DOUGLAS W. NICHOLSON
Bar No.: 3654
Docket No.: 78799
Filed: 09/12/2019

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 conditional guilty plea agreement in exchange for a stated form of discipline for attorney Douglas W. Nicholson. Under the agreement, Nicholson admitted to violating RPC 1.3 (diligence) and RPC 3.2 (expediting litigation) and agreed to a two-year suspension, stayed for two years, subject to certain conditions.

Nicholson admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes that Nicholson violated the above-listed rules by failing to respond to repeated district court orders directing him to file documents and appear in a probate case and by failing to promptly handle another client's matter. The issue for this court is whether the agreed-upon discipline sufficiently protects 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) (explaining the 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).

Nicholson has admitted to negligently engaging in a pattern of neglect and violating duties owed to his clients and to the legal system. Nicholson's actions injured the legal system and risked potential injury to one of his clients. Based on the most serious instance of misconduct, Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards* 452 (Am. Bar Ass'n 2018) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations"), the baseline sanction before considering aggravating or mitigating factors is a reprimand, *id*. at Standard 4.43 ("Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client."). The record supports the panel's finding of three aggravating factors (substantial experience in the practice of law, prior discipline, and a pattern of misconduct) and four mitigating factors (imposition of other penalties or sanctions, absence of a dishonest or selfish motive, a cooperative attitude toward the proceedings, and remorse). The panel concluded, and Nicholson agreed, that the aggravating factors warranted an upward deviation from the baseline sanction. Considering the relevant factors, we conclude that the agreed-upon discipline is sufficient to serve the purpose of attorney discipline.

Accordingly, we hereby suspend attorney Douglas W. Nicholson from the practice of law for two years from the date of this order, stayed for two years, and subject to certain conditions. During the two-year stay, Nicholson shall have no grievances resulting in actual discipline and shall regularly continue to see a therapist. Nicholson shall comply, if he has not already, with the district court's December 24, 2018, order addressing sanctions by completing the pro bono hours or paying the monetary sanctions. Within 90 days of the date of this order, Nicholson shall provide the Office of Bar Counsel a succession plan for his law practice. Furthermore, 90 days after the date of this order, Nicholson shall file a report with the Office of Bar Counsel identifying (1) that he is continuing to engage in the practice of law, (2) that he continues to be reasonably competent to attend to clients and is reasonably attending to clients and matters, and (3) the dates on which he met with his therapist in the preceding 90 days. Nicholson must file such reports every 90 days during the stayed suspension and they shall be counter-signed by Nicholson's therapist and John Huffman, Esq., to confirm that the reports' assertions are true and correct to the best of their personal knowledge. Nicholson shall refund $2,400 to client Constance Nelson within 180 days from the date of this order. Finally, Nicholson shall pay the costs of the disciplinary proceeding, including $2,500 under SCR 120, within 30 days from the date of this order. The State Bar shall comply with SCR 121.1. **It is so ORDERED**.[1]

RANDAL R. LEONARD
Bar No.: 6716
Docket No.: 78632
Filed: 09/12/2019

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, an amended conditional guilty plea agreement in exchange for a stated form of discipline for attorney Randal R. Leonard. Leonard admitted to violating RPC 1.3 (diligence), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct).

As set forth in the amended plea agreement, Leonard did not fully cooperate with the disciplinary proceedings resulting from a client's complaint that Leonard failed to diligently pursue the matter for which he had been retained. He also did not complete two conditions of a guilty plea agreement that addressed a 2016 disciplinary matter and was resolved through a public reprimand. The amended plea agreement and information submitted to the State Bar indicate that the violations resulted in actual injury to Leonard's client in that his case was dismissed at least in

part due to Leonard's lack of diligence and injury to the legal profession through Leonard's lack of cooperation in the disciplinary process. Leonard agreed to a six-month-and-one-day suspension with the last day stayed, provided that he successfully completes a two-year probationary period. He further agreed to the following conditions, as more specifically described in the plea agreement: (1) he must participate in binding fee dispute arbitration within the first 90 days of his suspension and pay, within the 24-month probationary period, any awarded attorney fees and all expert witness fees, as determined in the arbitration; (2) he must obtain a mentor approved by the State Bar before the end of the 6-month suspension, with a completed mentorship agreement and quarterly reports to be filed with the State Bar; (3) he must remain free from any violations of the professional conduct rules during the probationary period; and (4) he must pay the actual costs of the underlying disciplinary proceedings, including $2,500 under SCR 120 within 30 days of receiving the State Bar's memorandum of costs.

