

Bar Counsel Report

In Re: LUCAS GROWER
Bar No.: 11384
Case No.: 81254
Filed: 07/07/2020

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review under SCR 105(3)(b) 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 attorney Lucas Grower. Under the agreement, Grower admitted to violating RPC 1.1 (competence) and RPC 1.3 (diligence) and agreed to a one-year suspension, stayed subject to certain conditions, and a three-year probationary period. He has also agreed to pay restitution to his client and the costs of the disciplinary proceedings.

Grower has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated the above-listed rules by knowingly failing to timely serve a petition for judicial review in an employment matter and failing to oppose the resulting motion to dismiss or appear at the hearing on that motion. This resulted in the dismissal of the client's petition.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. 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).

Based on the duties Grower violated, and because he acted knowingly and his conduct resulted in injury or potential injury to his client and to the legal system, the baseline sanction before considering aggravating and mitigating circumstances is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client."). The record supports the panel's findings of three aggravating circumstances (a prior disciplinary offense, multiple offenses, and substantial experience in the practice of law), and four mitigating circumstances (absence of a dishonest or selfish motive, full and free disclosure to the State Bar and cooperation with its investigation, character and reputation, and remorse). Considering the factors outlined in *Lerner*, including the aggravating and mitigating circumstances, we conclude that the agreed-upon discipline is appropriate. 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, not to punish the attorney).

Accordingly, we hereby suspend attorney Lucas Grower from the practice of law in Nevada for a period of one year commencing from the date of this order, with the suspension stayed subject to the following conditions. Grower shall be subject to a three-year probation commencing from the date of this order, during which time he must not have any new grievances filed against him arising out of conduct post-dating the conditional guilty plea agreement that results in actual discipline. Grower must also meet with a mentor approved by the State Bar on a monthly basis for the first two years of his probation, with the mentor providing quarterly reports to the State Bar during those two years. Grower must pay \$750 in restitution to his former client during the probationary period. Additionally, he must pay \$2,500 in administrative costs pursuant to SCR 120 and the actual costs of the administrative proceeding if he has not done so already. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: DOUGLAS NICHOLSON
Bar No.: 3654
Case No.: 81190
Filed: 07/24/2020

ORDER OF SUSPENSION

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 Nicholson. Under the agreement, Nicholson admitted to breaching the terms of his probation in Discipline of Nicholson, Docket No. 78799 (Order Approving Conditional Guilty Plea Agreement, Sep. 12, 2019) and to violating RPC 1.3 (diligence); RPC 1.4 (communication); RPC 3.4(d) (fairness towards opposing party and counsel); RPC 8.1 (bar admission and disciplinary matters); and RPC 8.4(c) (misconduct – misrepresentation). He agreed to a two-year suspension and to pay restitution and the costs of the disciplinary proceedings.

As part of his guilty plea agreement, Nicholson has admitted to the facts and violations, which concern two grievances. As to the first grievance, Nicholson admitted that he violated RPC 1.3 (diligence) and RPC 3.4(d) (fairness toward opposing party and counsel) by knowingly failing to (1) appear at hearings on behalf of his client in a criminal matter; (2) timely review discovery and respond to motion practice; and (3) comply with district court orders, which resulted in the court rescheduling the trial twice and

removing Nicholson as counsel and the client remaining in custody. As to the second grievance, Nicholson admitted that he violated RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 8.4(c) (misconduct – misrepresentation) by failing to promptly provide the client with adequate information about the status of the client’s petition to terminate parental rights over a roughly three-year period and by misleading the client into believing that he had filed the petition when he had not. Nicholson also admitted that he violated RPC 8.1 (disciplinary matters) by failing to respond to the State Bar’s inquiries about the client grievances. Finally, he admitted that he violated conditions of his stayed suspension in Docket No. 78799 by failing to prepare a succession plan and to pay restitution, and by engaging in the conduct that led to this disciplinary matter.

