# Bar Counsel Report

**In Re: MATTHEW S. DUNKLEY**
**Bar No.: 6627**
**Case No.: 80635**
**Filed: 07/07/2020**

**ORDER OF DISBARMENT**

The Southern Nevada Disciplinary Board has filed, under SCR 112, a joint petition with attorney Matthew Dunkley for his disbarment by consent. The petition is supported by Dunkley's affidavit, stating that he freely and voluntarily consents to disbarment, after having had the opportunity to consult with counsel. Dunkley acknowledges in the affidavit that he violated RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct). He admits that he could not successfully defend against a disciplinary complaint.

SCR 112 provides that an attorney who is the subject of a proceeding involving allegations of misconduct may consent to disbarment by delivering an affidavit to bar counsel, who must file it with this court. Dunkley's affidavit meets the requirements of SCR 112(1), and we conclude that the petition should be granted. Accordingly, Matthew S. Dunkley is disbarred from the practice of law in Nevada. The provisions of SCR 115 and SCR 121.1 governing notice and publication of orders of disbarment shall apply to this order.

It is so ORDERED.

**In Re: CORY J. HILTON**
**Bar No.: 4290**
**Case No.: 79819**
**Filed: 07/08/2020**

**ORDER OF SUSPENSION**

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Cory J. Hilton be suspended from the practice of law for five years, or alternatively four years if $3,510,069.11 is paid in restitution by December 31, 2020, based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct).*[1]

We employ a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and thus, will not set them aside unless they are clearly erroneous or not supported by substantial evidence, *see generally Sowers v. Forest Hills Subdivision,* 129 Nev. 99, 105, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa,* 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). In contrast, we review de novo a disciplinary panel's conclusions of law and recommended discipline. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Hilton committed the violations charged. *In re Discipline of Drakulich,* 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's findings of fact in this matter as they are supported by substantial evidence and are not clearly erroneous. However, we conclude the panel erred in dismissing as time barred the charge that Hilton violated RPC 1.15 (safekeeping property) as to client Wendy Eveland-Black because there was no evidence in the record that Eveland-Black or the State Bar were aware before January 2014, that in September 2009, Hilton's trust account fell below the amount he was supposed to be holding on Eveland-Black's behalf. *See* SCR 106(2) (providing a disciplinary complaint may not be brought more than four years after the client or the State Bar discover the attorney's fraud or concealment). Based on the panel's findings and the record before this court, we agree with the panel's conclusions that the State Bar established by clear and convincing evidence that Hilton violated the above-listed rules by having his trust account out of balance by $3,510,069.11, failing to keep three clients informed about the status of their cases and failing to promptly comply with their reasonable requests for information, failing to timely disburse settlement funds to or on behalf of seven clients, and lying to the court about a case having settled when the case had yet to be completed. While the record demonstrated that Hilton's former bookkeeper was responsible for a portion of the missing trust account funds, Hilton recklessly avoided any active participation in the review, monitoring, or management of his trust account.

In determining whether the panel's recommended discipline is appropriate, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (noting the purpose of attorney discipline).

Hilton violated duties owed to his clients (diligence, communication, and safekeeping property) and the profession (misconduct). Hilton's mental state was knowing as the record demonstrates he never reviewed the trust account records himself so he knew or should have known his mismanagement of his firm and trust account could lead to a failure to keep client property safe. Hilton's clients and their lienholders were injured because they were not timely paid. Additionally, the legal system and the legal profession were injured by Hilton's misconduct. Based on the most serious instance of misconduct at issue, Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards,* 452 (Am. Bar Ass'n 2017) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct

among a number of violations."), the baseline sanction for Hilton's conduct, before consideration of aggravating and mitigating circumstances, is suspension. *See id.* Standard 4.12 ("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."). The record supports the panel's findings of five aggravating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, substantial experience in the practice of law, and indifference to making restitution) and two mitigating circumstances (personal or emotional problems and character or reputation). Considering all of the factors, we conclude the panel's recommended discipline serves the purpose of attorney discipline.

