In Re: PATRICIA A. ROSS
Bar No.: 9901
Case No.: 74860
Filed: June 19, 2018

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court revoke attorney Patricia Ross's disciplinary probation and impose the stayed two-year suspension based on her failure to comply with probation conditions. Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

On May 18, 2017, this court approved Ross's amended conditional guilty plea agreement and suspended her for two years, the entire term of which was stayed, for seven violations of RPC 1.3 (diligence), nine violations of RPC 1.4 (communication), seven violations of RPC 1.5 (fees), one violation of RPC 1.16 (declining or terminating representation), and seven violations of RPC 8.1(b) (bar admission and disciplinary matters). The stayed suspension was conditioned on Ross's compliance with probation terms, which included the condition that she "immediately begin psychotherapy for one year." Ross did not commence psychotherapy until more than four months after entry of this court's order, and only after the State Bar notified her that she was not in compliance with her probation conditions. Thus, substantial evidence supports the panel's finding that Ross violated the terms of her probation by failing to immediately begin psychotherapy. Because the stay of Ross's two-year suspension was subject to her compliance with the conditions of her probation, we revoke Ross's probation and suspend her for two years commencing from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.[1]

STIGLICH, J., with whom CHERRY, J., agrees, dissenting: I respectfully dissent. The requirement that Ross "immediately" commence counseling did not provide her with sufficient notice as to when she was required to start counseling or when counseling had to be completed. Further, Ross's receipt of the Order Approving Amended Conditional Guilty Plea, *In re Discipline of Ross,* Docket No. 70985 (May 18, 2017), and of the notice regarding the deadline for submittal of her first quarterly probation report were delayed. Considering these delays and the insufficient notice as to when she had to start and complete counseling, I would not revoke her probation.

'We grant Ross's April 5, 2018, motion to seal records in part and deny it in part. Because the record does not appear to include any correspondence from Dr. Peter Mansky, we deny Ross's motion to seal that correspondence. We grant Ross's motion to seal her medical test results. Because the entire record is currently filed under seal, we direct the clerk's office to refile the record not under seal, except for pages 447-72, which should be filed separately under seal. Otherwise this matter is public. *See* SCR 121(12).[1]

In Re: KEVIN R. HANSEN
Bar No.: 6336
Case No.: 73626
Filed: June 8, 2018

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, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Kevin R. Hansen. Under the agreement, Hansen admitted to one violation of RPC 1.4 (communication), one violation of RPC 1.15 (safekeeping property), and two violations of RPC 8.4(d) (misconduct: conduct prejudicial to the administration of justice). The agreement provides for a one-year suspension with the suspension stayed for an 18-month probationary period subject to conditions.

Hansen has admitted to the facts and violations. Thus, the record establishes that he violated RPC 1.4 and RPC 8.4(d) by failing to communicate with his client or inform her that he had left his law firm and taken her case with him and by failing to timely oppose a motion and file an expert witness disclosure on her behalf. He has also violated RPC 1.15 and RPC 8.4(d) by failing to properly maintain his trust account, overpaying himself attorney fees, and failing to timely pay clients' lienholders. 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). Hansen violated duties owed to his clients (communication and safekeeping property) and the legal system (engaging in conduct prejudicial to the administration of justice) and the admitted violations reflect a combination of negligent and knowing misconduct. His clients were injured because their lienholders were not timely paid or they were overcharged attorney fees. Further, one of his clients was injured because her complaint was dismissed against two defendants. 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 dishonest or selfish motive, timely good faith effort to make restitution or to rectify consequences of misconduct, character or reputation, interim rehabilitation, and remorse). SCR 102.5.

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 4.12 (Am. Bar Ass'n 2015) ("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."); *id.* Standard 7.2 (providing that suspension is the baseline sanction when a lawyer "knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury

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to a client, the public, or the legal system"). Considering all of the factors, we conclude that the guilty plea agreement should be approved. *See* SCR 113(1).

