

**In Re: Liborius I. Agwara**  
**Bar No.: 7576**  
**Case No.: 70361**  
**Effective Date: July 22, 2016**

### ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR TEMPORARY SUSPENSION

Attorney placed on restricted access to client and third-party funds, following failure to account for their distribution. The motion for temporary suspension was denied.

The State Bar of Nevada petitioned for the immediate temporary suspension of Liborius Agwara, alleging that he posed a substantial threat of serious harm to the public and that he had failed to safe-keep thousands of dollars in client and third-party funds. The bar also requested Agwara be restricted from handling his trust and firm accounts.

Agwara opposed the petition and argued that the issues the bar cited stemmed from 2014, and that no client funds were missing, meaning he did not present a threat to the public.

The court denied the petition for immediate suspension, without prejudice, since the evidence supporting the bar's petition did date to 2014. Agwara's accounts contained sufficient funds for payment, and there was no evidence he had mishandled funds to his clients' detriment.

The court did find that Agwara had failed to keep proper records relating to his funds, including failing to account for distribution of funds. The court, therefore, ruled that Agwara was prohibited from withdrawing funds from his client trust accounts, except upon written approval of Bar Counsel or by order of a court of competent jurisdiction. He will also be required to deposit any and all checks, including sums due to clients, into the trust accounts for those purposes.

**In Re: Jerry Donohue**  
**Bar No.: 8793**  
**Case No.: 69228**  
**Filed: July 22, 2016**

### ORDER OF SUSPENSION

Attorney ordered suspended for one year following multiple violations related to several cases.

A Southern Nevada Disciplinary Board hearing panel recommended Jerry Donohue be suspended from practice for one year following a number of violations, including his representation of clients, failure to supervise a non-lawyer assistant and safekeeping property.

Donohue was retained by clients in 2011 to handle their son's traffic tickets while he completed traffic school. Donohue did not provide the evidence of traffic school completion or provide the funds to pay the tickets, which the client had provided. The panel found Donohue had violated RPC 1.3 (diligence), and RPC 1.4 (communication), due to not having informed his clients that a bench warrant had been issued for their son's arrest.

Another client's identity was stolen by Donohue's paralegal in 2011. The paralegal took out a credit card in the client's name. When the client informed Donohue, he failed to investigate the paralegal or restrict the paralegal's access to the client's information until the paralegal's arrest a year later. The panel found these actions violated 1.15 (safekeeping property) and RPC 5.3 (responsibilities

regarding nonlawyer assistants) for failing to make reasonable efforts to ensure his paralegal was not stealing from his clients, and RPC 8.4 (misconduct) for knowingly allowing his paralegal to act in ways that would violate the Rules of Professional Conduct.

In 2012, Donohue was retained to handle a divorce for a client, but allowed the same paralegal to handle the majority of the case. At one point, the client paid \$4,000 to the paralegal directly, to be used for the retainer. That money disappeared. When the client questioned Donohue as to why the \$4,000 credit had not been applied, he did not limit the paralegal's access to the client funds.

The panel found that Donohue had violated RPC 1.4 (communication) for failing to respond to the client, RPC 1.15 (safekeeping property) for allowing the paralegal to be in a position where she could take the client's money and not credit that money to the client's account, RPC 5.3 (responsibilities regarding nonlawyer assistants) for failing to make reasonable efforts to ensure the paralegal was not stealing from his clients and RPC 5.5 (unauthorized practice of law) for allowing the paralegal to work on the divorce case without properly supervising her.

A fourth client hired Donohue to handle a pair of traffic tickets. The client provided her credit card information to the paralegal to pay the court fine, but instead of doing so, the paralegal charged the same amount to a company unrelated to the firm. A bench warrant was issued for the client's arrest for failure to pay the fine. The client then paid the court directly and contacted Donohue repeatedly, but did not receive a response.

The panel found that Donohue violated RPC 1.1 (competence) for failing to appropriately handle the traffic ticket, RPC 1.3 (diligence) for not diligently responding to the matter, RPC 1.4 (communication) for failing to return calls, RPC 1.15 (safekeeping property) for allowing the paralegal to charge the client and then not ensuring that the ticket was paid, and RPC 5.3 (responsibilities regarding nonlawyer assistants) for failing to make reasonable efforts to ensure that the paralegal was not stealing from his clients.

In addition to these findings, the panel found the following aggravating factors:

1. Prior disciplinary offense;
2. Pattern of misconduct;
3. Submission of false evidence, false statements or other deceptive practices during the disciplinary hearing;
4. Refusal to acknowledge the wrongful nature of conduct;
5. Vulnerability of victim;
6. Substantial experience in the practice of law; and
7. Indifference toward making restitution.

The panel found that the only mitigating factor was the delay in the disciplinary proceedings.

The court agreed with the panel's findings, noting its concern that Donohue did not appear to realize he should have investigated the paralegal's conduct. In addition to the suspension, Donohue will be required to complete six hours of CLE on law practice management, make restitution to three clients and pay the costs of the bar's proceedings prior to filing for reinstatement.

