



FILED

AUG 15 2018

1 Case No. OBC17-1244

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STATE BAR OF NEVADA

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BY: S. Dur.  
OFFICE OF BAR COUNSEL

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SOUTHERN NEVADA DISCIPLINARY BOARD

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6 STATE BAR OF NEVADA, )

7 Complainant, )

8 vs. )

PUBLIC REPRIMAND

9 KURT A. SMITH, ESQ., )

10 Nevada Bar No. 10764 )

11 Respondent. )

12 TO: Kurt A. Smith, Esq.,  
13 1701 N. Green Valley Parkway, Suite 4C  
Henderson, Nevada 89074

14 On or about September 18, 2017, Wells Fargo Bank notified the State Bar that  
15 your trust account had become overdrawn by \$888.56 on September 13, 2017, when a  
16 payment of \$5,766.67 was made from the account to Kabbage, Inc. ("Kabbage"). The  
17 payment was returned.

18 In your response to the State Bar about the overdraft notification, you provided  
19 your trust account records for 6 months to show that the account had not been overdrawn  
20 during that period of time. You further explained that your firm used Kabbage from time to  
21 time for business loans and the payments to and from Kabbage were tied to your trust  
22 account. You explained to the State Bar that you were depositing earned fees into your  
23 trust account and were then making payments on the Kabbage loans from the trust  
24 account, thereby commingling earned fees and client funds in the trust account.

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1           You now understand that you cannot commingle funds in this manner and that only  
2 unearned fees can be held in the trust account. You have also provided documentation  
3 that the Kabbage loans are no longer linked to your trust account.

4           A review of the records also revealed that, on July 14, 2017, you deposited a  
5 \$15,000 personal injury settlement into your trust account from Progressive Insurance on  
6 behalf of Albara Burgiaga Diaz ("Diaz") that was transferred in full to another account on  
7 July 17, 2017.

8           Based on the irregularity of the handling of those funds and the use of the trust  
9 account with respect to the business loans by you, the State Bar subpoenaed your trust  
10 and business account records for a period of 2 years. A review of those records  
11 demonstrated a number of instances of mishandling, but not misappropriation, of funds.


12           Upon review of the records received, the State Bar determined that Diaz's  
13 settlement of \$15,000 was transferred from your IOLTA account ending in #2587 to  
14 another IOLTA account ending in #2226. This IOLTA trust account was not reported to  
15 the State Bar as required by SCR 78.5.

16           The records also showed that on December 21, 2015, you deposited a settlement  
17 check in the amount of \$100,000 from Geico into your operating account ending in #2579  
18 on behalf of client Rosa Pace in violation of RPC 1.15. You subsequently transferred  
19 \$90,000 from your operating account ending in #2579 to your trust account ending in  
20 #2226 and then proceeded to pay Pace and her lienholders in a staggered fashion over a  
21 period of months. You now understand that personal injury settlement disbursements for  
22 clients, lienholders, and attorney's fees should occur at one time, not in a staggered  
23 fashion, and in accordance with the disbursement form.

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1 In light of the foregoing, you violated Rule of Professional Conduct 1.15  
2 (Safekeeping Property) and are hereby PUBLICLY REPRIMANDED.

3 Dated this 15th day of August, 2018.

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6 Bryan Cox, Esq.  
7 Formal Hearing Panel Chair  
8 Southern Nevada Disciplinary Board  
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