Accordingly, we hereby suspend attorney Kevin R. Hansen from the practice of law in Nevada for one year. The suspension shall be stayed and Hansen shall be on probation for 18 months commencing from February 9, 2018, subject to the following conditions as described in the conditional guilty plea agreement:

a) [Hansen] shall provide the State Bar with at least eight (8) quarterly audits of his trust account at his expense, during the period of the stay, subject to additional audits more frequently if deemed necessary. Said audits are to be done by an auditor agreed upon by the parties and will begin three (3) months after the Panel approves the Conditional Guilty Plea. Audits shall be due on June 1 (for any period of January to March), September 1 (for any period of March to June), December 1 (for any period of July to September) and March 1 (for any period of October to December) of any year for which this stayed suspension is in effect; [Hansen] will be in breach of this condition if the required audit report is not received by the Office of Bar Counsel within forty-five (45) days of its due date.
b) [Hansen] shall not be subject to discipline as defined in SCR 102. Any future grievances or complaints received by the Office of Bar Counsel alleging [Hansen's] professional misconduct, shall be regularly processed in accordance with SCR 105. Should any such matter, including but not limited to matters involving any of [Hansen's] trust accounts prior to this agreement, result in the opening of a grievance concerning which a Screening Panel ultimately determines that a formal hearing is warranted, the conduct shall be considered a breach of this stay, and will result in imposition of the one (1) year suspension as set forth herein. This Panel, if available, will meet as soon as possible to hold a hearing and determine if the imposition of a one (1) year suspension is appropriate. [Hansen] agrees to waive the thirty (30) [day] notice requirement under SCR 105.
c) The eighteen (18) month stay period will begin upon approval of the Conditional Guilty Plea by the Nevada Supreme Court. However, any discipline grievance or complaint received by the State Bar between the period of approval [by] this Panel and approval by the Supreme Court shall be subject to being deemed a breach of the stay and imposition of the one (1) year suspension from the practice of law shall be pursued as described above in paragraph (b).
d) Except as otherwise stated hereinabove, failure to comply with any of the foregoing terms and conditions of this stayed suspension will result in the immediate imposition of the full one (1) year suspension, with no right of appeal. Successful completion of the eighteen (18) month stay will relieve [Hansen] of any future possibility of the imposition of the one (1) year suspension which is imposed and stayed on the terms set forth in this Conditional Guilty Plea.
e) [Hansen] shall pay SCR 120(1) fees in the amount of $2,500 and the actual costs of the disciplinary proceeding due and payable within thirty (30) days of the Order by the Nevada Supreme Court approving the Conditional Guilty Plea Agreement.

The State Bar shall comply with SCR 121.1.
It is so ORDERED.

In Re: CHARLES C. LOBELLO
Bar No.: 5052
Case No.: 74423
Filed: May 24, 2018

ORDER OF REINSTATEMENT

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

This court suspended Lobello from the practice of law for four years, retroactive to July 29, 2013, and required that he pay the costs of the disciplinary proceeding. *In re Discipline of Lobello,* Docket No. 69779 (Order Approving Conditional Guilty Plea, April 22, 2016). The panel that heard Lobello's petition for reinstatement found he had paid those costs and completed the four-year suspension. Thus, as Lobello complied with the terms and conditions of the prior disciplinary order, and testimony by Lobello and three other witnesses supported Lobello's petition, the panel recommended that Lobello be reinstated to the practice of law in Nevada.

Based on our de novo review, we agree with the panel's conclusions that Lobello has satisfied his burden in seeking reinstatement by clear and convincing evidence. *See* SCR 11.6(2) (requiring an attorney to demonstrate by "clear and convincing evidence that he or she has the moral qualifications, competency, and learning in law required for admission to practice law in this state" and that the attorney's "resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest"); *Application of Wright,* 75 Nev. 111, 112-13, 335 P.2d 609, 610 (1959) (reviewing a petition of reinstatement de novo). We therefore approve the panel's recommendation that the petition be granted.

Accordingly, Charles C. Lobello is hereby reinstated to the practice of law in Nevada. Lobello shall pay the costs of the reinstatement proceeding, excluding bar counsel and staff salaries, within 30 days of this order. *See* SCR 120.

It is so ORDERED.

BRETT O. WHIPPLE
Bar No.: 6168
Grievance File: OBC17-1481
Filed: May 7, 2018

LETTER OF REPRIMAND

To Brett O. Whipple:

On Tuesday, April 24, 2018, a Screening Panel of the Southern Nevada Disciplinary Panel convened to determine whether you violated the Rules of Professional Conduct.