**In Re: Michael S. Myers**  
**Bar No.: 1494**  
**Case No.: SG 12-1337**

## PUBLIC REPRIMAND

To Michael S. Myers:

"Your client retained you to represent her in a personal injury matter. In her August 20, 2012, letter to the state bar, she complained that her case had settled for \$150,000 in May 2006, but she had never received an accounting of how the funds were disbursed. According to the client, she tried multiple times to reach you, but she was never able to speak with you. She indicated that her last conversation with the office staff was in April 2012, when she was told that they were still trying to get her liens reduced.

In your initial response to the state bar, dated September 13, 2012, you admitted that your staff "dropped the ball," adding that the staff member responsible for the file and forwarding messages to you left the firm in July 2012. According to you, the woman's case settled for \$150,000, but her medical bills exceeded \$175,000. You stated that your staff tried to secure lien reductions, but some providers did not respond, others wanted to negotiate for higher amounts and others under one umbrella billed separately. You said that since receiving the grievance, you had contacted her and assured her that you would take all the steps necessary to conclude her case.

Your response was sent to the client for comment. In response, she provided a copy of a letter she had written to you on October 6, 2012, wherein she demanded that you provide her with a complete copy of her file relevant to her medical billings and lien reduction requests, as well as the balance of funds in your trust account, and notified you that she would resolve the liens herself.

After this demand, you met with the client and provided her with a check in the amount of \$78,855.41, representing the balance of funds available to her, along with all of the documentation she requested. You indicated that you would continue to make your office available to the client to assist her in reducing the liens, if she desired. You added that you did not dispute her claim that her phone calls were not returned.

On January 3, 2013, the state bar sent additional correspondence to you asking you to provide more specific information and documentation regarding her settlement. In your response to the state bar, you confirmed that the settlement occurred in May 2006, and you provided a copy of the settlement check dated May 19, 2006. You explained that the check was deposited into the firm's trust account at Bank West of Nevada, but that the trust account had been closed and all funds transferred to a new trust account with Bank of Nevada.

You provided a copy of the disbursement sheet signed by the client on June 9, 2006. According to the disbursement sheet and records provided, you immediately issued a check for \$8,992.33 to your firm as reimbursement for costs, and transferred \$60,000 to yourself for your attorney fees. The balance of \$81,007.67 was kept in trust to pay her medical providers. After taking your fees, you issued only three checks to pay medical providers: the first on January 7, 2007; the second on October 11, 2007; and the third on April 30, 2010. The balance remaining after these checks were issued was \$78,855.41, which was paid directly to the client on October 10, 2012.

As part of its investigation into this matter, the state bar subpoenaed the bank account records for the trust account of your firm from January 2008 to October 2012, in order to determine if the funds had been maintained in the trust account during that period. Those records reflect that in July 2010, the trust account balance fell to \$32,255.03 and remained below the \$78,855.41 amount that should have been maintained in trust just for the matter; and that the balance remained under said amount for

approximately two weeks, until a settlement check in another client's matter was deposited in the account on July 19, 2010.

As mitigating factors, you not only made the client whole, but after the substantial delay, she received more money than she would likely have received in the ordinary course. You further agreed to indemnify the client from any future claims that might be asserted by any unpaid providers. Finally, you have taken substantial remedial steps to audit your trust account and minimize the risk of future similar errors.

Nonetheless, the panel unanimously concluded that you violated Rule of Professional Conduct (RPC) 1.4 (communication) by failing to keep your client apprised of the status of her case and not returning phone calls. You are reminded that the attorney, not his staff, is responsible for key communications with clients. You further violated RPC 1.15 (safekeeping property) for failing to keep your client's monies in trust and resolving her liens in a timely fashion and are hereby PUBLICLY REPRIMANDED."

**In Re: David Spurlock**  
**Bar No.: 4250**  
**Case No.: SG14-0092**

## PUBLIC REPRIMAND

To David Spurlock:

"From 2010 through January 2014, you represented the Teamsters Local 14. On July 24, 2013, your license to practice law was administratively suspended for failure to pay your bar dues and for failing to file certain administrative paperwork. You were aware of this suspension; nonetheless, you continued to represent the union.

According to union officials, you continued to draw weekly payments for this work despite being suspended. All the while, the union believed it had retained a licensed attorney, and you made no attempt to inform the union of the status of your license.

While it is your contention that none of the work you actually performed was necessarily work that an attorney must do, it is undeniable that the union believed it was retaining a licensed attorney to represent it and that you never informed them that this was untrue. It is also undeniable that the retainer agreement you were operating under called for legal representation.

Indeed, the retainer agreement between you and the union specifically elaborated upon the scope of your representation and called for:

'Review of Collective Bargaining Agreements between Client and certain companies located in the State of Nevada. Negotiation of Collective Bargaining Agreements on behalf of Clients and companies located in the State of Nevada. Representation of Client and its respective members with certain arbitrations which now are pending or may be pending in the future legal representation at hearings, disputes or conferences. Legal analysis of specific issues or items as it may relate to client's members or pending disputes between Client's members and their Employers.'

