In Re:
MICHAEL S. MYERS
Bar No.: 1494
JEFFREY R. GOMEL
Bar No.: 3067
Case No.: 74690
Filed: June 26, 2018

ORDER APPROVING JOINT 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 attorneys Michael S. Myers and Jeffrey R. Gomel. Under the agreement, Myers and Gomel admitted to violating RPC 1.15 (safekeeping property) and RPC 5.3 (responsibilities regarding nonlawyer assistants). Myers and Gomel agreed to a one-year stayed suspension subject to certain probationary conditions, including the payment of restitution.

Myers and Gomel have admitted to the facts and violations alleged in the complaint. The record therefore establishes that they failed to properly supervise a nonlawyer assistant, who improperly transferred more than $1 million from their trust account in an effort "to cover claimed firm costs." Neither Myers nor Gomel were aware of the nonlawyer assistant's activities. In fact, at the time Gomel resided in Montana and commuted to Las Vegas only once a month. Within fifteen minutes of discovering the nonlawyer assistant's improper trust fund transfers, Myers and Gomel self-reported to the State Bar. They also immediately hired a forensic accountant to do an external audit and began placing at least 10% of their earned fees in a separate account maintained by the accountant to address the trust account shortfall. They have cooperated fully with the State Bar and returned funds to the trust account, leaving a deficit of $507,941.53 as of the date of the panel's recommendation. Thus, the record establishes that they violated RPC 1.15 (safekeeping property) and RPC 5.3 (responsibilities regarding nonlawyer assistants).

As Myers and Gomel admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline). 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).

Myers and Gomel have admitted that they violated their duty to preserve client property. They also agreed that they caused potential harm to their clients and actual and potential harm to the legal profession and the legal system. The baseline sanction before considering aggravating and mitigating circumstances is either a reprimand or a 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 4.13 ("Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."). The record supports, and the State Bar, Myers, and Gomel agreed that there are three aggravating circumstances (pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and six mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to make restitution or rectify consequences of misconduct, full and free disclosure to disciplinary authority or cooperative attitude, character and reputation, and remorse) that apply for both attorneys and an additional mitigating circumstance (delay in disciplinary proceedings) that applies for Gomel. Regardless of the possible mental state of negligence, based on the amount of money involved, the potential or actual harm to clients and the profession, and the aggravating circumstances, we conclude that the agreed-upon one-year stayed suspension is appropriate.

Accordingly, we hereby suspend attorneys Michael S. Myers and Jeffrey R. Gomel from the practice of law in Nevada for a period of one year commencing from the date of this order. The suspension is stayed subject to the conditions outlined in the conditional guilty plea agreement. Myers and Gomel shall pay the actual costs of the disciplinary proceeding, in addition to $2,500 under SCR 120. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: SEAN L. BROHAWN
Bar No.: 7618
Case No.: 745416
Filed: July 19, 2018

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a modified conditional guilty plea agreement in exchange for a stated form of discipline for attorney Sean L. Brohawn. Under the agreement, Brohawn admitted to violating RPC 1.2 (scope of representation), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.4 (fairness to opposing party and counsel), RPC 8.1 (disciplinary matters), and RPC 8.4 (misconduct). He agreed to an 18-month suspension to run concurrent with the 18-month suspension imposed in Discipline of Brohawn, Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018).

Brohawn has admitted to the facts and violations alleged in the complaint. The record therefore establishes that Brohawn failed to appear on behalf of a criminal client on two occasions, resulting in the need for her to be appointed a public defender, and he failed to refund her his unearned legal fees. Additionally, Brohawn failed to withdraw two other clients' claims and failed to inform them of requests for discovery, which resulted in the clients being sanctioned $2,740 plus interest. They were unaware of the sanction until the opposing party attempted to collect the sanction and as a result, they had to pay $750 to *resolve* the debt. Further, Brohawn failed to respond to the State Bar's lawful demands for information in response to the two grievances. Thus, the record establishes that he violated the above-listed rules.