According to their findings, you were the attorney for Charles Rodrick ("Rodrick"), a resident of Arizona. Rodrick retained you as local counsel through Arizona attorney Mike Harnden ("Harnden") to represent Rodrick in the matter of *Andre Wilson v. Perfect Privacy et al.*, (the "Defamation Case").

You and Rodrick entered into an unwritten retainer agreement whereby Rodrick payed you a $400 retainer to be billed against at $200 an hour. Harnden associated onto the Defamation Case by verified petition on December 4, 2015. The petition named you as designated resident Nevada counsel. On the same day, you also filed a Motion to Dismiss (on Anti-SLAPP grounds) which had been prepared by Harnden.

On April 20, 2016, approximately four months after removal, the United States District Court remanded the Defamation Case back to the State Court on jurisdictional grounds.

On May 26, 2016, a month after the Defamation Case had been remanded, you filed a Notice of Readiness of anti-SLAPP Motion and Request for Setting Argument and/or Decision. However, you failed to file the anti-SLAPP Motion to Dismiss with the State Court.

On June 14, 2016, the Plaintiff in the Defamation Case filed a Motion for Permanent Injunction.

On July 11, 2016, with the (defective) Notice of Readiness of anti-SLAPP Motion and the Motion for Permanent Injunction hearings pending, you filed a Motion to Withdraw. Your basis for the Motion to Withdraw was claims that Harnden had become unresponsive and failed to communicate with you in a timely manner, and that Rodrick had only paid you $400.

Our request to you for emails between Harnden and Respondent did not support your claims of a breakdown in communication on Harnden's end. In fact, it shows Harnden's emails going unanswered by your office.

A hearing was held on July 18, 2016 regarding Plaintiff's Motion for Permanent Injunction. You failed to attend the hearing. Harnden attended but, as he was not yet admitted pro hac vice, he was not allowed to argue on behalf of Rodrick and was only allowed to give a status report. The minutes of that hearing indicate that Rodrick at no point filed an opposition to the Motion for Permanent Injunction in State Court, but that such an Opposition had been filed previously in the United States Court. The Court granted the Motion for Permanent Injunction as unopposed, albeit only as a preliminary injunction.

On June 29, 2016, Plaintiff in the Defamation Case filed a notice of intent to take default judgment against Rodrick for failing to file an Answer.

On July 25, 2016, again while your Motion to Withdraw was pending, you filed a Notice of Motion and Motion to Associate Counsel, which attached Harnden's pro hac vice application and identified you as the Nevada attorney of record. As part of the application you filed a sworn declaration acknowledging your responsibilities pursuant to SCR 42, including being present at all matters in open court unless otherwise ordered, and ensuring that the proceeding was tried and managed in accordance with Nevada's procedural and ethical rules.

On July 28, 2016, again while your Motion to Withdraw was pending, a hearing on Rodrick's Special Motion to Dismiss (anti-SLAPP) was held. You again failed to attend. Harnden was present but was still not allowed to argue on behalf of Rodrick. Harnden states that he had spoken to your office prior to the hearing and was told that either you or an associate would attend the hearing. The Motion was denied as being not properly being before the Court, as you had only filed the Motion in the United States Court, not the State Court.

On August 11, 2016, your Motion to Withdraw was granted. On August 18, 2016, Harnden wrote to you stating that alternate Nevada counsel had been obtained in the Defamation Case. On August 25, 2016 Harnden's pro hac vice application was denied. The Court advised counsel to, "follow the rules for such motion."

On November 17, 2016, Rodrick was sanctioned $5,000 in response to Rodrick's Motion to Set Aside Default. According to the minutes the sanction as awarded due to the "Defendants' repeated failure to comply with local rules, which resulted in an unreasonable multiplication of proceedings."

Ultimately, Rodrick's new counsel successfully had the Defamation Case dismissed on anti-SLAPP grounds. Rodrick was awarded attorney's fees, which were reduced by 40%. According to the minutes of the attorney's fees hearing, this reduction was due to the court taking issue with the removal of the case to the United States District Court, and the fallout from the remand, which included Rodrick's lack of understanding of the State Court's relationship with the United States District Court.