Based on our review of the record, we conclude that the amended guilty plea agreement should be approved. See SCR 113(1). Considering the duties violated, Leonard's mental state (negligence with regard to his lack of diligence and knowledge with regard to his lack of cooperation with the disciplinary investigation and failure to comply with the conditions of his public reprimand), the injuries caused by his conduct, and the aggravating and mitigating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, substantial experience in the practice of law, absence of a dishonest or selfish motive, and remorse), we agree that a six-month actual and one-day stayed suspension are appropriate. *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008) (identifying the following four factors that must be weighed in determining the appropriate discipline: "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"); *see Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 7.2 (Am. Bar Ass'n 2017) ("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 public, or the legal system."); *see also State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

We hereby impose a six-month-and-one-day suspension. Leonard shall serve six months of the suspension, commencing from the date of this order, and the remainder of the suspension shall be stayed pending his successful completion of a two-year probationary period. The probationary period shall commence upon entry of this order. To successfully complete probation, Leonard must comply with all of the conditions in the plea agreement, as outlined above. Leonard shall comply with SCR 115. The State Bar shall comply with SCR 121.1. **It is so ORDERED.**[2]

JAMES A. COLIN
Bar No.: 6257
Docket No.: 73031
Filed: 09/19/2019

Automatic review of a disciplinary board hearing panel's recommendation for attorney discipline.
Attorney suspended.

BEFORE THE COURT EN BANC.[3]

OPINION

The Rules of Professional Conduct (RPC) establish ethical guidelines for lawyers, some of which are mandatory and therefore define proper conduct for purposes of professional discipline. We consider in this matter whether to discipline attorney James A. Colin for violating rules that direct lawyers not to engage in conduct intended to disrupt a tribunal (RPC 3.5(d)), not to make statements concerning a judge's integrity or qualifications that the lawyer knows to be false or with reckless disregard as to the statements' truth or falsity (RPC 8.2(a)), and not to act in a way that is prejudicial to the administration of justice (RPC 8.4(d)). We conclude that the State Bar proved that Colin made statements in pleadings to the court concerning the integrity of several justices that he knew to be false or with reckless disregard for their truth or falsity and that he engaged in conduct prejudicial to the administration of justice, but the evidence does not establish that Colin engaged in conduct intended to disrupt a tribunal because the alleged conduct did not occur inside a courtroom or similar setting. Considering the nature of the misconduct and similar discipline cases, we conclude that a six-month-and-one-day suspension serves the purpose of attorney discipline.

FACTS AND PROCEDURAL HISTORY

This discipline matter arises out of Colin's representation of condemned inmate Charles Lee Randolph in an appeal from a district court order denying Randolph's second postconviction petition for a writ of habeas corpus. In that matter, former Justice Douglas voluntarily recused himself because he had presided over Randolph's trial, and Chief Justice Gibbons and former Justice Cherry recused themselves because, when they were district court judges, they had written letters stating that the deputy district attorney who prosecuted Randolph had always been professional in his interactions with them, and those letters were submitted to this court as part of the prosecutor's response to an order to show cause that had been entered in Randolph's direct appeal. The remaining

continued on page 42

continued from page 41

four justices on the court at that time (Justices Pickering, Hardesty, Parraguirre, and Saitta) decided Randolph's second postconviction appeal, affirming the district court's judgment. *Randolph v. State*, Docket No. 57959 (Order of Affirmance, Jan. 24, 2014). The misconduct at issue here involves statements that Colin included in several pleadings filed in the Randolph matter after the court entered its disposition.