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As Brohawn admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline). 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 and mitigating factors." *In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Brohawn has admitted that he knowingly violated duties owed to his clients (diligence, communication, scope of representation) and to the legal profession (failing to respond to a lawful demand for information from a disciplinary authority and misconduct). He also admitted that his clients were harmed because one was subject to criminal consequences as a result of his lack of diligence and communication and the others were monetarily sanctioned because he failed to properly withdraw their claims or inform them of requests for discovery. Further, the profession was harmed as a result of Brohawn's failure to participate in the grievance process. The baseline sanction before considering aggravating and mitigating circumstances is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* Standard 4.42 (Am. Bar Ass'n 2017) (providing that suspension is appropriate if a lawyer either "knowingly fails to perform services for a client and causes injury or potential injury to a client," or the "lawyer engages in a pattern of neglect and causes injury or potential injury to a client"). The record supports the panel's findings of three aggravating circumstances (multiple offenses, pattern of misconduct, and substantial experience in the practice of law) and two mitigating circumstances (mental disability and cooperative attitude). Considering all four factors, we conclude that the agreed-upon 18-month suspension to run concurrent with the suspension in Docket No.73964 is appropriate.

Accordingly, we hereby suspend attorney Sean L. Brohawn from the practice of law in Nevada for a period of 18 months, to run concurrent with the suspension imposed in *Discipline of Brohawn,* Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018), such that both periods of suspension will conclude on August 23, 2019. Brohawn shall pay restitution to LeeRoy and Linda Taylor in the amount of $1,150 and Christina Braithwaite in the amount of $1,250 within 60 days of the date of this order. Further, Brohawn shall pay the actual costs of the disciplinary proceeding, including $2,500 under SCR 120 within 60 days of the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

DELMAR L. HARDY
Bar No.: 1172
Case No.: 74060
Filed: 7/19/2018

PUBLIC REPRIMAND

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Delmar L. Hardy receive a public reprimand for violating RPC 1.8(a) (conflict of interest: current clients) and RPC 5.1 (responsibilities of partners, managers, and supervisory lawyers).

The State Bar has the burden of demonstrating by clear and convincing evidence that Hardy committed the violation charged. *In re Discipline of Drakulich,* 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). 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, 105, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa,* 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). In contrast, we review de novo a disciplinary panel's conclusions of law and recommended discipline. SCR 105(3)(b).

An associate in Hardy's firm, the Hardy Law Group, entered into a contingency fee agreement with a client to handle a trust and probate matter, which included a provision giving the firm the ability to attach a lien on any proceeds recovered as security for payment of fees owed to the firm. During the probate case the associate filed a notice of lien for attorney fees and, from the record provided to this court, it does not appear that the lien was ever adjudicated. *See* NRS 18.015(6) (allowing an attorney to request that a lien for attorney fees be adjudicated). Rather, after the district court entered its order distributing the majority of the trust assets,[1] the trustee executed an assignment of a note and deed of trust for a property held by the trust, assigning Hardy's client and Hardy Law Group jointly an interest in income from that property.

The obligor on the note defaulted and a deed in lieu of foreclosure was recorded at the request of the associate, giving the client a certain percentage ownership, and dividing the remaining ownership of the property between Hardy and his associate, all as tenants in common. The associate left Hardy Law Group shortly thereafter. Both the client and the associate testified at the hearing that the client was given no disclosures and made no written consent to own property with Hardy as tenants in common. The panel found that these actions constituted violations of RPC 1.8(a) (conflict of interest: current clients: specific rules-business transactions) and RPC 5.1 (responsibilities of partners, managers, and supervisory lawyers).

> RPC 1.8(a) prohibits a lawyer from enter[ing] into a business transaction with a client or knowingly acquir[ing] an ownership, possessory, security or other pecuniary interest adverse to a client unless:
> 1. The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
> 2. The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
> 3. The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Hardy first argues that a tenancy in common is not a business relationship, thus no violation could lie. We disagree as we have previously held that a business transaction occurs when an attorney places "himself in a position wherein the exercise of his professional judgment on behalf of his clients would be affected by his own financial interests." *In re Discipline of Singer,* 109 Nev. 1117, 1120, 865 P.2d 315, 317 (1993). Owning property with a client is certainly a situation where an attorney's professional judgment would be affected by his own financial interests.

We also disagree with Hardy's argument that his actions fall under RPC 1.8(i) and therefore cannot be considered a violation of RPC 1.8(a). RPC 1.8(i) prohibits attorneys from acquiring a proprietary interest in their client's litigation, except that the attorney may "[a]cquire a lien authorized by law to secure the

