

**MICHAEL R. PANDULLO****Bar No.: 10707****Case No.: 79166****Dated: 07/22/2019****ORDER IMPOSING TEMPORARY SUSPENSION**

This is a petition by the State Bar for an order temporarily suspending attorney Michael R. Pandullo from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Pandullo appears to have failed to act diligently in handling several clients' criminal defense matters by not appearing at scheduled court proceedings, and failed to communicate with clients by not returning phone calls and correspondence or otherwise keeping his clients informed about the statuses of their matters.<sup>1</sup>

SCR 102(4)(b) provides, in pertinent part:

On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

We conclude that the documentation before us demonstrates that Pandullo poses a substantial and ongoing threat of serious harm to the public." In particular, Pandullo's failure to appear on behalf of and communicate with clients has resulted in direct harm, including bench warrants issuing for his clients, his clients having to retain or have new counsel appointed, other attorneys having to step in to represent his clients when he fails to appear at hearings, and delays in various court proceedings. His immediate temporary suspension is therefore warranted under SCR 102(4)(b).

Accordingly, attorney Michael R. Pandullo is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against him. Under SCR 102(4)(d), Pandullo is precluded from accepting new cases but he may continue to represent existing clients for a period of 15 days from service of this order.<sup>2</sup>

The State Bar shall immediately serve Pandullo with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Pandullo's place of employment or residence, or by publication. Pandullo shall comply with the provisions of SCR 115. Bar counsel shall comply with SCR 121.1.

**It is so ORDERED.**<sup>3</sup>

**SCOTT R. DANIEL****Bar No.: 12356****Grievance File No.: OBC18-0870****Dated: 06/07/2019****PUBLIC REPRIMAND**

To Scott R. Daniel:

Sophia Prone ("Prone") retained you in June 2016 for a wrongful termination suit against her former employer the

TSA. Prone provided you with original documents and paid you \$450.

In December 2016, you cancelled several scheduled meetings and told Prone that you were drafting pleadings for court. Prone attempted to reach you by phone several times. Prone also went to your shared office space and was told that you no longer had an office there.

You admitted to the bar that you disengaged from your law practice for in the second half of 2016. This "disengagement" was the result of severe stress and a latent traumatic brain injury. By Spring 2017, you decided to leave your law practice and terminate your office lease. You acknowledge that Prone's matter "fell through the cracks." You never filed any pleadings on Prone's behalf or otherwise tried to advance Prone's claim during the year that you represented her. You failed to communicate to Prone that you would not proceed with the representation until the Summer of 2017.

You saw Prone during the Summer of 2017 when she was working security at the Reno Justice Court. You told Prone about your medical issues and that you could not represent her. You advised her that you would return her file so that she could retain new counsel. Despite your promises to return her file and refund the \$450 she paid, you did neither.

**Violations of the Rules of Professional Conduct**

You violated RPC 1.3 (Diligence) by neglecting Prone's case for approximately one year. In addition, you violated RPC 1.4 (Communication) when you (i) failed to inform her about the status of her case and (ii) failed to respond to her requests for information.

Finally, you violated RPC 1.16 (Declining or Terminating Representation) when you (i) failed to terminate the representation of Prone for at least six months, despite knowing that you were physically and/or mentally unable to continue with the representation and (ii) failed to provide Prone with her file after you finally did terminate the representation.

Your client was injured by your violation of the Rules of Professional Conduct because her ability to pursue her claim was impacted by your lack of diligence, lack of communication, and lack of effort to protect her interests when you terminated the representation.

Standard 4.43 of the ABA Standards for Imposing Lawyer Sanctions provides that the appropriate baseline sanction for the above-listed violations of the Rules of Professional Conduct is a reprimand.

The Panel considered the aggravating factor that you received prior discipline for a substantially similar issue during the time that you were supposed to be representing Prone. It also considered the mitigating factors of your documented neurological impairment, your full and free disclosure to the disciplinary authority and cooperative attitude toward the proceeding, your inexperience in the practice of law, and your expressed remorse. The Panel balances these factors and found that they did not warrant a deviation from the baseline standard.

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.3 (Diligence), RPC 1.4 (Communication), and RPC 1.16 (Declining or

Terminating Representation) and are hereby **PUBLICLY REPRIMANDED**.

**CHRISTINA J. GUPANA**

**Bar No.: 12757**

**Grievance File No.: OBC16-0858**

**Dated: 07/29/2019**

## **PUBLIC REPRIMAND**

To Christina J. Gupana:

Edward Bradley Radford (“Radford”) and Marlon Yson Medina (“Medina”) contacted you on or about December 5, 2014, to represent them on a Petition for Alien Relative (“I-130”) and a Provisional Unlawful Presence Waiver (“I-601A”) for Radford’s husband, Medina. Radford and Medina executed a retainer agreement for \$4,500 on or about February 19, 2015 for the I-130 and I-601A. The amount was paid in full on or about March 13, 2015.

You filed the I-130 on or about April 29, 2015, and it was approved on or about May 23, 2016. On or about July 6, 2016, you submitted payment of fees to the National Visa Center (“NVC”) on behalf of Medina. You received a receipt for the payment on or about July 7, 2016, indicating Medina’s status as paid.

After several months without an update on their case, Radford and Medina began trying to reach you via telephone and email. In December 2016, Radford and Medina paid your office all necessary filing fees and provided all necessary paperwork to submit the I-601A. Despite having access to all the necessary paperwork by January 17, 2017, you failed to properly submit the I-601A in a timely manner.