Colin's statements in the Randolph matter

In a petition for rehearing and a motion to disqualify the four justices who signed the *Randolph* disposition, Colin made a number of unsupported and outrageous remarks about the court and the justices, many of which were unrelated to the matter on which he sought rehearing. Those statements included, but are not limited to, the following:

> [The Court had] the audacity to affirmatively "alter" the appellate record to conform to the Court's dishonest actions and claims.
> …
> [T]he Court took its dishonesty to an unprecedented new level, and … the Court affirmatively fabricated a lie, blatantly contrary to the record…. Indeed, the Court's own Order proves that the Court is drunk with power, acting like a lawless bully, just lying and cheating to accomplish its evil objective to see Randolph dead.
> …
> [T]he four Justices … are vindictive, dishonest, and totally biased … They have concocted false and unsupportable legal theories … and appear to be willing to do anything to achieve their evil aims.
> …
> The Justices are dishonest, and that dishonesty is apparent from the record in this case, and also from their active participation in a lengthy and ongoing unconstitutional judicial scheme and conspiracy to circumvent the Nevada Constitution, steal money from the Nevada taxpayers, and put $30,000 unconstitutional dollars a year into their own, and/or their judicial friend's pockets.
> …
> [T]he Justices are engaged in an ongoing conspiracy to circumvent the Nevada Constitution through bogus "service" on a bogus "Law Library Commission."

Colin's motion to disqualify the four justices was denied as untimely in an order signed by Chief Justice Gibbons on March 25, 2014.

Colin filed a motion to strike the March 25 order and filed another motion to disqualify the four justices and to re-disqualify Chief Justice Gibbons and former Justices Cherry and Douglas, in which he alleged that none of the seven justices could be fair and impartial. In that motion, he made the following statements:

> This Nevada Supreme Court has no respect for the Nevada Constitution, or the law of the United States of America. The Court's despicable and blatantly lawless actions have repeatedly proven this sad truth.
> …
> [F]airness and honesty are anathema [sic] to this Court, which seeks only to use its brute power to make up lies, get paid, and wrongly blame others for its evil objective—the lynching of Charles Lee Randolph.
> …
> Just because seven (7) dishonest elected government officials conspire together to disobey the law, and agree that lies are the truth, it sure doesn't mean their lies actually are the truth.
> …
> The Nevada Supreme Court works hard to this very day to break the law, make up lies, and complete the judicial lynching of Charles Lee Randolph.

Colin's motions to strike the March 25 order and to disqualify all seven justices were denied in an order signed by Chief Justice Gibbons on September 17, 2014. In that order, Colin was also referred to the State Bar of Nevada for investigation and a determination on the appropriateness of discipline "based on the contemptuous tone and unsubstantiated allegations in the pleadings."

In response, Colin filed a motion to strike the September 17 order, arguing that Chief Justice Gibbons could not resolve the motions as he had recused himself in the matter. In that motion, Colin asserted that "Gibbons' willful illegal behavior seems obviously motivated by a desire to wrongly harm Mr. Randolph and his counsel" and the "vindictive and illegal attempt to 'discipline' undersigned counsel" "is void and illegal, and simply designed to retaliate."

Because the motion to strike the September 17 order was related to the motion to disqualify, the four justices who decided the *Randolph* matter recused themselves from deciding the motion to strike. The Governor appointed three district court judges to decide the motion to strike and, if necessary, the motion to disqualify. The appointed judges granted the motion to strike the March 25 and September 17 orders, concluding that because Chief Justice Gibbons had recused himself, he could not undertake any administrative action in the case. Thereafter, the appointed judges denied the motions to disqualify the four justices who had decided the *Randolph* matter. The petition for rehearing was then denied.

Bar proceedings

Following the referral in the September 17 order, the State Bar filed a disciplinary complaint against Colin in April 2015, alleging that he violated RPC 3.5(d) (conduct

intended to disrupt a tribunal), RPC 8.2(a) (false statement concerning the qualifications or integrity of a judge), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Colin filed an answer, in which he admitted to filing the motions to disqualify and strike, generally stating that they were valid and meritorious or reflected his honest opinions or beliefs and generally denying that those pleadings violated the RPCs. The State Bar and Colin entered into a conditional guilty plea agreement, which was reviewed and rejected by a hearing panel.