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). 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 acted knowingly in violating the above-referenced rules and his conduct resulted in injury to his clients and the profession, for which the baseline sanction is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass’n 2018) (“Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client”). Considering the circumstances in aggravation (prior disciplinary offenses, pattern of misconduct, vulnerability of victim, and substantial experience in the practice of law), and mitigation (cooperative attitude, imposition of other penalties of sanctions, and remorse), we conclude that the recommended discipline is appropriate and serves the purpose of attorney discipline.

Accordingly, we approve the guilty plea agreement and hereby suspend attorney Douglas Nicholson from the practice of law in Nevada for a period of two years, to be served concurrently with the previously stayed two-year suspension imposed in Docket No. 78799, such that Nicholson’s concurrent suspensions end two years from the date of this order. Within 180 days from the date of this order, Nicholson must pay restitution to the two parties named in the guilty plea agreement. Finally, Nicholson must pay \$2,500 in administrative costs pursuant to SCR 120 and the actual costs of the disciplinary proceeding 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: JOHN CROSBY
Colorado Bar No.: 27245
Case No.: 80811
Filed: 07/16/2020

ORDER OF PUBLIC REPRIMAND

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel’s recommendation that this court publicly reprimand Colorado and United States Patent and Trademark Office (USPTO) licensed attorney John Crosby based on violations of RPC 1.4 (communication) and RPC 8.1 (bar admission and disciplinary matters). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Crosby committed the violations 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).

Having reviewed the record, we conclude that substantial evidence supports the panel’s findings that the State Bar established by clear and convincing evidence that Crosby violated the above-referenced rules. First, after being retained by an inventor to prepare and file a patent application with the USPTO, Crosby knowingly failed to provide the client with the patent application filing number, adequately respond to her requests for information about the application’s status, and ensure that she received the filing notice and notice of missing documents for her application. Once Crosby considered the representation ended, he also failed to ensure the client had the necessary documentation and information to protect her rights and complete the application process. Second, after the client filed a grievance, the State Bar sent Crosby three inquiry letters, but Crosby failed to respond to any of the inquiries, resulting in a formal disciplinary complaint.

In determining whether the panels [sic] 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). Crosby acted knowingly in violating duties owed to his client (communication) and the profession (disciplinary matters). Crosby’s conduct injured or at least potentially injured his client due to

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an extended delay in the patent application process. The baseline discipline for such misconduct, before considering aggravating and mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility*, Standard 4.42 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client"). The record supports the panel's findings of two mitigating factors (no prior discipline and absence of dishonest or selfish motive) and one aggravating factor (substantial experience in the practice of law). Considering the four *Lerner* factors, including that Crosby lacked a dishonest or selfish motive, we agree with the panel that a downward deviation from the baseline sanction of suspension is warranted, and that the recommended public reprimand is appropriate and sufficient to serve the purpose of attorney discipline. *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, the courts, and the legal profession). Further, we conclude that the panel's recommendation that Crosby be assessed the actual costs of the disciplinary proceeding in addition to the administrative costs under SCR 120(3) is appropriate, since he failed to obtain the patent application number until after the pre-hearing conference in the disciplinary matter.

Accordingly, we hereby publicly reprimand attorney John Crosby for violating RPC 1.4 (communication) and RPC 8.1 (disciplinary matters). Additionally, Crosby must pay \$3,272.50, which includes the actual costs of the disciplinary proceeding plus \$2,500 under SCR 120, within 30 days from the date of this order.

It is so ORDERED.

MICHAEL J. HARKER
Bar No.: 5353
Case Nos.: OBC19-0713, OBC19-1061
& OBC20-0558
Filed: 07/21/2020

PUBLIC REPRIMAND

To Michael J. Harker:

FINDINGS OF FACT

Louis Monteleone/Equas

Louis Monteleone hired you, Mr. Harker, to file a Chapter 11 bankruptcy for his company, Equas LLC. Monteleone paid you a \$5,000 retainer before you filed the petition and \$4,275 after you filed the petition. You

failed to file a motion to be approved as Chapter 11 Debtor-in-Possession counsel for Equas. You failed to inform Mr. Monteleone of the basis or rate of the fee and expenses in his case. Although you earned the fees in the matter, your vague invoices caused Mr. Monteleone needless worry, frustration, and anxiety.