lawyer's fee or expenses." RPC 1.8(i)(1). And Hardy is correct that NRS 18.015(1)(a) provides an attorney a lien on a client's cause of action to secure payment for attorney fees. But subsections RPC 1.8(a) and (i) are not mutually exclusive. Rather, an attorney may have a proprietary interest in the object of a client's litigation under subsection (i) and NRS 18.015(1)(a) but, if that proprietary interest constitutes a business transaction under subsection RPC 1.8(a), then the attorney is still required to comply with RPC 1.8(a)'s written disclosure and consent requirements. *See* Ann. Model Rules of Prof l Conduct R. 1.8 cmt. 1 & R. 1.5 cmt. 4 ("[A] fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client."); *see also Hawk v. State Bar,* 754 P.2d 1096, 1103 (Cal. 1988) ("[A]n attorney who secures payment of fees by acquiring a note secured by a deed of trust in the client's property has acquired an interest adverse to the client, and so must comply with [California's equivalent of RPC 1.8(a)]."); *Petit-Clair v. Nelson,* 782 A.2d 960 (N.J. Super. Ct. App. Div. 2001) (holding that securing the payment of legal fees by obtaining a mortgage on the clients' personal residence constituted an adverse interest requiring written disclosure and consent); *Selby v. Stewart,* 853 N.Y.S.2d 489, 495-96 (App. Div. 2008) (requiring disclosure and consent when an attorney obtains a mortgage on the client's real property to secure payment for fees). Thus, because Hardy's interest in the client's property constituted a business transaction in this case, Hardy was obligated to comply with RPC 1.8(a). As there is no dispute that neither Hardy nor his associate complied with RPC 1.8(a)'s written disclosure and consent requirements, we agree with the panel's conclusion that the State Bar established by clear and convincing evidence that Hardy violated RPC 1.8(a).

We also conclude that the State Bar established that Hardy violated RPC 5.1 by clear and convincing evidence. RPC 5.1(c)(2) makes an attorney responsible for another attorney's violation of the RPCs if the attorney has managerial authority over the other attorney "and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." Here, Hardy failed to take any remedial action once he became aware of his co ownership of the property[2] and is therefore responsible for his associate's RPC violations[3] pursuant to RPC 5.1(c)(2).

In determining whether the panel's recommended discipline is appropriate, 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). We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (noting the purpose of attorney discipline).

Hardy violated duties owed to his client (conflict of interest: current clients) and to the profession (responsibilities of partners, managers, and supervisory lawyers). Hardy's violation was with knowledge as he knew that he obtained a proprietary interest in his client's property without giving written disclosures or obtaining written consent. *See* Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* 452 (Am. Bar Ass'n 2017) (Standards) (defining knowledge as a "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result"). The panel found and the record supports that there was actual injury to the client because the client lacked the opportunity to be informed about the consequences of owning property as tenants in common with Hardy. In aggravation, Hardy has substantial experience in the practice of law and his denial of responsibility for the RPC 1.8(a) violation was unreasonable. Although Hardy argues that his decision to defend himself should not be held against him, we conclude that substantial evidence supports the panel's finding that Hardy had knowledge of his RPC 1.8(a) violation yet did not accept responsibility for it. In mitigation, Hardy does not have a prior disciplinary record.[4]

Further, we conclude that the panel's recommendation that Hardy be assessed a $1,000 fine and the actual costs of the disciplinary proceeding in addition to the administrative costs under SCR 120(3) is appropriate. The State Bar's memorandum of costs included receipts and bills accounting for those costs.

Accordingly, we hereby publicly reprimand Delmar L. Hardy for violating RPC 1.8(a) (conflict of interest: current clients) and RPC 5.1 (responsibilities of partners, managers, and supervisory lawyers). Additionally, Hardy shall pay the actual costs of the disciplinary proceedings as provided in the State Bar's memorandum of costs, the $1,000 fine, and $1,500 under SCR 120(3) within 30 days from the date of this order.[5] *See* SCR 120. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

ANGELA J. LIZADA
Bar No.: 11637
Grievance File No.: OBC18-0149
Filed: 8/14/2018

LETTER OF REPRIMAND

To Angela J. Lizada:

On August 14, 2018, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel concluded that you violated the Rules of Professional Conduct and should be reprimanded. This letter shall constitute delivery of that reprimand.

On or about September 15, 2015, you were retained by Client A to represent her in an EEOC action for alleged discriminatory discharge by her former employer on July 15, 2015. You were to file a charge with the EEOC on Client A's behalf.

You prepared the charging document, which Client A signed on November 15, 2015. You then gave the document to your legal assistant to send to the EEOC. Your legal assistant improperly sent the charging document to Client A's former employer. It was not received by the EEOC within three hundred (300) days of Client A's discharge. Therefore, her action was time barred.