After the hearing panel rejected the plea agreement, the matter proceeded to a formal, contested hearing. Although Colin was served with a notice of the formal hearing, he failed to appear. During the hearing, the State Bar asserted that Colin's pleadings in the *Randolph* matter violated RPC 3.5, RPC 8.2, and RPC 8.4 because, in them, he demonstrated an unwillingness to pursue proper legal remedies upon receiving a ruling with which he disagreed and instead made numerous unfounded accusations about the integrity, motives, and competence of the supreme court justices. The panel concluded that Colin's persistent conduct over an extended period of time denigrated the legal system and devolved into a personal attack on those attempting to administer justice. Based on those findings and conclusions, the panel recommends this court suspend Colin for one year and require him to pass the Multistate Professional Responsibility Exam as a precondition to seeking reinstatement. The panel also recommends Colin be ordered to pay the costs of the disciplinary proceeding including $2,500 under SCR 120(3). In support of its recommendation, the panel found three aggravating circumstances (refusal to acknowledge the wrongful nature of his conduct, vulnerability of the victim, and substantial experience in the practice of law) and one mitigating circumstance (absence of a prior disciplinary record).

DISCUSSION

Colin violated RPC 8.2(a) and RPC 8.4(d) but did not violate RPC 3.5(d)

Colin contends that the evidence does not support the panel's conclusions that he violated RPC 3.5(d), RPC 8.2(a), or RPC 8.4(d) because "[t]he State Bar of Nevada intentionally lied to the hearing panel in an effort to get [him] disciplined for telling the truth!"[4] (Emphasis omitted.) The State Bar does not directly respond to this argument.

The State Bar has the burden of showing by clear and convincing evidence that Colin committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). To be clear and convincing, evidence "need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference … may be drawn." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (internal quotations marks omitted), as modified by 31 P.3d 365 (2001). Our review of the panel's findings of fact is deferential, SCR 105(3)(b), so long as they are not clearly erroneous and are supported by substantial evidence, *see Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013).[5]

But we review any conclusions of law de novo. SCR 105(3)(b). Accordingly, we determine de novo whether the factual findings establish an RPC violation. *See LK Operating, LLC v. Collection Grp., LLC*, 331 P.3d 1147, 1157 (Wash, 2014) (stating, in a legal malpractice action, that "[w]hether a given set of facts establish an RPC violation is a question of law subject to de novo review"); *see also Attorney Grievance Comm'n v. Korotki*, 569 A.2d 1224, 1234 (Md. 1990) (indicating that whether a legal fee violates a disciplinary rule is a question of law).

RPC 3.5(d)

RPC 3.5(d) provides that "[a] lawyer shall not engage in conduct intended to disrupt a tribunal." Interpreting the same language in an earlier version of the Rules of Professional Conduct, this court observed that the provision "is designed to guard against in-court disruption of an ongoing proceeding." *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). In *Stuhff*, this court rejected the disciplinary panel's finding that an attorney violated an earlier identically worded version of RPC 3.5(d), agreeing with the attorney that the rule "only applies where actual physical or verbal disruption in the courtroom occurs." *Id*. Thus, "[if a lawyer takes action outside a courtroom setting, it is virtually impossible that it could 'disrupt' a tribunal or be intended to do so in the sense contemplated by Rule 3.5(d)." 2 Geoffrey C. Hazard, Jr., et al., *The Law of Lawyering* Sec. 34.09, at 34-15 (4th ed. supp. 2019). We see no reason to overrule *Stuhff*. Accordingly, in order for Colin to have violated RPC 3.5(d), his conduct would have had to occur during a tribunal's proceeding.[6]

Colin's conduct did not occur in a courtroom setting. His statements and conduct all occurred in writing, instead of in-person before a tribunal. Thus, his conduct could not have disrupted the tribunal's proceeding in *Randolph* in the sense contemplated by RPC 3.5(d). Accordingly, we conclude that the panel's findings fail to establish that Colin violated RPC 3.5(d).

RPC 8.2(a)

RPC 8.2(a) provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." No matter the offensive or unkind nature of an attorney's statement, RPC 8.2(a) is limited to statements of fact as opposed to opinion because only statements of fact can be true or false and RPC 8.2(a) is intended to protect the integrity of the judicial system and the public's confidence in it, instead of "protect[ing] judges … from unkind or undeserved criticisms." *Attorney Grievance Comm'n v. Frost*, 85 A.3d 264, 274 (Md. 2014). Thus, based on the rule's plain language, there are three elements to an RPC 8.2(a) violation: an attorney makes (1) a statement of fact that (2)

continued on page 44

continued from page 43

impugns the judge's integrity or qualifications, (3) knowing the statement to be false or with a reckless disregard for the statement's truth. We address each element in turn.

