

1 Case Number: NG14-0546



2 FILED

3 JUL 12 2018

4 STATE BAR OF NEVADA

5 BY: [Signature]
6 OFFICE OF BAR COUNSEL

7 STATE BAR OF NEVADA

8 NORTHERN NEVADA DISCIPLINARY BOARD

9 STATE BAR OF NEVADA,)

10 Complainant,)

11 vs.)

12 BRET O. WHIPPLE, ESQ.)

13 STATE BAR NO. 6168)

14 Respondent.)

PUBLIC REPRIMAND

15 TO: Bret O. Whipple, Esq.
16 1100 S. Tenth Street
17 Las Vegas, Nevada 89104

18 You represented a client in a custody matter in the Family Division of the Second
19 Judicial District Court for the State of Nevada in and for the County of Washoe (the
20 "Lawsuit"). The Lawsuit was initially being handled by your attorney employee, however,
21 you became more actively involved in the case when, on March 4, 2014, you filed a custody
22 related "Motion for Immediate Discontinuation of Visitations and Child Interview and Other
23 Related Matters" (hereinafter referred to as the "Motion"). That Motion contained a number
24 of inaccuracies including:
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2 a. The statement that no relevant order has been produced and no relevant
minutes have been filed in the Lawsuit;

3 b. The statement that you were not noticed of the Case Settlement
4 Conference in the Lawsuit;

5 c. The statement that you were not provided with the proposed Parenting
6 Plan; and

7 d. The statement that the other party in the Lawsuit did not inform anyone
8 that he would be exercising his visitation.

9 Contrary to your assertions, a) an Order regarding the Parenting Plan was issued prior to
10 you filing the Motion, and your client had been served with it and brought it to your office¹,
11 b) your attorney employee was notified of the Case Settlement Conference when he
12 attended the Case Management Conference and the date was provided to your office in
13 the Case Management Conference Order, and c) the opposing party's counsel had sent
14 correspondence to your office specifically notifying you that her client would be exercising
15 his visitation as provided in the approved Parenting Plan. On March 6, 2014, Opposing
16 counsel notified you of the inaccuracies in your Motion. You withdrew the Motion to re-
17 view it and revise it if necessary, in light of opposing counsel's representations.

18 On March 11, 2014, you filed a "Re-noticed Motion" that was substantially similar to
19 the prior Motion and without removing any of the inaccurate assertions. You could have
20 determined the accuracy of the statements made in the Re-noticed Motion by reviewing
21 the February 21, 2014 Order Re: Approval of Memorandum of Agreement; the proposed
22 Parenting Plan; the other parties' Settlement Conference Statement dated February 25,

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¹ Your client brought the Parenting Plan to the paralegal and expressed concern about its contents. Your paralegal told her not to worry about it because your office had not yet been served with the document. The paralegal did not notify you of the client's concerns either so that you could make sure that they were timely addressed.

1 2014; the JAVS video of a February 28, 2014 hearing; the March 4, 2014 Notice of
2 Compliance with WDCR 9; the Court Minutes which were filed on March 6, 2014; and the
3 opposing counsel's letters of February 27, 2014, March 4, 2014 and March 6, 2014. The
4 client could have also informed you of the details that rendered your statements inaccurate.

5 Although you participated significantly in the drafting of the Motion and the Re-
6 noticed Motion, you relied on your paralegal to confirm the information in the Motion and
7 did not personally review the file, look at any objective evidence, or speak with the client
8 directly before filing to Re-noticed Motion. Also, neither you, nor your paralegal, checked
9 the court docket to confirm your assertions made in the Re-noticed Motion. This is
10 important because the Minutes of a prior proceeding were filed on March 6, 2014 and those
11 Minutes would have informed you of the inaccuracy of some of your assertions. In addition,
12 had you personally spoken to her, your client could have informed you of her receipt of the
13 Parenting Plan, and her concern from January 2014 that a mistake was made. You would
14 have also been able to personally analyze opposing counsel's correspondence with
15 attachments, instead of relying on your paralegal's interpretation of its contents.

16 On March 28, 2014, the opposing party filed an Opposition to the Re-noticed Motion.
17 On April 8, 2014, the opposing party submitted the Re-noticed Motion for decision. On
18 April 9, 2014, you filed a Motion to Withdraw as counsel for the client.

19 On April 13, 2014, the opposing party filed a Motion for Sanctions because of the
20 un-corrected inaccuracies in the Re-noticed Motion. Not until April 23, 2014, did you
21 withdraw the Re-noticed Motion, and you only did that because you were withdrawing as
22 counsel—not because you were acknowledging the inaccuracies in the document.

23 The Motion for Sanctions was fully briefed and submitted to the Court. A hearing
24 on the Motion for Sanctions was held October 22, 2014. You testified that your statements
25 in the Re-noticed Motion were accurate because you had not personally seen documents

1 or been told particular information. This is not the standard by which attorneys are held
2 regarding notice of information. Your former client was required to testify at that hearing
3 as well. Ultimately, the Court granted the opposing party's Motion for NRCP 11 Sanctions
4 and referred this matter to the State Bar of Nevada.

5 Pursuant to RPC 1.3 (Diligence), you had a duty to act with reasonable diligence
6 and promptness in representing your client. You knowingly violated RPC 1.3 when you
7 failed to confirm that facts asserted in the Motion and the Re-noticed Motion were accurate.
8 You were less than diligent because you did not review the available Orders and
9 correspondence prior to filing the motions; instead you relied on a paralegal's inaccurate
10 representations about their content and/or existence. The judicial system and the integrity
11 of the profession were injured or potentially injured by your lack of diligence with respect
12 to your representation of your client.

13 You also knowingly violated RPC 5.3 when you failed to ensure that the conduct of
14 your paralegal, a nonlawyer employee, complied with the Rules of Professional Conduct.
15 You allowed your paralegal to advise your client in the underlying matter and to draft
16 motions without verifying the accuracy of the information asserted therein. The judicial
17 system and the integrity of the profession were injured or potentially injured by your
18 violation of RPC 5.3.

19 Finally, you knowingly violated RPC 8.4(d) when you filed the Motion and Re-noticed
20 Motion that contained inaccurate statements which could have been corrected had you
21 verified the information with your client and/or the available court records and
22 correspondence prior to filing the motions, or even after opposing counsel pointed out the
23 inaccuracies and referred you to the documentation that supported her assertions. Your
24 conduct, which was prejudicial to the administration of justice, resulted in injury or potential
25 injury to the judicial system and the integrity of the profession.

1 In light of the foregoing, you are hereby PUBLICLY REPRIMANDED and ordered to
2 (i) refund the above-referenced client the \$1,500 she paid you in legal fees, (ii) pursuant to
3 SCR 120, pay the State Bar of Nevada \$750 plus all costs of mailing and the court reporter,
4 (iii) report this discipline to all other licensing organizations to which you belong if their rules
5 require such reporting, and (iv) participate in four additional hours of Continuing Legal
6 Education regarding legal staff management.

7 DATED this 25th day of July, 2016.

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9 By: BARTH AARON
10 BARTH AARON, ESQ.
11 Formal Hearing Panel Chair
12 Northern Nevada Disciplinary Board
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