would instead be required to work under the supervision of another attorney. The panel also recommended Pallares pay the costs of the bar proceedings, excluding Bar Counsel and staff salaries.

Accordingly, the court suspended Pallares from the practice of law for a term of three years commencing from the date of this order. Pallares shall also pay the costs of the bar proceedings, excluding Bar Counsel and staff salaries, within 30 days from receipt of the state bar's bill of costs. Upon successful reinstatement, Pallares must abide by the agreed-upon requirement that he work under the supervision of another attorney and not maintain his own law practice.

Justice Lidia Stiglich did not participate in the decision.

In Re: Shelley Lubritz
Bar No.: 5410
Case No.: 71075
Filed: January 20, 2017

ORDER OF SUSPENSION

Attorney suspended for six months, followed by an 18-month stayed suspension resulting from admission to nine violations of RPC 1.3 (diligence), six violations of RPC 1.4 (communication), two violations of RPC 1.15 (safekeeping property), five violations of RPC 3.2 (expediting litigation), two violations of RPC 3.4(c) (fairness to opposing party and counsel), one violation of RPC 3.4(d) (fairness to opposing party and counsel: failure to comply with discovery requests), one violation of RPC 3.5(d) (impartiality and decorum of the tribunal and relations

with the jury: lawyer shall not engage in conduct to disrupt the tribunal) and eight violations of RPC 8.1(b) (bar admission and disciplinary matters).

The Nevada Supreme Court approved a conditional guilty plea recommendation from a Southern Nevada Disciplinary Board panel for attorney Shelley Lubritz. As part of the agreement, Lubritz accepted a six-month suspension, followed by an 18-month stayed suspension, subject to conditions. Lubritz admitted to nine violations of RPC 1.3 (diligence), six violations of RPC 1.4 (communication), two violations of RPC 1.15 (safekeeping property), five violations of RPC 3.2 (expediting litigation), two violations of RPC 3.4(c) (fairness to opposing party and counsel), one violation of RPC 3.4(d) (fairness to opposing party and counsel: failure to comply with discovery requests), one violation of RPC 3.5(d) (impartiality and decorum of the tribunal and relations with the jury: lawyer shall not engage in conduct to disrupt the tribunal) and eight violations of RPC 8.1 (b) (bar admission and disciplinary matters).

The violations were related to Lubritz's representation of 14 separate clients between 2008 and 2013, and Lubritz's subsequent failure to respond in a timely manner to bar grievances. During that representation, Lubritz indicated she was suffering from significant health problems and a gambling addiction, which affected her ability to represent those clients.

After a hearing, Lubritz agreed to a modified conditional guilty plea agreement imposing a six-month actual suspension followed by an 18-month stayed suspension subject to certain probationary conditions.

Lubritz also agreed that if she failed to comply with any of the terms or conditions of the plea agreement, the 18-month stayed suspension would be immediately imposed, and she would not have the right to appeal the imposition of the stayed suspension. A panel majority approved the modified conditional guilty plea agreement. In support of its decision, the panel found three aggravating factors:

1. A pattern of misconduct between 2011 and 2014;
2. Multiple offenses; and
3. Substantial experience in the practice of law. SCR 102.5(1)

The panel, however, found six mitigating factors:

1. Absence of dishonest or selfish motive;
2. Mental disability or chemical dependency;
3. Substantial delay in disciplinary proceedings;
4. Interim rehabilitation;
5. Imposition of other penalties in the form of significant restitution; and
6. Remorse.

Based on a review of the record, the court concluded that the conditional guilty plea agreement should be approved. Considering the duties violated and the aggravating and mitigating circumstances, the court concluded that the six-month actual suspension followed by an 18-month stayed suspension subject to certain conditions is sufficient to serve the purpose of attorney discipline.

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In Re: William A. Kennedy
Bar No.: 9365
Case No.: 71326
Filed: February 24, 2017

ORDER OF SUSPENSION

Attorney suspended for one year based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.16 (declining or terminating representation), RPC 8.1(b) (bar admissions and disciplinary matters) and RPC 8.4(d) (misconduct prejudicial to the administration of justice).

A Southern Nevada Disciplinary Board panel recommended attorney William Kennedy be suspended for one year based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.16 (declining or terminating representation), RPC 8.1(b) (bar admissions and disciplinary matters) and RPC 8.4(d) (misconduct prejudicial to the administration of justice).

The court deemed the facts and charges admitted, because Kennedy failed to answer the complaint and a default was entered.

The record established that Kennedy failed to communicate with his client or terminate his representation of the client after the client rejected a settlement offer that Kennedy recommended she accept. He also failed to respond to a motion for summary judgment, thereby depriving his client of the opportunity to defend against the motion. The motion was granted and judgment entered against the client.

The record further established that Kennedy failed to cooperate in the disciplinary investigation, particularly after he indicated that he was preparing a response and needed an additional 30 days in which to do so. And finally, based on those violations and evidence, the record established that Kennedy did not update his contact information with the state bar, as required by SCR 79.

The court found that the record supported the hearing panel's finding that Kennedy knowingly violated the rules of professional conduct. Kennedy's misconduct harmed his client by not keeping her informed as to the status of her case and not diligently defending her such that she lost the opportunity to oppose a summary judgment motion and a judgment was entered against her. Kennedy's failure to cooperate in the disciplinary investigation harmed the integrity of the profession, which depends on a self-regulating disciplinary system. The record also supported a finding of two aggravating circumstances (pattern of misconduct and refusal to acknowledge the wrongful nature of his conduct) and one mitigating circumstance (absence of prior disciplinary record).

Considering all of these factors and Standards 4.42 and 7.2 of the ABA Standards for Imposing Sanctions, the court suspended Kennedy from the practice of law in Nevada for a period of one year, commencing from the date of the order. Kennedy was also ordered to pay the costs of the disciplinary proceedings in the amount of \$2,500, plus the court reporter and transcript fees as invoiced by the state bar, within 30 days from the date of this order.

TIPS FROM THE OFFICE OF BAR COUNSEL

A REMINDER REGARDING BANK FEES

You have already heard—multiple times—almost everything we can tell you about your trust account. You know “it is not your money,” you cannot “borrow” from it, you can't use it to back up your ATM card, you can't use one client's money to pay off another.

And you know that your bank must report overdrafts to the Office of Bar Counsel, even if they pay the item for you.

But, here is something you probably didn't know: about half of the violations attorneys' banks report are because you failed to check your arithmetic and failed to account for the bank's monthly fees. This is a waste of everyone's time and your money. It may also lead to a wider investigation of your practice, if the bad trust-check investigation points that way.

So, here is a way to remember to debit the fees that banks charge against your trust account:

On your way to work or court, what is the biggest building you pass, other than a casino or a WalMart? It is probably a bank or a large commercial building with a bank for an anchor tenant.

Why is that?

It's because banks are profitable. And one of their sources of profit is the fees they charge you every month in order to keep your trust fund. That's not so hard, is it?

Even when the trust account overdraft is as simple as, “I forgot to deduct the fees,” we have to process the bank's report, and you have to answer our letter of investigation and provide backup documentation if required. Who pays for that? You do.