First, while many of Colin's statements about the justices are fairly characterized as opinions, substantial evidence supports the panel's findings that at least some of them were statements of fact. The strongest examples of factual statements include Colin's statements that the justices "affirmatively 'alter[ed]' the appellate record"; "affirmatively fabricated a lie, blatantly contrary to the record"; and have actively participated "in a lengthy and ongoing unconstitutional judicial scheme and conspiracy to circumvent the Nevada Constitution, steal money from the Nevada taxpayers, and put $30,000 unconstitutional dollars a year into their own, and/or their judicial friend's pockets" by serving on the Law Library Commission.

Second, substantial evidence supports the panel's findings that Colin's statements concern the qualifications or integrity of the justices. In particular, he accused them of lying, altering the record in a case, engaging in an unconstitutional conspiracy, and stealing money from the taxpayers.

Finally, substantial evidence supports the panel's findings that Colin either knew the statements were false or made the statements with reckless disregard for their truth. In particular, Colin admitted in his affidavit supporting one of the post-judgment disqualification motions that he waited to assert the illegality of the justices' compensation for service on the library commission until after the decision in *Randolph*. He stated that he "considered filing a Motion to Disqualify in 2011 based only on the Justice's [sic] unconstitutional participation in the conspiracy to circumvent the Nevada Constitution pursuant to the bogus 'Library Commission' but decided to give the Justices the benefit of the doubt." From that admission, it can be inferred that Colin knew the compensation was not illegal and made the false statement only because the court ruled against his client. At the very least, substantial evidence supports the panel's findings that Colin made those statements with reckless disregard for the truth, as any compensation for service on the Law Library Commission necessarily was authorized by the Legislature.

In sum, the State Bar established by clear and convincing evidence that Colin made statements of fact that impugned the justices' integrity, with knowledge of the statements' falsity or with reckless disregard for whether they were false. Based on that evidence and giving deference to the panel's findings of fact, we conclude that Colin violated RPC 8.2(a).

RPC 8.4(d)

Finally, we consider whether the State Bar proved that Colin violated RPC 8.4(d). RPC 8.4(d) provides that it is misconduct for an attorney to "[e]ngage in conduct that is prejudicial to the administration of justice." Interpreting the same language in an earlier version of RPC 8.4(d), this court observed "that conduct that intentionally interferes with the criminal justice and civil litigation processes generally is prejudicial to the administration of justice." *Stuhff*, 108 Nev. at 633-34, 837 P.2d at 855. For purposes of this rule, "prejudice" requires "either repeated conduct causing some harm to the administration of justice or a single act causing substantial harm to the administration of justice." *Id*. at 634, 837 P.2d at 855 (emphasis omitted). Unlike RPC 3.5(d) discussed above, RPC 8.4(d) can be used to address conduct that occurs outside of a courtroom and is intended to or does disrupt a tribunal. *See id*. at 633-37, 837 P.2d at 855-57 (imposing discipline under earlier version of RPC 8.4(d) to conduct that occurred outside the courtroom but was intended to interfere with a court proceeding).

Colin made repeated efforts to disqualify the four justices who decided *Randolph* in an effort to either delay the proceedings or obtain another panel of judges to decide the case anew. In particular, he filed motions to disqualify *after* the justices had entered a decision on the merits and made serious charges of ethical and criminal violations by the justices without any supporting factual allegations or cogent argument supported by legal authority. From that conduct it can be inferred that Colin intended to manipulate the appellate process by delaying the proceedings and obtaining a new panel of judges to decide the case. His post-judgment motion practice significantly delayed the final resolution of the *Randolph* matter. Based on that evidence and giving deference to the panel's findings of fact, we conclude that Colin violated RPC 8.4(d).

The appropriate discipline

Lastly, we turn to the appropriate discipline for Colin's violations of RPC 8.2(a) and RPC 8.4(d). The hearing panel recommended a one-year suspension and passage of the Multistate Professional Responsibility Examination as a condition of reinstatement. Although that recommendation is persuasive, *Schaefer*, 117 Nev. at 515, 25 P.3d at 204, we determine the appropriate discipline de novo, SCR 105(3)(b). In doing so, we weigh fours [sic] 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).