On June 4, 2017, Rodrick emailed you requesting an "affidavit of fees for work done by your firm so I can submit them to the court for my ANTI-SLAPP win." You did not timely respond to Rodrick's email.

RPC 1.3 states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

RPC 1.4 states, "A lawyer shall: …(4) Promptly comply with reasonable requests for information…."

Your actions in representing Rodrick clearly violated the above-listed Rules of Professional Conduct. As such, you are hereby **REPRIMANDED.** In addition, within 30 days of this Letter of Reprimand you are required to remit to the State Bar of Nevada the amount of $1,500 pursuant to Supreme Court Rule 120(3).

LILLIAN J. DONOHUE
Bar No.: 533
Grievance File Nos.: OBC17-1579 & OBC18-0194
Filed: May 7, 2018

LETTER OF REPRIMAND

To Lillian J. Donohue:

On Tuesday, April 24, 2018, a Screening Panel of the Southern Nevada Disciplinary Panel convened to determine whether you violated the Rules of Professional Conduct in your representation of Frances Gower ("Gower") and Patrick Cougill, Esq. ("Cougill").

According to their findings, in May of 2017, you were retained by Cougill to complete a probate matter for the estate of his mother who died in Nye County. You requested a $5,000 retainer be sent overnight. Cougill sent the check on May 3, 2017 and you filed the Will on May 11, 2017.

However, after multiple requests from Cougill asking you to send a retainer agreement, on August 3, 2017, Cougill decided to terminate you, and asked for an accounting of his retainer and a return of any unused portion. Cougill's request went unanswered.

On October 17, 2017, Cougill left a voice message for you which was not returned. Cougill tried to call you again on November 8, 2017 but your voice mail box was full. Cougill sent you a letter on November 12, 2017 but again received no response.

Cougill then went to your office on December 15, 2017 where he spoke with you about his concerns. You acknowledged your communications failures due to personal matters and agreed to provide an accounting and refund.

You represented to the State Bar investigator that you had billed approximately three hours on Cougill's case at a rate of $250 per hour, but that you intended to refund Cougill in full due to your communications failure.

Second, in November of 2016, you were retained by Gower to represent her in a personal injury claim regarding a June 29, 2016 car accident. After analyzing the case, you believed that Gower was unlikely to obtain a better result than

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the $2,176 offer of settlement that had already been received, thus, you took no further action on the case. You failed to communicate this information to Gower.

In October of 2017, due to your inaction, Gower decided to terminate you and requested her file back. After multiple requests, Gower finally received her file on February 16, 2018. Gower is currently attempting to retain new counsel to file litigation prior to the expiration of the June 29, 2018 statute of limitations.

RPC 1.3 states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

RPC 1.4 states, in relevant part:

A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) Keep the client reasonably informed about the status of the matter
(4) Promptly comply with reasonable requests for information….

Your actions in representing Gower and Cougill clearly violated the above-listed Rules of Professional Conduct. As such, you are hereby **REPRIMANDED.** In addition, within 30 days of this Letter of Reprimand you are required to remit to the State Bar of Nevada the amount of $1,500 pursuant to Supreme Court Rule 120(3).

Due to the similarity of these two grievances, they have been consolidated by the Screening Panel.

KEN R. ASHWORTH
Bar No.: 4519
Case No.: OBC15-0865
Filed: June 5, 2018

LETTER OF REPRIMAND

To Ken R. Ashworth:

Commencing in or around 2010, you began providing legal advice to Ralph and Faye Johnson ("the Johnsons"), including estate planning services pertaining to their estimated $40-50 million estate. The estate planning work consisted of revising the Johnsons' existing living trust, wills, and power of attorney documents, and creating additional documents described briefly ahead. At the relevant time, the Johnsons were also providing financial support to a disabled adult sister (Nyla Petersen), and to two adult granddaughters (Melissa Petersen and Jennifer Petersen), and they were looking for a means to provide that support into the future while avoiding estate tax consequences at their deaths. You drafted four trust documents ultimately executed by the Johnsons:

(a) The "Ralph and Faye Johnson Living Trust," ("Living Trust") supplemented by each of the Johnsons' Last Will & Testament, Durable Power of Attorney, Durable Power of Attorney for Health Care, and HIPAA Authorizations. These documents were originally signed by the Johnsons in August 2012, and later amended and re-signed in December 2012;
(b) The "Irrevocable Trust Agreement of Faye P. Johnson," providing for the support of Faye Johnson's adult, disabled sister, Nyla Petersen ("Irrevocable Trust, f/b/o Nyla");
(c) The Irrevocable "Jennifer Petersen 2012 Spendthrift Trust," ("Jennifer Petersen Spendthrift Trust") providing for the support of the Johnsons' adult granddaughter, Jennifer Petersen; and
(d) The Irrevocable "Melissa Petersen 2012 Spendthrift Trust," ("Melissa Petersen Spendthrift Trust") providing for the support of the Johnsons' adult granddaughter, Melissa Petersen.

The contingent remainder beneficiary designated in each of the four trusts was the Ralph and Faye Johnson Private Foundation, which you prepared. Further, the Living Trust designates the Robert K. Ashworth Foundation ("RKA Foundation"), a charitable organization to promote cancer research in Nevada in memory of your son, Robert K. Ashworth, as a remainder beneficiary, along with other charitable remainder beneficiaries designated by the Johnsons.

You provided estate planning and tax advice to the Johnsons concerning the funding and tax consequences of the various funding options for each of these trusts in their creation and in their final distribution. As to each of these trusts, you or your law firm was named as Trustee, Co-trustee, or Successor Trustee. Similarly, you were to be appointed as a board member of the Ralph and Faye Johnson Private Foundation you were to create to act as remainder beneficiary of the Trusts. You also created the Bald Eagle Trust for Melissa Petersen with yourself listed as the trust protector while you were representing the Johnsons and serving as a fiduciary of their trusts (including Melissa's spendthrift trust). Although you served as trust protector of the Bald Eagle Trust, and were anticipated to serve as a board member of the Ralph and Faye Johnson Private Foundation, at the specific request of the Johnsons, you did not obtain the Johnsons' written informed consent or waiver of the potential conflict of interest in accepting these roles while also acting as the Johnsons' attorney and as a current and future trustee of their trusts, nor did you advise the Johnsons in writing to seek independent legal advice with respect to such potential conflicts.

Although it is your position that the Johnsons insisted upon you acting as the successor trustee on their living trust and dictated the compensation they would be willing to pay for such services, you should have better communicated with them about their options, including hiring a professional fiduciary such as a bank or trust company, and you should have more clearly advised the Johnsons to seek the advice of independent legal counsel with respect to their options for choosing a fiduciary before naming you, their attorney, in this role.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.4 (Communication) and RPC 1.7 (Conflict of Interest: Current Clients) and are hereby **REPRIMANDED.**

KENNETH J. MCKENNA
Bar No.: 1676
Case No.: OBC17-0526
Filed: June 7, 2018

LETTER OF REPRIMAND

To Kenneth J. McKenna:

On or about November 23, 2015, you agreed to represent Melissa Eras ("Eras") in connection with "WCSD" and negotiating

Eras's employment/termination status. Eras agreed to pay you a "flat fee" of $3,000, plus costs for the representation. The Retainer and Fee Agreement stated that

(i.) "No hourly fees will be charged and no hourly records will be kept."
(ii.) "Should Client fail to supply sufficient funds for the proper investigation of this case so as to jeopardize Attorney's ability to represent Client, Attorney may, at his discretion withdraw from representation in the case and in that event none of the fees … shall be refundable." and
(iii.) "ATTORNEY FEE NON-REFUNDABLE: The Fee Arrangement set out above if the Attorney's Fee for complete representation of Client. Client understands and agrees that the Fee in Non-refundable, and is earned in full by the Attorney upon acceptance of the representation and is to be retained by the Attorney regardless of the disposition of the case or termination of the Attorney/ Client relationship."

On or about December 18, 2015, Eras paid you $1,800 towards the $3,000 flat fee.