You did not become aware of the improper mailing of Client A's charging documents until October 2018. Though you repeatedly requested status updates concerning Client A's case from your legal assistant, you did not personally attempt to determine why the EEOC had taken no action on the case until March 2, 2017, when you faxed a letter to the EEOC requesting a status update. After that inquiry you failed to follow-up though no written response was received.

Nevada Rule of Professional Conduct 1.3 (Diligence) requires a lawyer to act with reasonable diligence and promptness in representing a client. In this instance, you should have done more to ensure Burnett's case was being

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investigated. You should not have waited over fifteen (15) months after filing to request an update in writing, and you should have followed-up when you did not receive a response to your inquiry.

Nevada Rule of Professional Conduct 5.3 (Responsibility Regarding Nonlawyer Assistants) requires a lawyer with managerial authority to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer. In this instance, you should have done more to ensure that the legal assistant properly filed the charging documents and was making timely inquiry into the status of Client A's case.

Upon discovering the error, you did take corrective action to prevent future violations. Specifically, you terminated the employee involved and reviewed all active cases to verify no additional errors had been made. You have also instituted new office procedures to better track case statuses and deadlines. You also offered to refund the fees paid by Client A.

Accordingly, you are hereby **REPRIMANDED** for having violated Rules of Professional Conduct ("RPC") 1.3 (Diligence) and 5.3 (Responsibility Regarding Nonlawyer Assistants.

We 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
John A. Furlong	219	76357	7/18/2018
April Rodewald-Fout	5754	76363	7/18/2018
Margaret Ann Willoughby	1090	76360	7/18/2018
Walter V. Norwood	2428	76362	7/18/2018
Andrew S. Myers	3546	76361	7/18/2018
Suzanne M. Lugaski	8942	76359	7/18/2018
Mary F. Edwards	6873	76358	7/18/2018
James A. Davidson	2588	76356	7/18/2018
Jessica L. Combs	11364	76364	7/18/2018

1. Contested attorney fees were not distributed. To the extent Hardy argues that the district court order addressed his law firm's lien for attorney fees, we disagree, as it is clear the attorney fees discussed in the district court's order are those requested by the trust's attorney.
2. There is substantial evidence in the record to support the panel's finding that Hardy knew of his ownership of the property at the time his associate left the Hardy Law Group, which occurred shortly after Hardy was deeded the interest in the property.
3. The associate was given a letter of reprimand for his actions in the client's case. Considering all these factors, we agree that a public reprimand is sufficient to serve the purpose of attorney discipline. *See Claiborne,* 104 Nev. at 213, 756 P.2d at 527-28. Though suspension is generally the baseline sanction for Hardy's misconduct, *see* Standards, at Standard 4.32 (providing that suspension is "appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client"), we conclude that the mitigating circumstance weighs in favor of a public reprimand.
4. We note, however, that after this matter was fully briefed, Hardy was suspended from the practice of law in a separate disciplinary matter. *See In re Discipline of Hardy,* Docket No. 75741 (Order of Suspension and Referral to Disciplinary Board, May 15, 2018).
5. We note that the State Bar's retaxed memorandum of costs has a mathematical error. The total amount should be $5,763.68, not $6,763.68.

TIPS FROM THE OFFICE OF BAR COUNSEL

Just because you can say anything in an email or text, does not mean that you should.

In today's legal arena, emails and texts can be used as evidence just like an old-fashioned hand-written letter. That means if it is something you would not put in a letter and mail it off, putting it into an email or text might not be a good idea either.

Emailing and texting have made lawyer's lives exponentially easier, as the technology is used to communicate important information to clients very quickly. But, communicating in a flippant manner with clients via email or text can lead to misunderstandings, bad reputations and bar grievances. *See* RPC 1.3 (Diligence), RPC 1.4 (Communication), and RPC 8.4 (Misconduct). The potential for misunderstandings makes communicating via email or text with third-parties an even-more difficult minefield to navigate. *See* RPC 3.4 (Fairness to Opposing Party and Counsel), RPC 4.1 (Truthfulness in Statements to Others) and RPC 4.3 (Dealing with Unrepresented Person). Professional emails should be just that: professional. Texting can be reserved for simple procedural details, like confirming appointments.

Similarly, emails and text messages can make communicating with opposing counsel or co-counsel go much more smoothly. But if you would not print, sign and put a stamp on something that you just tapped quickly into your smartphone, then sending it via text could lead to problems.

The speed of emailing and texting, combined with the ease of using both, can lead to inaccurate and unprofessional communications that could jeopardize a client's case—and an attorney's reputation.