The date of this fee agreement, which supplanted a prior agreement, was August 15, 2013, some three weeks after you were suspended.

Your conduct as stipulated herein violates Rule of Professional Conduct (RPC) 1.5 (fees), RPC 1.16 (declining or terminating representation), and RPC 5.5 (unauthorized practice of law). Based upon the foregoing you are hereby PUBLICLY REPRIMANDED."

## LETTER OF REPRIMAND

"On January 19, 2016, a screening panel of the Southern Nevada Disciplinary Board convened to consider the above-referenced grievance. After considering all of the evidence, the panel unanimously concluded that you violated the Rules of Professional Conduct and should be issued the following Letter of Reprimand:

You represented a client in a personal injury case. In or about November 2012, the matter settled for policy limits, and you deposited a \$ 15,000 settlement check into your trust account. You did not disburse any portion of the funds (other than to yourself) for two years. In addition, you did not maintain the funds appropriately in your trust account during that time frame. And you did not resolve the case or any medical liens during the two years from November 2012 to November 2014, and did not speak to your client in that interval. Lastly, when the state bar requested trust account statements from you related to this matter, you were missing 12 months' worth of statements, which led to the state bar subpoenaing your bank records.

Rule of Professional Conduct 1.3 (diligence) states that '[a] lawyer shall act with reasonable diligence and promptness in representing a client.' You failed to be diligent in this matter when you made no effort for two years to contact your client, did not resolve any outstanding medical liens and did not disburse the settlement funds to anyone but yourself.

Rule of Professional Conduct 1.4 (communication) states that 'a lawyer shall ... keep the client reasonably informed about the status of the matter' and 'promptly comply with reasonable requests for information.' You failed to respond to your client and did not give him updates on the status of the matter for two years.

Rule of Professional Conduct 1.15 (safekeeping property) states that 'complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.' You failed to maintain such records, and thus could not provide those trust account statements to the state bar when they were requested. In addition, 1.15 states that 'upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.' You did not promptly disburse these funds, nor did you notify all of the medical lienholders when you received them.

Rule of Professional Conduct 8.1 (bar admission and disciplinary matters) states in pertinent part that a lawyer in connection with a disciplinary matter 'shall not... knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority ....'

In this matter, you knowingly failed to provide the bar with trust account statements or with a signed copy of the client's settlement disbursement statement, as you were requested to. In addition, when asked by the state bar, you declined to explain why the client's funds were not properly maintained in trust. This is unacceptable.

With regards to your obligations under RPC 1.15, the screening panel in this matter was concerned about your trust account practices. The panel specifically directs you to immediately start using trust account checks (not cashier's checks, as has been your practice), and to implement an accounting system so that the state bar can easily reconcile your trust account balance if necessary.

As described above, this incident is a violation of Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property) and 8.1 (bar admission and disciplinary matters). Accordingly, you are hereby REPRIMANDED."

## TIPS FROM THE OFFICE OF BAR COUNSEL

### I've finally received my client's settlement check. I need to cover payroll, and the client is calling to get it. What can I do?

That settlement check? It's not your money, and it may not be your client's either.

When you receive settlement in an amount that sufficiently covers your fees and any liens against the recovery, and still leaves a substantial sum for your client, distribution is simple. However, all too often claims against the settlement, including your fees, leave the client and the lienholders dissatisfied with the recovery. While Rule of Professional Conduct (RPC) 1.15(e) requires you to promptly distribute portions of the funds as to which interests are not in dispute, you should protect the money, yourself and your client when there are multiple claims against the settlement or when any claimant stands to receive what they may perceive as less-than-adequate recovery. Until you resolve those issues, "your" fees are not yours to take.

When settlement funds are insufficient to fully satisfy all claimants, absent informed written consent from all claimants to a proposed distribution, including the client, distribution of settlement funds should not occur absent court approval. While an interpleader action seems universally dreaded, by its very nature it protects the lawyer and the client from future claims or challenges to the distribution.

Remember, the settlement is not your money, it may not be your client's money, and when the sum is insufficient to satisfy all claimants, even your fee may ultimately be in dispute. Embrace the interpleader.

On this topic, be aware that the June 2, 2016, Nevada Supreme Court opinion in Golightly & Vannah v. TJ Allen & Renown Regional Medical Center, 132 Nev., Adv. Op. 41, now clearly requires that the attorney must have perfected an attorneys' fees lien in compliance with NRS 18.015(3), prior to recovery, in order to protect against pro-rata fee distribution when settlement sums are inadequate to satisfy all claimants.

Any bar members wishing to submit their own ethical dilemma or scenario for publication as a future bar counsel tip, should email [jims@nvbar.org](mailto:jims@nvbar.org).