For the representation, you assisted Eras in meeting with the Washoe County School District ("WCSD"). Eras's objectives were not obtained, therefore, Eras retained you a second time. The second retention was "in connection with state employment WCSD." On or about February 11, 2016, you and Eras executed the second Retainer and Fee Agreement. Eras agreed to pay you a "non-refundable" retainer of $20,000 and "35% of any and all amounts recovered by compromise, settlement, judgment, verdict, and award or pursuant to a judgment plus costs" for the second representation. The second Retainer and Fee Agreement also stated:

(i.) The $20,000 payment "represents a non-refundable retainer and is earned in full at the inception of this agreement between Client and Attorney upon Attorney's agreement to represent Client with respect to the above referenced case. This fee is not based on hours worked. No hourly fees will be charged and no hourly records will be kept."
(ii.) "Should Client or Attorney terminate Attorney's representation of Client in this matter, Attorney shall be entitled to the non-refundable retainer and shall have the right to lien the case additionally for the value of services rendered in regard to the 35% contingent fee agreed to."
(iii.) "FEE NON-REFUNDABLE: The fee arrangement set out above is Attorney's fee for representation of Client as Described above. Client understand [sic] and agrees that the fee is non-refundable and is to be retained by the Attorney regardless of disposition of the case."

On or about February 11, 2016, Eras paid $10,000 toward the retainer amount identified in the second Retainer and Fee Agreement. Thereafter, Eras was to pay $200 per month towards the balance of the retainer. Eras did not make any of the $200 payments.

In or about May, 2016, Eras personally submitted a Final Appeal letter to the Department of Education, Training and Rehabilitation ("DETR") which included additional documentation and statement that she had collected. Your office did not participate in the submission.

In September, 2016, your office represented to Eras that a draft of the lawsuit should be ready for Eras's review soon. Then, in or about October, 2016, your office told Eras that the representation would be terminated if payments were not made towards the retainer. In response to the notice, Eras emailed Respondent's office and requested they reconsider the requirement that payment be received before moving forward with litigation on her behalf.

On or about January 23, 2017, your office declined to "alter the terms of the contract" to allow non-payment of the rest of the retainer and reiterated the termination of the representation. The email from your assistant also simply asserted that all paid fees had been earned.

You did not file a Complaint on behalf of Eras or provide Eras with a copy of any prepared Complaint when the representation was terminated.

Violation of the Rules of Professional Conduct

You had a duty to take steps to the extent reasonably practicable to protect your client's interests when terminating representation pursuant to RPC 1.16 (Declining or Terminating Representation). You knowingly violated RPC 1.16 (Declining or Terminating Representation) when, after you terminated the representation, you failed to provide Eras with papers and property and/or refund the advance payment of fees that had not been earned or incurred.

Your aforementioned conduct also was prejudicial to the administration of justice for Eras, thus being a knowing violation of RPC 8.4(d) (Misconduct-prejudicial to the administration of justice).

Your client could have been injured by your misconduct had she not availed herself of appropriate agency redress and sought other counsel.

In arriving at the appropriate level of discipline for your misconduct, the Panel has considered the aggravating factors of your prior discipline (SCR 102.5(1)(a)) and your substantial experience in the law SCR 102.5(1)(i)). The Panel has also considered the mitigating factors of your cooperative attitude toward the discipline proceeding (SCR 102.5(2)(e)), the mitigation of any injury to the client by your return of $5,900 of the retainer funds, and the remoteness of prior offenses (SCR 102.5(2)(n)).

Although this foregoing violation could warrant a suspension of your license to practice law, the nature of the injury to the client and the mitigating factors warrant a downward deviation from the presumptive sanction.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.16 (Declining or Terminating Representation) and RPC 8.4(d) (Misconduct-prejudicial to the administration of justice) and are hereby **REPRIMANDED** and ordered to pay $1,500, plus all hard costs of the disciplinary proceeding within 30 days of the filing of the Findings of Fact, Conclusions of Law and Order.

You are also cautioned that no fee is *per se* "non-refundable." All fees, whether billed hourly or as a "flat fee" must be measured by the reasonableness of that fee, as set forth in RPC 1.5(a). If the fee is not reasonable, then it must be refunded. The Panel also cautions you that, having now received three disciplinary reprimands, any further violation of any Rule of Professional Conduct will be weighed with this history in mind.