In January 2017, you met with Radford and Medina to inform them of your decision to leave Nevada later that year. During that meeting, you assured Radford and Medina that their immigration matters would be handled properly. Also during that meeting, you provided Radford and Medina with contact information for your paralegal, Thalia Gomez (“Gomez”).

On or about March 6, 2017, Gomez indicated Medina’s I-601A was filed in January 2017. On or about March 21, 2017, Gomez claimed the I-601A had been rejected due to NVC’s failure to issue proof of payment. Gomez indicated to you and your clients that the I-601A would be resubmitted, but did not give a timeframe for doing so.

On May 7, 2017, Radford sent you an email requesting a meeting to discuss the status of the case. In your response to Radford’s email, you stated that you had left Nevada, the case had already been filed, and that you had fulfilled your obligations under the retainer agreement.

On May 16, 2017, Medina sent you an email requesting information on the status of his case and for information on why they had not received a receipt or other confirmation for the submission. In two (2) separate responses to Medina’s email, you again stated the waiver had been submitted, and that you would provide a receipt number as soon as you received it. You blamed the delay on an immigration system backlog, though you did inquire

as to the most recent status update received from Gomez. You again stated your work under the retainer agreement was completed.

On July 14, 2017, Radford sent another email to Gomez, this time inquiring as to which office the I-601A had been submitted. On July 25, 2017, Gomez responded, indicating she was “still working with the National Visa Center to get the document” she needed to refile the I-601A. Despite repeated attempts to communicate with you and Gomez via email and text, Medina and Radford heard nothing further on their case for over four (4) months.

On or about December 19, 2017, Radford and Medina went to your prior office location, where they spoke with your prior receptionist, Dora Salazar. They indicated that they intended to file suit against you, as they had contacted NVC directly and learned that the I-601A had not been filed. On December 20, 2017, you emailed Radford and Medina indicating Gomez made her aware that their case had been returned due to a change in forms and fees, resulting in Gomez having to refile the I-601A. You also threatened to countersue Radford and Medina if they took legal action against you. At that time, Gomez had not refiled the I-601A.

On December 21, 2017, you emailed Gomez the Cover Sheet and acknowledgment of fees Respondent obtained online on December 20, 2017. Both documents were required for proper submission of the I-601A and were available online as early as January 17, 2017.

On December 26, 2017, you again emailed Radford and Medina indicating you could not meet with them to return their file documents because you were no longer in the United States. You further indicated Gomez would update them on their case, and indicated the I-601A had been submitted and there were “no more legal matters to discuss.” You have acknowledged that not all necessary forms had been completed on Radford and Medina’s behalf at that time.

You transferred your law license to inactive status with the State Bar effective January 1, 2018. You are not licensed in any other jurisdiction in the United States.

On or about February 2, 2018, you emailed Gomez demanding Gomez meet certain deadlines related to the Medina matter. Thereafter, you notified Medina and Radford that you would be coming to Las Vegas to replace Gomez as their case manager. You also acknowledged Gomez’s lack of responsiveness to Medina and Radford.

On or about April 2, 2018, you met with Radford to obtain a copy of his file and discuss the status of the case. You notified Radford and Medina that a new paralegal, Maria Bustamante (“Bustamante”), would be handling their case.

Throughout the course of the investigation of this matter, you repeatedly informed the State Bar that the I-601A had been submitted multiple times by Gomez. In August of 2018, you finally acknowledged that Gomez never filed the I-601A, and that it was not actually submitted until July 2018.

On or about August 28, 2018, the State Bar received a grievance from your former employer. You worked as an associate for the grievant’s law firm from October 22,

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2012 through January 2, 2014. Bustamante worked as a paralegal/case manager at the law firm from May 10, 2010 through August 27, 2018.

Emails exchanged between you and Bustamante demonstrate that a number of your clients' immigration matters remained open and unfiled after January 1, 2018. You knew by or before February 2018 that one (1) or more of her clients' immigration matters had not been properly filed. You then arranged for outstanding client matters to be handled by Bustamante, a paralegal, after voluntarily placing yourself on inactive status.

You continued to meet with clients after placing yourself in voluntary inactive status. You personally, and through Gomez and Bustamante, continued to prepare immigration documents on behalf of clients after placing yourself in voluntary inactive status. You maintained client application fees in your IOLTA account and issued checks for applications to USCIS on behalf of clients, after placing yourself in voluntary inactive status.

In light of the foregoing, you violated Rules of Professional Conduct RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Declining or Terminating Representation), RPC 3.2 (Expediting Litigation), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 5.4 (Professional Independence of a Lawyer) and are hereby **PUBLICLY REPRIMANDED**.

#### **MARSHA KIMBLE-SIMMS**

**Bar No.: 8530**

**Grievance File No.: OBC19-0033**

**Dated: 08/12/2019**

#### **LETTER OF REPRIMAND**

To Marsha Kimble-Simms:

Jerry Liberty ("Liberty") retained you to represent him in a personal injury case. You settled his case in January 2018. Shortly after you received the settlement check you transferred your State Bar license to inactive. You continued to work on Liberty's case, but lienholders refused to negotiate with you while inactive.

Liberty sent you multiple status requests starting in April. You did not respond until August. You did not tell Liberty about your inactive status or the difficulties in his case. Liberty complained to the State Bar in December. You had not taken any further action.

Nevada Rule of Professional Conduct 1.4 (Communication) requires you to keep your clients reasonably informed about the status of their legal matters and promptly answer their requests for information. Your communication with Liberty falls below this professional standard.