Accordingly, we hereby suspend attorney Cory J. Hilton from the practice of law in Nevada for five years from the date of this order. Hilton shall pay $3,510.069.11 in restitution and complete ten hours of continuing legal education in law firm management, including at least five hours on trust account management.[2] If Hilton pays the restitution in full by December 31, 2020, the five-year suspension will be reduced to a four year suspension. Additionally, Hilton shall continue treatment with his clinical therapist at a duration of her recommendation. Hilton shall also pay the costs of the disciplinary proceedings, including $2,500 under SCR 120, within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.[3]

**In Re: WILLIAM B. PALMER, II**
**Bar No.: 1803**
**Case No.: 80699**
**Filed: 06/24/2020**

**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 William B. Palmer. Under the agreement, Palmer admitted to violating RPC 1.15 (safekeeping property). He agreed to a stayed six-month suspension and a one-year probation. He also agreed to pay restitution and the costs of the disciplinary proceedings.*

Palmer has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated RPC 1.15 by overdrawing his trust account, failing to maintain a proper trust account record with a ledger documenting all transactions for one client matter, commingling funds, and failing to safekeep a client's settlement funds by mistakenly withdrawing more than his earned fees and costs.[4]

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner,* 124 Nev. 1232, 1246, 197 P.3d 1067,1077 (2008).

Based on the duty violated, and because Palmer should have known he was dealing improperly with client funds and his conduct resulted in potential injury to his client and the profession, 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 2017) ("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"). The record supports the panel's findings of two aggravating circumstances (prior disciplinary offenses and substantial experience in the practice of law), and five mitigating circumstances (absence of dishonest or selfish motive, full and free disclosure to disciplinary authority/cooperative attitude, timely good faith effort to make restitution or rectify consequences of misconduct, character or reputation, and remorse). Considering the factors outlined in *Lerner,* we conclude that the recommended discipline is appropriate and serves the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne,* 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (recognizing that the purpose of attorney discipline is to protect the public, courts, and the legal profession, not to punish the attorney).

Accordingly, commencing from the date of this order, we hereby suspend attorney William B. Palmer from the practice of law in Nevada for six months. The suspension will be stayed for one year subject to the conditions that Palmer (1) submit quarterly trust account reports to the State Bar showing his account and client ledgers and reconciliation with bank statements, (2) not receive any grievance for RPC 1.15 misconduct during the stayed period that results in a disciplinary screening panel recommending a formal hearing, and (3) comply with the other terms stated on page 9 of the conditional guilty plea agreement. Additionally, Palmer must pay the costs of the disciplinary proceeding, including $2,500 under SCR 120, within 30 days from the date of this order.

It is so ORDERED.

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# Bar Counsel Report

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**In Re: LUIS A. AYON**
**Bar No.: 9752**
**Case No.: OBC19-0750**
**Filed: 05/18/2020**

**PUBLIC REPRIMAND**

To Luis A. Ayon:

You represented a group of corporate defendants and related individuals in a federal lawsuit. On March 26, 2019, US District Judge Jennifer Dorsey referred the lawsuit to Judge Koppe for a mandatory settlement conference.

On March 27, 2019, Judge Koppe entered an order setting the settlement conference in chambers on May 9, 2019. The order stated that all parties are to appear. The deadline to seek an exception for attendance was April 3, 2019. Settlement Statements were to be submitted to the judge's law clerk by May 2, 2019. No one filed an exception to attend by April 3, 2019.

You failed to submit the required settlement statement by May 2, 2019.

The Judge issued a Minute Order for you to submit the Settlement Statement by May 6, 2019. The Minute Order stated that a "failure to comply with [the] order may result in the imposition of sanctions and/or the vacation of the settlement conference."

You submitted a settlement statement by the second deadline. In that statement you identified all of the individual defendants as having full settlement authority over defendants and stated you would be in attendance at the settlement conference. You did not request accommodations for any parties that could not personally attend the settlement conference.

