

Bar Counsel Report

In Re: TERRY L. WIKE
Bar No.: 7211
Case No.: 79305
Filed: 02/27/2020

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Terry L. Wike receive a public reprimand and two years probation subject to certain conditions based on violations of RPC 1.15 (safekeeping property).

We employ a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and thus, will not set them aside unless they are clearly erroneous or not supported by substantial evidence, see generally *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 102, 294 P.3d 427, 428 (2013). In contrast, we review de novo a disciplinary panel's conclusions of law and recommended discipline. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Wike 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 Wike violated RPC 1.15 (safekeeping property) as those findings are supported by substantial evidence and are not clearly erroneous. Wike repeatedly paid personal and business expenses out of his trust account and deposited personal funds into the account to cover his misuse of trust account funds. He also would pay one client and the client's lienholders with funds he received on behalf of another client. Additionally, Wike had a duty under RPC 1.15(e) to retain any disputed funds until the dispute was resolved, yet he paid himself attorney fees out of disputed funds. Thus, we agree with the panel's conclusions that the State Bar established by clear and convincing evidence that Wike violated RPC 1.15.

In determining the appropriate discipline, this court weighs 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). This court determines the appropriate discipline de novo. SCR 105(3)(b).

Wike violated a duty owed to his clients (safekeeping property). It is unclear from the panel's recommendation whether it concluded that Wike's mental state was knowing or negligent. Nonetheless, there is substantial evidence in the record demonstrating Wike knowingly violated RPC 1.15 as he used trust account funds to pay business and personal expenses and then transferred personal funds into his trust account to repay the client funds he had misused. Additionally, substantial evidence supports that

Wike's conduct harmed or potentially harmed his personal injury clients. In particular, even though Wike ultimately paid the clients and their lienholders, he failed to hold their funds in trust resulting in harm due to the delay in receiving their funds or the payment of their liens, and potential further harm if Wike had been unable to deposit funds to cover what he owed to his clients. The baseline sanction for Wike's conduct, before consideration of aggravating and mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) (providing that suspension is 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").

The record supports the panel's finding of one aggravating circumstance (substantial experience in the practice of law) and one mitigating circumstance (cooperation with the disciplinary authority). While the State Bar argues that the mitigating circumstance of cooperation is not supported by substantial evidence, the record demonstrates that Wike provided the requested information to the State Bar, including invoices for construction defect costs. We agree with the State Bar that the mitigating circumstance of character and reputation is not supported by substantial evidence as there is no evidence in the record regarding Wike's character and reputation other than his own statements concerning his experience.

Considering all of the factors, we disagree with the panel that a public reprimand and probation would 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). Considering the number of times Wike misused client funds, Wike's substantial experience in the practice of law, Wike's poor accounting practices and records, and Wike's insistence that his misconduct is not serious, we conclude an actual suspension is necessary.

Accordingly, we hereby suspend attorney Terry L. Wike from the practice of law in Nevada for two years, with all but the first three months stayed, commencing from the date of this order. During the stayed suspension, Wike must be mentored by an attorney who practices in personal injury law and is knowledgeable in its accounting practices. Additionally, during the stayed suspension, Wike must submit quarterly reports to his mentor and the State Bar and will be subject to periodic audits by the State Bar. Wike shall pay the costs of the bar 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: DENNIS M. PRINCE
Bar No.: 5092
Case No.: OBC19-0892
Filed: 01/22/2020

LETTER OF REPRIMAND

To Dennis M. Prince:

On April 1, 2015, you became a partner in the law firm which came to be known as Eglet Prince (the “Firm”). As part of your partnership, you were issued an American Express platinum card which was to be used for the benefit of the Firm and not for payment of personal expenses.

However, in January, 2019, a firm partner reviewed your records and determined that many of the expenses charged to your firm card were for personal expenditures. You agreed that a portion of the charges were personal in nature, and disputed others, but ultimately accepted responsibility for these charges and reimbursed the Firm \$136,038.87 over the life of the card.

While the State Bar took into account your nearly 30 years of practice with no prior discipline, and the fact that you quickly and voluntarily paid back these expenses, the State Bar is concerned with your conduct as it relates to the use of the card. As such, you are hereby REPRIMANDED for violating RPC 8.4 (misconduct). In addition, within 30 days of this Letter of Reprimand, you are required to remit to the State Bar of Nevada the amount of \$1,500 pursuant to Supreme Court Rule 120(3).