Nevada Rules of Professional Conduct 1.16 (Declining or Terminating Representation) requires you to take steps to protect your client's interest before withdrawing from representation. Your move to inactive status effectively ended your representation of Liberty. You did so without taking the necessary steps to protect his interests. Your withdrawal falls below the professional standard required of you.

Accordingly, 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). I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

#### **DAVID C. O'MARA**

**Bar No.: 8599**

**Grievance File No.: OBC19-0051**

**Dated: 08/12/2019**

#### **LETTER OF REPRIMAND**

To David C. O'Mara:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievance which was opened because of information obtained in a grievance initiated against Brian Moquin, Esq. The Screening Panel has unanimously determined that you be issued a Letter of Reprimand for violations of Rules of Professional Conduct (RPC) in your *pro hac vice* sponsorship of Brian Moquin, Esq.

#### **FACTUAL BACKGROUND:**

In June 2014 you were retained to serve as "local counsel" by the Plaintiffs in a civil suit in Nevada. As "local counsel," you sponsored California attorney Brian Moquin for *pro hac vice* admission for that particular suit and all involved expected that Mr. Moquin would be the lead counsel for that suit. While your retainer agreement stated a limited scope of representation, that agreement does not relieve you of your obligations as the sponsor of Moquin.

During the course of the civil suit, Moquin was ordered to comply with the Nevada Rules of Civil Procedure regarding discovery in July 2015, January 2017, February 2017, and May 2017. In addition, the trial was continued three times because Moquin continued to fail to comply with discovery requirements. You were aware during the suit that Moquin never fully complied with discovery requirements.

Moquin also failed to file a reply brief and/or submit a Motion for Summary Judgment filed on behalf of your joint clients. Finally, in late 2017, Moquin failed to oppose motions that requested case-ending sanctions against your joint clients.

You communicated with Moquin that he was failing to comply with the applicable procedural rules in the suit and he failed to abide by your requests and demands to remedy the failures. You also expressed your concerns about Moquin's failures to your joint clients, which was evidenced in documents provided in the grievance initiated against Moquin. However, you did not withdraw your sponsorship of Moquin until after the Court granted the case-ending sanction against your clients. You did not communicate to the Court that you would not condone the misuse of the Nevada judicial system by Moquin.

#### **APPLICABLE RULES OF PROFESSIONAL CONDUCT:**

RPC 1.16 (Declining or Terminating Representation) provides that a lawyer shall withdraw if the representation will result in a violation of the Rules of Professional Conduct. It also provides that a lawyer may withdraw if (i) "a client fails substantially to fulfill an obligation to the

lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled," (ii) "the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client," or (iii) "other good cause for withdrawal exists." In this instance, you knew that Moquin was failing to perform crucial tasks on behalf of the client. Moquin's conduct was unacceptable. Had Moquin been your client, it would have been clear that withdrawal was necessary under RPC 1.16 because you would not have been able to abide by the Rules of Professional Conduct without his participation. You had a responsibility to the Court to ensure that Moquin handled the litigation in a procedurally and ethically appropriate manner. You knew that Moquin was not and you did not timely withdraw your sponsorship of Moquin. While you may have believed that withdrawing as counsel would have been detrimental to your clients, you did not balance that belief with an understanding of how continuing to sponsor Moquin was also detrimental.

RPC 8.4(d) (Misconduct- Prejudicial to the Administration of Justice) provides that it is a violation of the Rules of Professional Conduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. You continued to allow Moquin access to the Nevada courtroom, via *pro hac vice* admission, despite knowing that Moquin was (i) failing to abide by the requirements of NRCP and (ii) failing to adequately represent the joint clients. Your continued sponsorship of Moquin was ultimately prejudicial to the administration of justice in the underlying case.

#### APPLICABLE STANDARDS FOR IMPOSING LAWYER SANCTIONS:

Standard 7.3 of the ABA Standards for Imposing Lawyer Sanctions states "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, the public, or the legal system."

You identified that the attorney you sponsored for *pro hac vice* admission was mishandling the matter to the detriment of the client, however, you waited an unreasonable amount of time before withdrawing from the representation and signaling to the Court and all others involved that you did not support the *pro hac vice* counsel's conduct.

#### REPRIMAND

Based upon the foregoing, you are hereby **REPRIMANDED** for your conduct related to your sponsorship of Moquin, which conduct violated Rule 1.16 and Rule 8.4(d) of the Nevada Rules of Professional Conduct when you failed to terminate the representation and withdraw your sponsorship of an out-of-state attorney despite knowing that the attorney was failing to abide by the requirements of NRCP and adequately represent the joint clients.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

**ANTHONY W. LIKER**

**Bar No.: 4670**

**Grievance File Nos.: OBC18-1220  
& OBC18-1235**

**Dated: 04/19/2019**

#### LETTER OF REPRIMAND

To Anthony W. Liker:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) in the handling of (i) the representation of a client in a matter where he was accused of a serious crime and (ii) your radio advertisements.

#### FACTUAL BACKGROUND:

In July, 2018, you were retained to represent a defendant in a criminal matter that had not yet gone to Preliminary Hearing. The client's mother executed a retainer agreement that identified that the representation was for one settlement conference or status check and that you would be paid a flat fee of \$6,000 (of which \$5,000 was paid). The client did not execute a retainer agreement or otherwise provide consent, confirmed in writing, of the limitation placed on the representation. The client now claims that he did not understand the limitation on the representation.