On May 7, 2019, the parties submitted a stipulation to continue the settlement conference because the representative of another party had a personal family conflict and could not attend the settlement conference. In a conference held that afternoon, it was determined that the conference could proceed, nonetheless. At no point in the May 7, 2019 communication with the Court did you request a continuance due to your clients' schedules or request permission for any client to not personally attend the settlement conference.

On May 9, 2019, you appeared at the settlement conference with only one individual client, who you represented had settlement authority for all represented defendants; however, the other three individual clients were missing. The court ordered the missing clients to appear within 20 minutes. You represented that was impossible because your clients were out of the country. You also told the Court that this was something you only recently discovered. You asked for the conference to proceed because you believed settlement negotiations could be achieved with the single individual client who your [sic] represented had full settlement authority for all of your defendant clients; but the Court disagreed and continued the settlement conference.

You had also been previously admonished for similar conduct in another Federal lawsuit, in which you did not produce all individual defendants at the court ordered settlement conference, although you did submit a belated request for telephonic appearance of the client.

Although you knew of the Mandatory Settlement Conference date on March 27, 2019, the clients were not informed of the date and their required attendance until May 7, 2019. This is because you relied on support staff to communicate the necessary information and did not confirm that timely communication with the clients was done. Two of the three absent clients had other business commitments that prevented them from being in attendance on May 9, 2019, and which could not be changed with such short notice. However, only one of those clients was actually out of the country. You also advised the clients that one client's appearance was not required because she was a nominal party to the lawsuit, but you did not make that clear in in the filed Settlement Conference Statement, and thus, the court required that client's appearance.

The Court found that you falsely represented in the settlement statement that all of the individual clients would appear at the settlement conference when you had not communicated with them about the conference at all prior to submitting the statement. The Court also found that you falsely represented that all of the absent clients were out of the country. The Court ordered you to pay plaintiff and the HOA $500 in attorneys' fees and pay a fine to the US District in the amount of $3,000, which you did.

**Violations of the Rules of Professional Conduct**

You had a duty to timely communicate with all of your clients regarding the Mandatory Settlement Conference, its scheduled date, their ability to attend, and how to accomplish the united goal of the clients at that conference, pursuant to RPC 1.4 (Communication). You knowingly violated RPC 1.4 (Communication) when you failed to timely and adequately communicate with your clients prior to the Mandatory Settlement Conference.

Pursuant to RPC 3.4 (Fairness to Opposing Party and Counsel), you had a duty to obey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. You knowingly violated RPC 3.4 (Fairness to Opposing Party and Counsel) when you failed to timely and accurately report the attendance of your clients in the filed Mandatory Settlement Conference Statement.

Your failure has the potential to injure your client. You did injure the efficiency of the judiciary and integrity of the profession.

**ABA Standard for Imposing Lawyer Sanctions**

The appropriate baseline sanction for your violations of RPC 1.4 (Communication) and RPC 3.4 (Fairness to Opposing Party and Counsel) is suspension, pursuant to Standard 6.12 of the ABA Standards for Imposing Lawyer Sanctions. However, a downward deviation from the baseline sanction is warranted because of your (i) absence of a prior disciplinary record, (ii) absence of a dishonest or selfish motive, (iii) personal issues that impacted your work at the time of the Mandatory Settlement Conference, (iv) full and free disclosure to disciplinary authority and cooperative attitude toward proceeding, (v) interim efforts to correct the administrative shortcomings that led to these violations, and (vi) remorse regarding the impact the violations had on your clients, the efficiency of the judiciary and the integrity of the profession.

In light of the foregoing, you are found to have knowingly violated Rule of Professional Conduct ("RPC") 1.4 (Communication) and RPC 3.4 (Fairness to Opposing Party and Counsel) and are hereby PUBLICLY REPRIMANDED and ordered to pay $1,500, plus the hard costs of the disciplinary proceeding.