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SEAN L. BROHAWN
Bar No.: 7618
Case No.: OBC18-0176
Filed: May 15, 2018

LETTER OF REPRIMAND

To Sean L. Brohawn:

A Screening Panel of the Northern Nevada Disciplinary Board recently reviewed the above-referenced grievance files. The Panel unanimously concluded that a Letter of Reprimand should be issued to you for violation of RPC 1.3 (Diligence), RPC 3.2 (Expediting Litigation), RPC 8.1(b) (Bar Admissions and Disciplinary Matters) and RPC 8.4 (Misconduct).

Facts

Jeffrey Lowden hired you in January 2017 to file a breach of contract action. Mr. Lowden alleges that he paid you a $3,000 retainer. You failed to file an Answer to the Counterclaim or propound any discovery and opposing counsel filed a Motion for Default Judgment and a Motion for Sanctions. Mr. Lowden hired other counsel who made an appearance in the matter on August 31, 2017, but you never filed a Notice to Withdraw or assisted in a substitution. The request for default and sanctions was denied only because the Court was informed of your discipline suspension on June 13, 2017.

On February 14, 2018, a grievance file was opened and you were asked to respond to Mr. Lowden's allegations. You received notice, pursuant to RPC 8.1(b) that a failure to respond may result in the allegations made in the grievance being deemed admitted by a screening panel. You never responded to the State Bar's inquiry.

Violations

The client complained of your lack of diligence, which the panel found credible in light of your failure to provide proof of any work completed on behalf of the client. The panel found that you violated RPC 1.3 (Diligence) and RPC 3.2 (Expediting Litigation) based on the existing account of events. This violation could have resulted in serious injury to your client if the court had not taken notice of your suspension and Mr. Lowden had not retained new counsel quickly.

In addition, the Office of Bar Counsel forwarded you a copy of the grievance and requested a response. You failed to respond to the correspondence, which is a separate violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters). Finally, the panel found that your conduct in handling the client's matters and this discipline matter violated RPC 8.4(d) (Misconduct-prejudicial to the administration of justice).

Discipline

The Panel felt that this misconduct warranted suspension. But the Panel considered, as a mitigating factor, that you are already suspended for eighteen months for similar misconduct during, substantially, the same time period, and therefore, it expects that you will be required to account for this misconduct at any reinstatement hearing held in the future.

Accordingly, you are hereby **REPRIMANDED** for violating RPC 1.3 (Diligence), RPC 3.2 (Expediting Litigation), RPC 8.1 (Bar Admission and Disciplinary Matters) and RPC 8. 4 (Misconduct) and are assessed $1,500, pursuant to SCR 120, which shall be paid to the State Bar of Nevada within 30 days of the formal issuance of this Letter of Reprimand.

This reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

TIPS FROM THE OFFICE OF BAR COUNSEL

A scam targeting trust accounts – and the funds inside – is again focusing on attorneys in Nevada. And it's working.

The lawyers, usually sole practitioners, are asked to deposit a check into the trust account and then transfer the funds to the "client." The check presented for deposit, of course, is fake.

The scam usually involves one of two scenarios:

The Debt Collector

The attorney is "hired" to do collections for a foreign company with customers in the United States. The attorney sends a demand letter to the U.S. entity which owes the client money, and the debtor quickly provides payment (usually $200,000 to $300,000).

When the attorney informs the client that the payment has arrived, the client insists that the funds be wired (not mailed) immediately to a bank in another country. The funds are transferred, withdrawn immediately in cash and the client disappears.

Eventually the attorney's bank will discover the original check was fake and then debits the trust account, usually leaving it empty. As a result, funds which actually belonged to clients or third-parties have been transferred to the offshore account and stolen by the scammer.

The Big Deal

The attorney is asked to facilitate a large commercial transaction, often involving expensive farm equipment. The client is the "seller."

The "buyer" provides the attorney with a fake check, again for hundreds of thousands of dollars, to be deposited into the trust account. Again, the client wants the funds *wired* immediately and disappears.

The trust account is not an escrow account. It is meant to hold funds associated to legal representations in which you provided actual legal work. It should not be used to facilitate commercial transactions.

And beware of opportunities that look too good to be true. If the client and his/her bank are overseas, be especially careful.