The retainer agreement also stated that the fee was nonrefundable, the representation excluded any appellate work, and you could resolve the case as you deemed appropriate. The aforementioned boilerplate contract provisions are concerning because 1) RPC 1.16(d) requires you to refund "any advance payment of fee or expense that has not been earned or incurred" and, pursuant to Ethics Opinion No. 15, no fee is ever *per se* nonrefundable; 2) NRAP 3C(b) requires trial counsel to file a Notice of Appeal and perform certain initial appellate tasks – an attorney cannot contract out of those obligations; and 3) only the client can decide to settle a matter.

You communicated a settlement offer to your client, but it was not accepted. Then, on October 8, 2018, you filed a Motion to Withdraw from the representation citing the client's inability to pay for representation past the Preliminary Hearing and a communication issue with the client as the basis for the request. Your motion was granted, the client was reassigned to the Public Defender, and the Preliminary Hearing had to be continued. You did refund the \$5,000 to the client.

You have also been running radio advertisements in Elko, Nevada, that have not been submitted to the State Bar's Advertising Committee for review. During October 2018 and February 2019, you paid for a radio station to run an advertisement referencing recommendations from judges. However, the radio advertisement omitted that such recommendations were for the sole purpose of your admission to practice law in North Dakota. You ran at

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least one other radio advertisement between October 2018 and March 2019. You did not submit any of these radio advertisements for review by the State Bar Advertising Committee, as required by RPC 7.2A.<sup>4</sup>

#### **APPLICABLE RULES OF PROFESSIONAL CONDUCT:**

RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) allows an attorney to reasonably limit the scope of representation with the client's informed consent. In this matter, there is no evidence that your client provided the necessary informed consent for you to limit the representation to "one settlement conference or status hearing." The client's mother signed the Fee Agreement and the client claims that he did not understand that the representation was limited in scope. RPC 7.1 (Communications Concerning a Lawyer's Services) provides that "a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. "False or misleading" is defined as containing a material misrepresentation of fact or law or omitting a fact necessary to make the statement, as a whole, not materially misleading. In this instance, the radio advertisement that you ran twice in Elko, Nevada stated that judges "recommend" you but omitted that such recommendations were for the purposes of the moral character evaluation for admission into the North Dakota Bar, not for the purposes of representing particular clients.

RPC 7.2A (Advertising Filing Requirements) requires an attorney to file with the State Bar "written or recorded communications the lawyer causes to be disseminated for the purpose of advertising legal services" within 15 days of the first dissemination of the advertisement. You failed to submit multiple radio advertisements, despite knowing of the requirement to do so. Further, this instance exemplifies why advertisements are to be submitted – so that the content can be reviewed and the attorney instructed on the propriety of it in a timely manner. The Panel expects that if the "judges" radio advertisement had been submitted, you would have been directed to revise its content to correct the misleading nature of the "recommendation" statement.

Finally, RPC 8.4(e) (Misconduct) states that it is professional misconduct to imply an ability to influence improperly a government official. Your radio advertisement indicated judges recommended you which improperly implied an ability to influence a judge on behalf of a client because of the recommendations.

#### **APPLICABLE STANDARDS FOR IMPOSING LAWYER SANCTIONS:**

Standard 4.63 of the ABA Standards for Imposing Lawyer Sanctions provides that "reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client." In this instance, your failure to get informed consent to the limitation on the representation from your actual client had the potential to cause your client injury and your refund of the entire flat fee is the only thing that prevent your conduct from causing actual injury to your client. Standard 4.64 provides that an admonition is appropriate if the failure was an isolated instance and there was little or no injury or potential injury to

the client. A Letter of Reprimand is an appropriate sanction for your failure to provide your client with the complete information about the scope of your representation in light of the fact that you did return the flat fee when you terminated the representation.

Standard 7.2 provides that suspension 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, the public, or the legal system. In this instance, you knew that you needed to submit all advertisements to the State Bar for review and you failed to do so on multiple occasions in the last seven months. In addition, at least one of the advertisements omits information that is material to prevent the advertisement from being misleading and from implying an ability to improperly influence a government official. Standard 7.4 states that an admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a profession and causes little or no injury or potential injury to a client, the public, or the legal system. Considering these Standards, it is appropriate in this instance to issue a reprimand, a form of discipline between suspension and admonition, for your violations of RPC 7.1 and RPC 7.2A.

#### **REPRIMAND**

Based upon the foregoing, you are hereby **REPRIMANDED** for your conduct related to representation of the foregoing clients, which conduct violated Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) for failing to get informed consent, confirmed in writing, from your client for the limitation of the representation in the criminal matter.

RPC 7.1 (Communications Concerning a Lawyer's Services) for omitting material information from the radio advertisements that you ran in October, 2018 and February, 2019.

RPC 7.2A (Advertising Filing Requirements) for failing to submit multiple radio advertisements between October, 2018 and March, 2019 despite knowing that such submission was required.

RPC 8.4(e) (Misconduct) for implying improperly an ability to influence improperly a government official when your radio advertisement stated that judges 'recommended' you without any qualification of that recommendation.

Please understand that the Screening Panel seriously considered directing the Office of Bar Counsel to proceed to Formal Hearing in these matters. However, after much discussion, it decided on a lesser form of discipline, trusting that you will be better and do better with your practice of law.