**ENDNOTES**

1. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.
2. Hilton argues less restitution is owed, but the record does not adequately reflect a lesser amount is due. However, if Hilton can adequately demonstrate to the State Bar that all restitution has been paid and the amount paid is less than $3,510,069.11, he will not be required to pay additional funds.
3. The Honorable Abbi Silver, Justice, voluntarily recused herself from participation in the decision of this matter.
4. Palmer self-reported the overdraft and returned to his trust account the amount he mistakenly withdrew.

# TIP FROM THE BAR COUNSEL

## Received a negative review online? Tread carefully!

It's hard to remember life before the internet, let alone life before smart phones. Younger attorneys may not remember that life at all. Before the internet, to find a business or service, you would ask friends or look for the first company in the Yellow Pages. Now, a quick Google search yields millions of reviews.

Forbes says 92 percent of consumers read online reviews before selecting a local business.[1] And 84 percent of consumers trust online reviews as much as personal recommendations.

Clients also turn to the internet for legal services. Yelp, Google and Avvo have emerged as the front runners of law firm reviews. Of course, the State Bar of Nevada provides free public access to its Find a Lawyer directory and Lawyer Referral Service. Online reviews can have an immediate and widespread impact on a lawyer's business. Millions of consumers seek out a lawyer every year. Every star in a Yelp rating translates to a 5-9 percent increase in revenue.[2]

But what if an unhappy client leaves a negative online review for the world to see? A natural reaction is to defend yourself and your firm. Our professional instinct is to debate and defend. Articulated facts present more compelling arguments. But, before you engage with some counter points, consider the ethical implications.

Ask yourself, "Does this online and public negative review rise to the level of a 'controversy,' which triggers the 'self-defense' exception to Rule 1.6?"

A formal criminal or civil complaint is not required to trigger the "self-defense" exception to Rule 1.6. Generally, formal proceedings are not required before lawyers can disclose information to defend themselves. See Pa. Ethics Op. 96-48 (1996) (Investigation by SEC sufficient to trigger disclosure by lawyer).

The majority of jurisdictions opine that negative online reviews are not a "controversy" sufficient to trigger the lawyer's ability to disclose confidential information. See *In re Skinner,* 758 S.E.2d 788 (Ga. 2014); *In re Steele,* 45 N.E.3d 777 (Ind. 2015); N.Y. State Ethics Op. 1032 (2014); Tex. Ethics Op. 662 (2016). However, at least one state has opined that a disagreement in the public media is a controversy. Ariz. Ethics Op. 93-02 (1993).

Many lawyers also conflate Rule 1.6 with an exception to Rule 1.9 that allows lawyers to reveal information about a former client that has become public information. See Rule 1.9(c)(1). However, Rule 1.6 contains no exception permitting disclosure of information that is already publicly available. As a result, if a lawyer reveals even public information about a former client in response to a negative online review, they may be subject to discipline under Rule 1.6. The rule even acts to protect the identity of the lawyer's client.

Before you respond to a negative online review, exercise caution and restraint. Do not disclose information to reveal your clients' identities, even if available by the public. The lawyer's duty to comply with their ethical obligations of confidentiality pursuant to Rule 1.6 must trump the lawyer's own interest in their reputation.

What can you do when you receive a negative review? Stay positive. According to Yelp, users are 33 percent more likely to upgrade an unfavorable review if you respond with a positive, personalized message within a day.[3]

It's hard to let your ego take a hit. But it is better for your license and your career.

**ENDNOTES**

1. Erskine, R., 2020. *20 Online Reputation Statistics That Every Business Owner Needs to Know*. [online] Forbes. Available at: <https://www.forbes.com/sites/ryanerskine/2017/09/19/20-online-reputation-statistics-that-every-business-owner-needs-to-know/#33ee0658cc5c> [Accessed 17 July 2020].
2. *Id.*
3. Darnell Holloway, D., 2020. *Responding to Yelp Reviews Within 24 Hours Boosts Your Upgrade Probability - Yelp*. [online] Yelp. Available at: <https://blog.yelp.com/2017/03/responding-reviews-within-24-hours-boosts-upgrade-probability> [Accessed 17 July 2020].