Colin violated duties owed to the legal system: making false statements about the integrity of a judge and engaging in conduct prejudicial to the administration of justice. Colin's mental state was knowing, as he knew that if he sought to disqualify all of the supreme court justices, the *Randolph* matter would be, at the very least, delayed. Colin's misconduct harmed the legal system and likely the public's perception of the legal system. The baseline sanction for his misconduct, before consideration of aggravating and mitigating circumstances, is suspension. *See Compendium of Professional Responsibility Rules and Standards: Standards for Imposing Lawyer Sanctions*, Standard 6.12 (Am. Bar Ass'n 2018) (recommending suspension for knowingly making false statements to the court and causing an adverse or potentially adverse effect

on the legal proceeding); *id*., 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 public, or the legal system.").

The panel found and the record supports two aggravating circumstances (refusal to acknowledge the wrongful nature of his conduct and substantial experience in the practice of law) and one mitigating circumstance (absence of a prior disciplinary record). The panel also found a third aggravating circumstance based on the vulnerability of the victim, apparently on the theory that Colin's misconduct delayed justice for Randolph. That is not an appropriate application of the vulnerable-victim aggravating circumstance. When considering whether a victim is "vulnerable," courts typically look at the victim's individual characteristics such as age, level of education or sophistication, and physical or mental disabilities or impairments. *Annotated Standards for Imposing Lawyer Sanctions* Sec. 9.22 (Am. Bar Ass'n 2015) (collecting cases). The record does not indicate that Randolph is vulnerable for purposes of this aggravating factor. It also is not entirely clear that Randolph is a "victim" of the professional misconduct at issue, given that RPC 8.2(a) and RPC 8.4(d) implicate duties owed to the legal system rather than a client. Thus, only the first two aggravating circumstances are supported by substantial evidence. Considering the aggravating circumstances and mitigating circumstance together, they do not support a deviation from the baseline sanction of suspension.

Weighing all four factors, we agree with the panel's recommendation that a suspension is appropriate but not with the length of the recommended suspension (one year), which is beyond what is necessary to serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney). This court has imposed shorter suspensions in similar cases. *See In re Discipline of Lord*, Docket No. 73447 (Order of Suspension, Dec. 20, 2017) (suspending attorney for six months and one day where the attorney had interrupted a proceeding and made false accusations about the judge, causing the judge to recuse himself and continue the trial); *In re Discipline of Hafter*, Docket No. 71744 (Order of Suspension, Nov. 17, 2017) (suspending an attorney for six months where the attorney made statements on social networking sites that the judge presiding over one of his matters was biased and anti-Semitic). In light of these similar cases and the relevant factors discussed above, we conclude that the purpose of attorney discipline is achieved through a six-month-and-one-day suspension.

Accordingly, we suspend attorney James A. Colin from the practice of law in Nevada for six months and one day commencing from the date of this decision. Because the imposed suspension is longer than six months, Colin must petition the State Bar for reinstatement to the practice of law. SCR 116. As a condition to seeking reinstatement, he must take and pass the Multistate Professional Responsibility Exam. Colin shall pay the costs of the disciplinary proceedings, including $2,500 under SCR 120(3), within 30 days of the date of this decision. The parties shall comply with SCR 115 and SCR 121.1.

SCHLEGELMILCH, D.J., concurring in part and dissenting in part:

I write separately as I do not find the State Bar proved by clear and convincing evidence that the element of "prejudic[e] to the administration of justice" existed as required by RPC 8.4(d).