You are also cautioned that the boilerplate provisions of your fee agreements should be revised to comply with the applicable Rules of Professional Conduct and Rules of Appellate Procedure.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

**CALVIN R. X. DUNLAP**  
**Bar No.: 2111**  
**Grievance File No.: OBC18-1016**  
**Dated: 04/18/2019**

## LETTER OF REPRIMAND

To Calvin R. X. Dunlap:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) in the handling of your IOLTA Trust Account.

### FACTUAL BACKGROUND:

On August 29, 2018, the Office of Bar Counsel received an overdraft notification from Torrey Pines Bank regarding your IOLTA trust account. A check in the amount of \$77,293.82 was presented for payment on August 27, 2018, and honored despite insufficient funds. The State Bar asked you to provide an explanation for the overdraft.

In response, you stated that the check was issued under very unusual circumstances following the lengthy litigation of a complex multi-part personal injury, insurance and medical lien claim matter. You explained that your personal injury client accumulated approximately \$745,966 in medical bills and the multiple insurance policies available to the client totaled \$465,000, leaving a potential deficit of \$280,966. But, because of the age of the injured client, most of his bills were paid by Medicare. After disbursing a majority of the funds to the client and the medical lienholders, in April 2017, your office secured a refund from Medicare. You asserted an interest in the refunded monies and withdrew them from the IOLTA trust account thinking there would not be a dispute about the disbursement of those funds. However, the client did dispute how those monies should be disbursed. The client asserted that the refund should be disbursed only to him. You believed that amount was overstated by \$39,000, but agreed to the client's figure to settle the dispute. Several meetings were held in August to go over the records and to compare figures and disputed amounts. At the last meeting, held August 24, 2018, the firm issued a check to the client for the \$77,293.82 with, what you thought was, an understanding that before the check was deposited, you were "going to check a couple more things." You and your client claim there was a misunderstanding about delaying the deposit and the client deposited the check immediately.

Your local banker contacted you to report a deficiency in the amount of \$26,503.91 but cleared the check anyway and the client was promptly paid. Upon receiving that notification, you deposited the funds that cleared and eliminated the deficiency.

Because of the overdraft, the State Bar subpoenaed your IOLTA Trust Account records and you were asked to account for a number of large withdrawals that were made in the six months prior to the overdraft, including providing the supporting documentation for each withdrawal. In a supplemental response, you provided documentation for

three cases, including the above-referenced case, which explained the majority of the withdrawals. However, you could not readily account for the remaining withdrawals. At the State Bar's instance [sic], you then researched and provided additional documentation for two more cases that verified the oldest two withdrawals were partial withdrawals of earned fees. Your explanation of these withdrawals indicated that you leave a substantial amount of earned fees in the IOLTA Trust Account and do not always withdraw your earned fees in one lump sum. The documentation does not indicate that you fail to properly disburse funds to clients or lienholders or that you are personally withdrawing more than your earned fees, except in the aforementioned instance of the premature withdrawal.

### APPLICABLE RULES OF PROFESSIONAL CONDUCT:

Rule 1.15 (Safekeeping of Property) of the Nevada Rules of Professional Conduct ("RPC") requires that attorneys keep third-party funds separate from their own funds, except for a *de minimus* amount that can be maintained in an IOLTA trust account for payment of fees associated with the account. It also requires an attorney to hold funds until any dispute regarding disbursement is resolved. In this instance, you prematurely withdrew funds that ultimately were the subject of dispute. In addition, you held more than the *de minimus* amount in your IOLTA Trust Account, which is co-mingling of funds, and your accounting of the funds in the IOLTA Trust Account was incomplete until the State Bar required you to provide a detailed accounting. Your premature withdrawal of funds exposed your client to injury, which was avoided when you were able to quickly transfer the disputed funds back to the IOLTA Trust Account. Your co-mingling of your funds with clients' funds exposes your clients' funds to the risk of attachment by your own creditors and the potential that you will overdraw from the account. Your inability to promptly account for the funds withdrawn from the IOLTA Trust Account also exposes the potential that you will overdraw from the account.

Standard 4.12 of the ABA Standards for Imposing Lawyer Sanctions provides that "suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and cause injury or potential injury to a client." Withdrawing funds in which a third-party (i.e. client) may have an interest before resolving any disputes is dealing improperly with client property. Failing to withdraw earned funds from an IOLTA Trust Account is dealing improperly with client property because it is co-mingling the lawyer's property with the client's property. Failing to be able to promptly account for the transactions in an IOLTA Trust Account evidences dealing improperly with the account as well. You have been practicing law for almost 50 years and should know how to properly deal with funds in an IOLTA Trust Account. Your failures had the potential to cause serious injury to a client because client funds could easily be misappropriated under these circumstances. However, no client was ultimately injured by your failures and you have no instances of prior discipline. Therefore, it is appropriate to deviate from the sanction of suspension to the issuance of a Letter of Reprimand.

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## REPRIMAND

Based upon the foregoing, you are hereby **REPRIMANDED** for your conduct related to representation of the foregoing clients, which conduct violated Nevada Rules of Professional Conduct (“RPC”) as follows:

RPC 1.15 (Safekeeping Property) for failing to wait for a client to be able to dispute the distribution of funds prior to your withdrawal of those funds and for failing to timely withdraw all of your earned fees.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

### KENNETH V. WARD

Bar No.: 446

Grievance File No.: OBC18-1240

Dated: 04/18/2019

## LETTER OF REPRIMAND

To Kenneth V. Ward:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) in your handling of the Estate of Richard Wainscott.