In Re: EVAN D. SCHWAB
Bar No.: 10984
Case No.: OBC19-1296 & OBC19-1480
Filed: 02/18/2020

LETTER OF REPRIMAND

To Evan D. Schwab:

On February 18, 2020, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievances. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct (“RPC”) and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

OBG19-1296 pertains to your handling of your client trust account. RPC 1.15 (Safekeeping Property) states, in pertinent part, that “[a] lawyer shall hold funds or other property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.” Specifically, RPC 1.15(c) states that “[a] lawyer shall deposit into a client trust account legal fees and

expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.” You withdrew funds from your client trust account to repay loan(s) for your law firm. Under ABA Standard 4.12, 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. In this case, you should have known that you were improperly dealing with your client trust account. This type of ethical breach could potentially have caused injury to your client(s).

With regard to OBC19-1480, you were retained to assist Gilbert Romero (hereinafter “Mr. Romero”) in filing for bankruptcy. RPC 1.3 (Diligence) states that a “lawyer shall act with reasonable diligence and promptness in representing a client.” There was an unreasonable delay in filing Mr. Romero’s bankruptcy. Under ABA Standard 4.44, admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client. In this case, your delay in filing Mr. Romero’s bankruptcy was negligent. This type of ethical breach could potentially have caused injury to Mr. Romero.

Lastly, RPC 3.4 (Fairness to Opposing Party and Counsel) states, in pertinent part, that a lawyer shall not “[r]equest a person other than a client to refrain from voluntarily giving relevant information to another party unless: (1) [t]he person is a relative or an employee or other agent of a client; and (2) [t]he lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.” You offered to provide Mr. Romero with a full refund of his fees paid in exchange for the withdrawal of his bar grievance against you. Under ABA Standard 6.33, reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. In this case, offering Mr. Romero full refund in exchange for the withdrawal of his bar grievance was negligent. This type of ethical breach not only interferes with the outcome of a legal proceeding, but diminishes public confidence in the legal profession as well.

Under ABA Standard 4.12, suspension is generally appropriate for your violation of RPC 1.15. Under ABA Standard 4.44, admonition is generally appropriate for your violation of RPC 1.3. Under ABA Standard 6.33, reprimand is generally appropriate for your violation of RPC 3.4. However, based on your absence of a prior disciplinary record, your cooperative attitude toward the instant proceedings, and your remorse for your actions, we believe that mitigation of your disciplinary sanction is appropriate. Moreover, in OBC19-1296, your retention of a CPA demonstrates your efforts to rectify the consequences of your misconduct and an absence of a dishonest or selfish motive.

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Accordingly, you are hereby REPRIMANDED for violating RPC 1.3, 1.15, and 3.4. In addition, pursuant to Supreme Court Rule 120(3), you are required to remit to the State Bar of Nevada the amount of \$1,500 within 30 days of this letter. I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this Rule:

Name	Bar No.	Order No.	Filed
Robert L. Auer	607	80677	03/04/2020
Michael S. Brandt	5881	80678	03/04/2020
Benjamin L. Bunker	9773	80679	03/04/2020
Stephen J. Dahl	1069	80680	03/04/2020
Monica J. Finta	6297	80681	03/04/2020
Joshua B. Fisher	12208	80682	03/04/2020
Michael J. Gervolino	7347	80684	03/04/2020
Tony Graf, Jr.	12540	80685	03/04/2020
Daniel S. Hussey	257	80686	03/04/2020
Paul D. Johnson	3085	80687	03/04/2020
Roy L. Nelson, II.	635	80688	03/04/2020
Kristen H. Philhower	6435	80689	03/04/2020
Natalie A. Pons	5134	80690	03/04/2020
Ralph R. Rhoades	6470	80691	03/04/2020
Stephen G. Snyder	417	80692	03/04/2020
Suzanne R. Sullivan	6839	80697	03/04/2020
Anne M. Vohl	4138	80698	03/04/2020

TIP FROM THE BAR COUNSEL

State Bar of Nevada's Jurisdiction over Federal Practitioners

Some areas of federal practice, such as immigration, allow an attorney, not otherwise admitted to practice law in Nevada, to work here in Nevada. What jurisdiction then, does the State Bar of Nevada have over these non-Nevada licensed attorneys?



Supreme Court Rule 99 provides jurisdiction to the Supreme Court and Nevada disciplinary boards and panels over, "Every attorney admitted to practice law in Nevada, specially admitted by a court of this state for a particular proceeding, practicing law here, whether specially admitted or not, or whose advertising for legal services regularly appears in Nevada ..."

Thus, federal practitioners must still be careful to review and adhere to the Nevada Rules of Professional Conduct in their Nevada cases. Failure to do so can result in disciplinary action in Nevada including reprimands, injunctions against practicing in the state, and of course, reciprocal discipline from their licensing jurisdiction.