Colin's behavior clearly violated RPC 8.2(a). The Bar should not view the majority opinion as limiting their ability to disagree with factual or legal determinations made by a Nevada jurist or make valid disqualification affidavits when supported by evidence of bias. Here, Colin's unsupported vexatious attack on the court cannot legitimately be characterized as a professional disagreement with the factual or legal determinations made in the *Randolph* order. In that respect, I concur with the majority in finding the violation of RPC 8.2(a) was well supported by clear and convincing evidence in the record.[7]

I respectfully disagree with the majority's use of inferences to establish that the record supports a finding of prejudice under RPC 8.4(d) and that the actions of Colin "prejudic[ed] … the administration of justice." As stated by the majority, "it can be inferred that Colin intended to manipulate the appellate process by delaying the proceedings and obtaining a new panel of judges to decide the case" by repeated efforts to disqualify the justices. Majority, *supra*, at 12. The hearing panel in this matter made none of the findings inferred by the majority in the hearing panel's Findings of Fact, Conclusions of Law and Recommendation. The State Bar complaint itself only indicates that Colin "wasted court time and resources." Further, there was no evidence or argument presented relating to Colin's intent in the record of the disciplinary proceeding.

As the majority properly points out, *In re Discipline of Stuhff* sets forth that in order to support a violation of RPC 8.4(d), "prejudice" requires "either repeated conduct causing some harm to the administration of justice or a single act causing substantial harm to the administration of justice." 108 Nev. 629, 634, 837 P.2d 853, 855 (1992) (emphasis omitted); *see also* majority, supra, at 11. In *Stuhff*, there were specific supported findings of delay and prejudice found by the hearing panel which were upheld by this court. *Id*. In this matter, the hearing panel did not find that a delay occurred, let alone that Colin had the intent to cause a delay.[8] I cannot infer clear and convincing evidentiary support for "prejudic[e] to the administration of justice" when there was none established or considered by the hearing panel in the record. For those reasons, I dissent from the majority as the State Bar did not present clear and convincing evidence of a violation of RPC 8.4(d) to the hearing panel.

continued on page 46

continued from page 45

I do concur in the stated discipline for Colin's violation of RPC 8.2(a). That violation, standing alone, in light of the stated aggravating and mitigating circumstances, warrants the imposed discipline as it is in conformity with discipline imposed for similar actions in the past by this court.

CLARENCE E. GAMBLE
Bar No.: 4268
Docket No.: 79027
Filed: 09/20/2019

ORDER OF REINSTATEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to grant suspended attorney Clarence E. Gamble's petition for reinstatement.

In 2002, on review of a hearing panel's recommendation to approve a conditional guilty plea agreement in exchange for a stated form of discipline, this court suspended Gamble from the practice of law for three years starting on January 7, 2002. *See In re Discipline of Gamble*, Docket No. 38537 (Order Approving Conditional Guilty Plea, Jan. 7, 2002). The order suspending Gamble required that he satisfy the conditions set forth in the plea agreement before seeking reinstatement, including paying restitution and the costs of the disciplinary proceeding, and meeting monthly with bar counsel to monitor the status of his restitution payments and to confirm that his law clerk duties did not constitute the practice of law. The plea agreement also provided that, if reinstated, he would be subject to a one-year probationary period during which he must pass the Multi-State Professional Responsibility Examination and must work in a group setting, either government practice or an established law firm, with no access to bank accounts. Gamble filed his petition for reinstatement with the State Bar on February 21, 2019 – more than 14 years after his 3-year suspension ended. He has taken and passed both the Multi-State Professional Responsibility Examination and the Nevada bar examination, *see* SCR 116(5) (requiring an attorney who has been suspended for five years or more to successfully complete the bar exam in order to be reinstated), and the panel has recommended that he be reinstated to the practice of law subject to certain conditions.

Based on our de novo review, we agree with the panel's conclusion that Gamble has satisfied his burden of proof in seeking reinstatement, including showing compliance with the conditions identified in the plea agreement underlying this court's order suspending Gamble. *See* SCR 116(2) (providing that an attorney seeking reinstatement must demonstrate compliance with certain criteria "by clear and convincing evidence"); *Application of Wright*, 75 Nev. 111, 112-13, 335 P.3d 609, 610 (1959) (reviewing a petition of reinstatement de novo). We therefore grant the petition for reinstatement.

Clarence E. Gamble is hereby reinstated to the practice of law in Nevada on the following conditions: Gamble shall be on probation for one year from the date of this order during which time he must work in a group setting, either government practice or an established law firm, with no access to bank accounts. Additionally, if he has not already done so, Gamble must pay the costs of the reinstatement proceeding, including $2,500 under SCR 120(5), within 30 days of this order.