### FACTUAL BACKGROUND:

Lauren Wainscott and her sister retained you in January 2018 and paid \$2,000 to open probate on their father’s estate.

You filed A Petition for Summary Administration and Issuance of Letters on July 13, 2018. An Order regarding the Petition was filed on August 13, 2018 and Letter of Administration were issued on October 4, 2018. In late August or early September 2018, Wainscott and her sister were notified that the mortgage company was seeking to foreclose on their father’s house. No later than September 6, 2018, the clients informed you of the foreclosure and requested advice on how to proceed. You did not respond to the clients’ requests for advice or information for months.

The house was eventually sold via Trustee’s Deed on January 31, 2019.

You admit that, after learning of the foreclosure and seeing little opportunity to save the home, you were reluctant to deliver the disappointing news to the clients. You identified that when you did finally discuss the matter with your clients, you learned that they had already come to the same conclusion, immediately agreed that the home could not be saved from foreclosure and encouraged you to close the estate as quickly as possible.

In October 2018, Wainscott filed a grievance with the State Bar regarding your failures to communicate. In March 2019, Wainscott reiterated her frustration over the lengthy probate process that she feels was needlessly caused by your lack of diligence and communication. With her March 2019 correspondence, Wainscott provided printouts of text messages showing a continuing lack of substantive response from you between September 2018 and January 2019. You admit that you “may not have communicated

as quickly as I should have” and that there was delay in getting the petition signed and notarized, which delayed the process “a little.”

In early November, 2018, you sent a preliminary response to the grievance in which you stated that you were “in the process of finalizing the case,” expected the estate to be finalized within four weeks, and had an out-of-the-country trip from November 9, 2018 to November 26, 2018. In a December 24, 2018 written response to the grievance, you again asserted that the estate should be finalized in three weeks.

On February 26, 2019, the Court issued an *Order to Show Cause*, ordering you and the co-administrators to appear before the Court on March 25, 2019 and explain why they had not complied with NRS 144.010 (filing an inventory of the estate within 120 days). Had you followed through with filing documents as you asserted was being done in November, 2018 and December, 2018, then the Court would not have needed to issue the *Order to Show Cause*.

On March 6, 2019, you finally filed a *Motion to Close Administration of Estate and Discharge Administrators* and attached affidavits from both of the co-administrators attesting to the non-existence of estate assets and desire to close the estate. The matter is now closed.

### APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS:

Your conduct violated your duties of diligence and communication with your client. You were conscious of your obligations, but did not intend to violate those duties for your, or another’s benefit, and therefore, your mental state when you engaged in the violative conduct was “knowing.” In addition, your conduct caused your clients injury because their matter was delayed and they were subjected to unnecessary worry, frustration, and anxiety because of the lack of communication and the unnecessary delay in the proceeding. Pursuant to Standard 4.42 of the ABA Standards for Imposing Lawyer Sanctions, the appropriate baseline sanction for your misconduct is suspension.

However, the Panel acknowledges that you (i) have engaged in the practice of law for almost 30 years without any instances of prior discipline, (ii) expressed remorse for your conduct, (iii) remedied the failure to file appropriate documents with the court, and (iv) cooperated with the disciplinary authority. These mitigating factors warrant a downward deviation from suspension to issuance of a Letter of Reprimand.

## REPRIMAND

Based upon the foregoing, you are hereby **REPRIMANDED** for your conduct related to representation of the foregoing clients, which conduct violated Nevada Rules of Professional Conduct (“RPC”) as follows:

RPC 1.3 (Diligence) for failing to promptly and diligently resolve the probate matter despite your admission that it should be done, the passing of the statutory deadline for necessary submissions in a probate matter, and your clients’ requests to proceed; and

RPC 1.4 (Communication) for failing to communicate with your clients in response to their requests for information and with regard to information your clients needed to properly evaluate the probate proceeding, but which you believed would be negatively received.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500 which is to be paid no later than May 18, 2019.

**ANGELA J. LIZADA**  
**Bar No.: 11637**  
**Grievance File No.: OBC18-1306**  
**Dated: 06/25/2019**

## LETTER OF REPRIMAND

To Angela J. Lizada:

On June 25, 2019, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel concluded that you violated a Rule of Professional Conduct and should be reprimanded. This letter shall constitute delivery of that reprimand.

On or about April 10, 2018, you were retained by Christopher Coletta to file a Chapter 7 bankruptcy petition. At your initial consultation with Coletta, you were aware that Coletta had outstanding tax issues and he informed you that based on his tax professional's advice, he understood that tax debts and perfected tax liens are non-dischargeable in bankruptcy. You advised him that certain tax debts may not be discharged and provided him the rules regarding the same.

Following the initial consultation, Coletta provided you with documentation concerning his outstanding tax liabilities. The documentation included the balances or personal income taxes owed from tax years 2013 and 2014. In reviewing the provided documentation, you failed to inquire as to the date on which each year's taxes became due and you failed to determine whether the IRS had attached liens for the taxes on Coletta's home. Additionally, Coletta failed to advise you that he had obtained an extension to file his 2014 tax return.

Coletta's bankruptcy was approved and an Order of Discharge thereon on July 31, 2018. Thereafter, he received additional notices from the Internal Revenue Service regarding the unpaid taxes from 2014. Coletta contacted you to determine why the 2014 taxes remained outstanding. Only then did you inquire into whether Coletta had received an extension to file his 2014 taxes and explain to Coletta that a recorded tax lien on his property could not be discharged.