Michael Bash

On August 23, 2017, a lawsuit was filed against Michael Bash ("Bash") *et al.* Case No. A-17-760382-C (the "Lawsuit") After hiring two other attorneys to represent him, Bash hired you to defend him in the lawsuit. Bash paid you a \$750 flat fee. On May 16, 2019, you filed a Motion to set aside all previous orders and judgments entered. But you failed to file a notice of appearance, so the Court did not consider your Motion. You failed to check the status of the filed motion. Ultimately, Bash had to hire a fourth attorney to represent him.

RULE

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client. You failed to act in a reasonably diligent and prompt manner when he [sic] failed to file the necessary motion to be approved as Chapter 11 Debtor-in-Possession counsel for Equas. You failed to act in a reasonably diligent and prompt manner when you failed to file the necessary motions to be paid for post-petition work as counsel for Equas. You failed to act in a reasonably diligent and prompt manner when he [sic] failed to file a notice of appearance or motion for substitution of counsel in the Lawsuit against Bash.

RPC 1.5. Fees.

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses ...

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client. Pursuant to applicable bankruptcy rules and case law, the fees you collected for Monteleone's Chapter 11 Debtor-in-Possession case were unreasonable *per se* because the Court did not approve them and your representation. The fee you charged Bash was unreasonable because you failed to follow through with your work, which forced Bash to hire a new attorney to perform the same work.

ABA STANDARD FOR BASELINE DISCIPLINE

ABA Standard 4.43 states that:

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.

ABA Standard 7.3 states that:

Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client.

You have the following aggravating circumstances that may justify an increase in the degree of discipline to be imposed (SCR 102.5(1)): prior disciplinary offenses; multiple offenses; and substantial experience in the practice of law.

You have the following mitigating circumstances that may justify a reduction in the degree of discipline to be imposed (SCR 102.5(2)): absence of a dishonest or selfish motive; full and free disclosure to disciplinary authority or cooperative attitude toward proceeding; and remorse.

DISCIPLINE IMPOSED

Therefore, you have violated Rules 1.3 (Diligence) and 1.5 (Fees) and are hereby PUBLICLY REPRIMANDED. Pursuant to SCR 120 (Costs), you shall pay the costs of the disciplinary proceeding of \$1,500 within thirty (30) days of receipt of a billing from the State Bar.

TIP FROM THE BAR COUNSEL



Bankruptcies Might Be Tempting, But Don't Do Them Without BK Know-How

In tough times, people sometimes take chances they otherwise would avoid. This year has been rough, and lawyers can make less-than-optimal choices just like anybody else.

During the Great Recession of a decade ago, people lost their jobs and homes at (what was then) an unbelievable pace. Las Vegas was hit particularly hard, and for a while it was called the bankruptcy capital of the country.

The lure of bankruptcy cases was tempting for many attorneys who did not practice in that area of law. For some lawyers with business drying up in their own practices, it was too tempting.

The result was complaints to the State Bar of Nevada from clients whose bankruptcy matters failed for lack of competent representation. Homes and businesses were lost, and a bunch of attorneys ended up with professional discipline.

The ethics rules usually were the same and, not surprisingly, flowed from one to the next:

- RPC 1.1 (Competence);
- RPC 1.3 (Diligence); and
- RPC 1.4 (Communication).

The pattern became familiar.

The attorney, who of course practiced in another area of law, took a bankruptcy matter and messed it up pretty quickly. He/she did not know which bankruptcy chapter was appropriate, filled out the wrong forms, provided inadequate attachments, missed deadlines, etc. A classic competence situation.

Then, not knowing how to fix a problem, the attorney would just stop working on the file. That lack of diligence would cause more problems and eventual failure of the bankruptcy.

Finally, not knowing how to explain this mess, communication with the client just stopped.

During this current crisis, a lot of our neighbors are out of work and getting desperate. It is an environment that might entice a non-bankruptcy lawyer to take a chance despite a lack of training and experience.

This month's tip is to resist that temptation. It's not just the attorney's livelihood, it's also the client's life.