It is so ORDERED.

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:

Ellen M. Tipping
Bar No. 9209
Order No. 79105
Filed 09/04/2019

Christopher J. Curtis
Bar No. 4098
Order No. 79595
Filed 09/23/2019

1. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.
2. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.
3. Chief Justice Mark Gibbons and Justices Kristina Pickering, James W. Hardesty, and Ron D. Parraguirre voluntarily recused themselves from participation in the decision of this matter. Before their retirements, Justices Michael L. Douglas and Michael A. Cherry also voluntarily recused themselves. The Governor then appointed district court judges David A. Hardy, Nathan Tod Young, Scott Freeman, Kimberly A. Wanker, Robert W. Lane, and John Schlegelmilch to sit in place of the six recused justices. Justices Elissa F. Cadish and Abbi Silver therefore did not participate in the decision of this matter.
4. While Colin makes numerous other arguments, we conclude he waived those arguments by failing to present them to the hearing panel. *See Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that a point not argued below is "waived and will not considered on appeal"). We acknowledge

that Colin presents a novel procedural issue regarding whether the hearing panel was required to render a written decision rejecting his conditional guilty plea agreement. SCR 113(1) provides that a "tendered plea is subject to final approval or rejecting by the supreme court if the stated form of discipline includes disbarment or suspension" and SCR 105(2)(e) requires a hearing panel to "render a written decision within 30 days of the conclusion of the hearing." Many other states have specific rules stating that if a hearing panel rejects a conditional guilty plea, the guilty plea is withdrawn and will not be reviewed by the supreme court , *see e.g.*, Alaska Bar Rule 22(h) (2018); N.J. Rule 1:20-10(b)(3), 1:20-15(g) (2019); N.M. Rule Annotated 17-211 (2019), but Nevada does not have such a rule. We need not consider whether there was a procedural error here because Colin failed to preserve this argument.

5. The deference applied to factual findings in civil matters governs our review of a hearing panel's factual findings because SCR 105(3)(a) provides that bar matters are treated the same as civil actions.
6. We note that a comment to the current model rule indicates that RPC 3.5(d) can apply to disruptive conduct during "any proceeding of a tribunal, including a deposition." Model Rules of Prof'l Conduct R. 3.5 cmt. 5 (Am. Bar Ass'n 2018).
7. I also concur with the majority's conclusion that Colin did not violate RPC 3.5(d) and that by failing to present any evidence or argument at his disciplinary hearing on his other stated grounds, he waived the same.
8. Colin's hearing panel never made any findings that (1) any actual delay occurred, (2) Colin intended to manipulate the appellate process, (3) any delay was attributable to Colin, or (4) any delay was not a result of the administrative processes of the court as described by the majority.

TIPS FROM THE OFFICE OF BAR COUNSEL

RPC 1.2(c) Unbundled Legal Service

RPC 1.2(c) allows a lawyer to "limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent." When a law firm decides to unbundle legal services, it breaks down tasks associated with a legal problem and provides specific, limited legal representation to address part of a case. This gives *pro se* litigants an affordable way to receive the guidance they need to navigate the justice system.

Unbundled services are not right for every client or every legal problem. The law firm must determine on a case-by-case basis whether it can unbundle an individual client's legal needs or whether the matter requires full-service representation. The law firm bears the responsibility of determining whether unbundling is appropriate.

The law firm must clearly explain the limitations. A client can only consent when he or she knows what the law firm will ***not*** do and how it will affect the case. The law firm must disclose the limitation in the representation agreement.

Thoroughness and preparation are a significant concern with unbundled legal services. The law firm must provide competent and thorough representation, regardless of the limited scope. Limited scope should never result in limited quality.

Some practice areas naturally lend themselves to unbundling, like estate planning or family law; others, such as criminal defense, do not. The firm must consider whether the client is sophisticated enough to handle some of the footwork in their case. If a client's needs would be better suited to full-service representation, then the firm must provide full-service representation or refer the client elsewhere.

Remember, the purpose of this rule is to give low- or moderate-income individuals access to justice — not to create an easy revenue stream for the profession.

For a discussion on ghost-lawyering, see the Standing Committee on Ethics and Professional Responsibility Formal Opinion No. 34.