Nevada Rule of Professional Conduct ("RPC") 1.3 (Diligence) requires a lawyer to act with reasonable consult with the client about the means by which the client's objectives are to be accomplished. In this instance, you should have done more to ensure your client was aware of the limitations regarding available relief from tax debt.

Accordingly, you are hereby **REPRIMANDED** for violation RPC 1.4 (Communication). In addition, within

30 days of this Letter of Reprimand you are to reimburse the State Bar of Nevada for investigation and prosecution costs of \$1,500 pursuant to Supreme Court Rule 120(3).

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

**STEPHEN A. BOWERS**  
**Bar No.: 7613**  
**Grievance File No.: OBC18-0656**  
**Dated: 06/25/2019**

## LETTER OF REPRIMAND

To Stephen A. Bowers:

On June 25, 2019, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel concluded that you violated two Rules of Professional Conduct and should be reprimanded. This letter shall constitute delivery of that reprimand.

On or around November of 2014, Dennis Briganti ("Briganti") the owner of CF Dominicana Cigars and Royal Flush Events hired you to sue former employees of his companies for stealing his business plan and clients in violation of the employees' employment contracts. Briganti intended to bring the lawsuit in proper person but was unable to do so because the plaintiffs were corporations.

Briganti wanted to control litigation costs by utilizing a paralegal to do the majority of the research and drafting for the litigation. You agreed. On March 24, 2015, you filed a complaint on behalf of Briganti's companies against the former employees and the company started by the former employees. You obtained a default against one of the former employees and the corporate defendant, and the case proceeded with respect to the other employee.

During the course of the litigation, the defendant filed a motion to dismiss due to Briganti's failure to post a non-resident security bond. The motion was denied, but you never filed the order, as directed by the court. Additionally, you failed to prepare a bench warrant when the court ordered it against one of the defendants.

On March 7, 2017, the defendant moved to dismiss Briganti's complaint pursuant to NRCP 16.1, due to Briganti's failure to file a case conference report ("JCCR"). You opposed the motion, including an affidavit in support of the opposition. In the affidavit, you accepted responsibility for the failure to file the JCCR, attributing it to an injury sustained while in Indiana that required you to remain out-of-state for an extended period of time. In granting the motion, the court noted that you were able to propound discovery and otherwise participate in the litigation of this matter during the time you were out-of-state. Therefore, the medical condition did not justify failure to timely prepare the JCCR.

You indicated that, per client instruction, the paralegals were responsible for initial drafting of the

*continued on page 42*

*continued from page 41*

JCCR. However, you were ultimately responsible for ensuring the JCCR was timely submitted and failed to do so.

Nevada Rule of Professional Conduct (“RPC”) 1.3 (Diligence) requires a lawyer to act with reasonable diligence and promptness in representing a client. Your conduct in failing to ensure timely filing of the JCCR fell below this standard.

Accordingly, you are hereby **REPRIMANDED** for having violated RPC 1.3 (Diligence). In addition, within 30 days of this Letter of Reprimand you are to reimburse the State Bar of Nevada for investigation and prosecution costs of \$1,500 pursuant to Supreme Court Rule 120(3).

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

#### **DANNY M. WINDER**

**Bar No.: 1569**

**Grievance File No.: OBC19-0383 +2**

**Dated: 07/23/2019**

#### **LETTER OF REPRIMAND**

On July 23, 2019, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. The Panel concluded that you violated two Rules of Professional Conduct and should be reprimanded. This letter shall constitute delivery of that reprimand.

#### **OBC17-1673:**

In July 2017, Derrick Holmes (“Holmes”) retained your office to assist with probate matters involving his deceased wife. Holmes’ wife and mother-in-law held title to the house in which Holmes lived, and after his wife’s death, the mother-in-law threatened to sell the home and force Holmes out. You charged Holmes \$2,500, of which \$1,500 was paid by August 2017. Holmes made no additional payments. In December 2017, Holmes contacted the State Bar requesting assistance in obtaining information from your office concerning the status of his matter.

In response to the initial grievance, you contacted Holmes and agreed to waive the outstanding balance. In January 2018, your office filed a Petition for Summary Administration of the estate and a complaint against Holmes’ mother-in-law in an attempt to establish Holmes’ legal interest in the property. The complaint included the following causes of action: a quiet title; breach of contract; and unjust enrichment. Holmes withdrew his grievance at that time.

On February 9, 2018, apparently unbeknownst to you and Holmes, the property was foreclosed by the HOA. Despite this, in July 2018, your firm filed an ex parte motion to extend the time for service of the previously filed complaint. The motion was granted, and an amended complaint was then served on Holmes’ mother-in-law.

Holmes’ mother-in-law did not contest Holmes’ right to the property. However, because she received nothing from the foreclosure sale, her motion to dismiss the lawsuit was granted.

#### **OBC19-0139:**

Mages Shiferaw (“Shiferaw”) and approximately 250 other taxicab drivers retained your office to represent them in unemployment actions against their former employer, the Frias Corporation (“Frias”). At that time, Frias owned five taxicab companies, and had terminated approximately 300 drivers for participation in an unauthorized “wildcat” strike over a collective bargaining agreement (“CBA”) the drivers believed was illegally executed.

Shiferaw’s and the other employees’ unemployment claims were denied at the hearing level. You appealed on their behalf, and after a two-day hearing the denial was affirmed. The district court affirmed the denial on judicial review, and the Supreme Court, in a 4-3 decision, affirmed the district court.

During the pendency of the state court appeal, you filed a federal lawsuit on behalf of another driver, Tadios Tessema (“Tessema”) who, during negotiation of the CBA, served as Unit Chair for the bargaining unit. The complaint named Tessema in a “representative capacity” for all full-time and regular part-time drivers Frias employed.

The federal court action was dismissed on Frias’ motion, though a motion for sanctions for failure to meaningfully prosecute the matter was denied. Your office timely appealed the dismissal to the Ninth Circuit, where a briefing schedule originally set June 19, 2017, as the due date for the Opening Brief.

The parties mediated the appeal, which resulted in an amended briefing schedule, making the opening brief due July 3, 2017. The case was released from the mediation program on June 30, 2017. That order did not modify the briefing schedule. According to you, a former associate in your office filed a streamlined extension on opening brief on June 9, 2017. The docket does not reflect this claim, and you did not provide a copy of the filing or the email referenced in the billing entry from your office. On August 3, 2017 the Court of Appeals dismissed the appeal. The following day, you filed a motion to reinstate the appeal and extend time to file the opening brief, in which you claimed the streamlined extension made the due date August 2, 2017. No exhibit was attached to support the August 2, 2017 deadline. Additionally, you did not attach a copy of the opening brief despite acknowledging that even under the extension it was due two days prior to the filing. The motion was denied on September 18, 2017. On October 30, 2017, you filed another motion to extend, this time accompanied by an opening brief. The motion was denied.

#### **OBC19-0383:**

On or about July 23, 2018, Johnathan Allen (“Allen”) retained you to file quiet title actions for four separate cases. Allen did not own the properties, but had entered into agreements with the property owners to allow him to retain counsel who would act on their behalf. Allen paid you \$10,000.00. No retainer agreement was executed. All four actions were filed in late August and early September 2018.

You filed complaints in each matter and obtained temporary restraining orders in two cases. On or about October 17, 2018, your client requested a refund of all fees. At that time, motions to dismiss were pending in all matters,

and a hearing was pending on your preliminary injunction in one matter. You failed to attend the hearing, and did not oppose any of the motions, despite not having filed motions to withdraw or obtaining court permission to do so.

Nevada Rule of Professional Conduct (“RPC”) 1.3 (Diligence) requires a lawyer to act with reasonable diligence and promptness in representing a client. Your lack of diligence in the Holmes matter prevented your client from attempting to recover his home or otherwise stay the foreclosure proceedings. Your lack of diligence in timely filing an opening brief or timely requesting an extension in the Tessema matter prevented your client, and those he represented, from pursuing their appeal.

RPC 1.16 (Declining or Terminating Representation) requires a lawyer to comply with applicable law requiring permission of the tribunal when terminating representation. Your failure to timely obtain permission to withdraw in the Allen matters reflects negatively on the profession.

Accordingly, you are hereby **REPRIMANDED** for having violated RPC 1.3 (Diligence) and RPC 1.16 (Declining or Terminating Representation). In addition, within 30 days of this Letter of Reprimand you are to reimburse the State Bar of Nevada for investigation and prosecution costs of \$1,500 pursuant to Supreme Court Rule 120(3).

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

1. Pandullo was administratively suspended on May 1, 2019, for failing to pay the annual, extension, and/or late fee required by SCR 212. *In re Administrative Suspension of Non-Compliant Members*, Docket No. 78682 (Order of Suspension, May 1, 2019).
2. Pandullo may request that this order of temporary suspension be dissolved or amended by filing a petition with this court as provided in SCR 102(4)(e).
3. This matter was originally docketed as confidential because a formal disciplinary complaint had not yet been filed. Since we are granting the petition, this matter is now public. SCR 121(5). This order constitutes our final disposition of this matter. Any new proceedings involving Pandullo shall be docketed as a new matter.
4. You did attempt to submit an advertisement in December 2018, but you did not use the correct form and, after it was returned to you without consideration, you did not re-submit the advertisement using the correct form.

## TIPS FROM THE OFFICE OF BAR COUNSEL

### Practicing in Immigration Court: Know What to Do, And Do It

Immigration law is, probably to most lawyers, a difficult-to-grasp quagmire of laws, rules and deadlines that must be navigated for the client to have any chance for success.

For the client, the stakes can be high. A mistake by legal counsel could cause a client to receive a one-way ticket to a place that he or she doesn’t want to go.

An attorney’s lack of diligence – missing an important deadline in the complex immigration process – can have the same result: deportation.

Rule of Professional Conduct 1.1 (Competence) requires an attorney to have the legal knowledge, skill, thoroughness and preparation necessary to represent a client in a given area of law. Translation: You must know what you are doing.

Some areas of law have some crossover, so an attorney might practice in multiple arenas. Personal injury and workers compensation, for example, have similar aspects that can allow attorneys to practice in both.

Immigration law, however, is different. It’s practiced in a federal system and in federal courts, so you know there will be a bunch of rules and paperwork. File the wrong form and a client might be doomed. Pick the wrong legal strategy, maybe the same result.

An attorney must know what he or she is doing before wading into that quagmire with a client in hand. No on-the-job training. Work with an experienced immigration lawyer before trying it solo.

After learning what to do, the attorney must follow through and do it. RPC 1.3 (Diligence) requires a lawyer to “act with reasonable diligence and promptness” when representing a client. That means filing documents on time and not missing hearings.

Bottom line: Know what you’re doing and do it. Your clients look to you to navigate a system that, to them, is probably a very scary place. And the stakes for them are high.