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Bar Counsel Report

In Re: MICHANCY M. CRAMER
Bar No.: 11545
Case No.: 86960
FILED: 12/12/2024

ORDER OF PUBLIC REPRIMAND

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Michancy M. Cramer be publicly reprimanded. The State Bar alleged, and the hearing panel found, that Cramer committed two violations of RPC 3.4(c) (fairness to opposing party and counsel), two violations of RPC 4.4 (a) (respect for rights of third persons), and one violation each of RPC 3.5(d) (decorum of the tribunal), and RPC 8.4(a), (d) (misconduct) during two court hearings and after a deposition in 2020.[5] The State Bar challenges the hearing panel's finding that Cramer had a negligent mental state when committing the various acts of misconduct. Cramer disagrees and also challenges the hearing panel's findings as to several of the violations.

The State Bar has the burden of showing by clear and convincing evidence that Cramer committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). "Our review of the panel's findings of fact is deferential, so long as they are not clearly erroneous and are supported by substantial evidence." *In re Discipline of Colin*, 135 Nev. 325, 330, 448 P.3d 556, 560 (2019) (citing SCR 105(3)(b)). However, we apply de novo review to the panel's conclusions of law. SCR 105(3)(b).

Having reviewed the record and considered the parties' arguments, we agree with the hearing panel that Cramer violated RPC 3.4(c), RPC 4.4(a), and RPC 8.4(a), (d). As to the RPC 3.4 violations, we agree with the hearing panel that Cramer "[k]nowingly disobey[ed] an obligation under the rules of a tribunal," RPC 3.4(c), by ignoring the court's multiple admonitions to discontinue certain lines of questioning. We also agree that Cramer violated RPC 4.4(a) by using a derogatory term when referring to a party during a May 13, 2020, hearing and by calling opposing counsel a vulgar name during an argument after a deposition on August 3, 2020. In both instances, substantial evidence supports that Cramer had "no substantial purpose other than to embarrass" those third parties by her comments. RPC 4.4(a) ("(A] lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person … ."). Finally, because Cramer's actions violated the Rules of Professional Conduct and her conduct during hearings on May 13, 2020, and September 11, 2020, disrupted the tribunal, we also conclude that Cramer violated RPC 8.4(a) and (d).[6] See RPC 8.4(a) (providing that it is misconduct for an attorney to violate the Rules of Professional Conduct), (d) ("It is professional misconduct for a lawyer to … [e]ngage in conduct that is prejudicial to the administration of justice."); *In re Discipline of Colin*, 135 Nev. 325, 332, 448 P.3d 556, 562 (2019) (explaining that conduct that "is intended to or does disrupt a tribunal" may constitute an RPC 8.4(d) violation).

As to the RPC 3.5(d) violation, however, we conclude that substantial evidence does not support the panel's findings. The plain language of RPC 3.5(d) provides that "[a] lawyer shall not engage in conduct intended to disrupt a tribunal." Here, the panel found that Cramer violated RPC 3.5(d) by her conduct during a May 13, 2020, court hearing in which she made inappropriate comments to a witness and opposing counsel. And while we conclude that Cramer acted with a knowing mental state during the May 13, 2020, hearing, the record does not support that she acted with an intent to disrupt the court proceedings. Accordingly, we conclude that the panel erred in finding that Cramer violated RPC 3.5(d).

In determining the appropriate discipline for Cramer's violations of RPC 3.4(c), RPC 4.4(a), and RPC 8.4(a), (d), 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). Cramer violated duties owed to the legal profession (fairness to opposing party and counsel, impartiality and decorum of the tribunal, respect for rights of third persons, and misconduct). We agree with the panel that Cramer's actions caused actual or potential injury by potentially delaying the proceedings and resolution of the matters at issue in the respective litigations. However, we disagree with the panel's conclusion that Cramer's mental state in committing these acts of misconduct was negligent.[7] Rather, the record demonstrates that Cramer had a knowing mental state during the May 13, 2020, and September 11, 2020, hearings. In particular, she appeared to have a "conscious awareness of the nature or attendant circumstances of" her actions but did not appear to have the intent to accomplish a particular result beyond representing her client at those hearings. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, 452 (Am. Bar Ass'n 2023) (*Standards*) (defining a knowing mental state). We further conclude that the record demonstrates that Cramer's conduct after the August 3, 2020, deposition, during which she called opposing counsel a vulgar name after asking opposing counsel to leave Cramer's office, was done with an intentional mental state. Indeed, the record demonstrates that Cramer had a "conscious objective or purpose to accomplish a particular result," *id*. (defining an intentional mental state), particularly since she directed her comments to opposing counsel after she had left the office and then repeated the vulgar terminology a second time when questioned.

Because the most serious misconduct was Cramer's intentional violation of her duty to respect the rights of third parties, the baseline sanction, before considering aggravating or mitigating circumstances, is suspension. See *Standards*, Standard 6.22 ("Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding."). Substantial

evidence in the record supports two aggravating circumstances (multiple offenses and substantial experience in the practice of law) and five mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, interim rehabilitation, and remorse). See SCR 102.5 (listing "[a]ggravating and mitigating circumstances [which] may be considered in deciding what sanction to impose"). Weighing the mitigating and aggravating circumstances, and the minimal actual injury, we agree with the panel's recommendation that a downward deviation from the baseline sanction of suspension is appropriate. Thus, considering all of the *Lerner* factors, we· conclude that a public reprimand is sufficient to serve 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, the courts, and the legal system).

Accordingly, we hereby publicly reprimand attorney Michancy M. Cramer for violating RPC 3.4(c) (fairness to opposing party and counsel), RPC 4.4(a) (respect for rights of third persons), and RPC 8.4(a), (d) (misconduct). Cramer shall pay the costs of the disciplinary proceedings, plus fees in the amount of $1,500, see SCR 120(3), within 30 days from the date of this order.[8] Cramer shall also be required to complete an additional six (6) hours of continuing legal education in the area of civility, in addition to her annual CLE requirement. The State Bar shall comply with SCR 121.1.

It is so ORDERED.

In Re: THOMAS J. GIBSON
Bar No.: 3995
Case No.: SBN24-00017
Filed: 12/20/2024

REPRIMAND

To [Thomas J. Gibson]:

A disciplinary panel of the Southern Nevada Disciplinary Board reviewed this matter against you. We unanimously find that you violated rules 1.3, 3.2(a), and 8.4(d) of the Nevada Rules of Professional Conduct ("RPC"). This misconduct, your mental state, the degree of injury, and a balancing of aggravating and mitigating circumstances requires us to issue you a Reprimand. This discipline is to ensure your professionalism and adherence to our ethical standards as attorneys in the State of Nevada. We encourage you to take appropriate action to prevent similar misconduct in the future.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

RPC 1.3 (Diligence) states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." In this matter, we find you violated RPC 1.3 after you failed to timely file a docketing statement, transcript request form, opening brief, and appendix with the Nevada Supreme Court.

RPC 3.2(a) (Expediting Litigation) states that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." In this matter, we find you violated RPC 3.2(a) after you failed to follow applicable appellate rules and failed to timely file a docketing statement, transcript request form, opening brief, and appendix.

RPC 8.4(d) (Misconduct) states that "[i]t is professional misconduct for a lawyer to …[e]ngage in conduct that is prejudicial to the administration of justice …" In this matter, we find you violated RPC 8.4(d) after you repeatedly failed to comply with the Court's orders regarding the filing of a docketing statement, transcript request form, opening brief, and appendix, thus failing to expedite litigation consistent with the interests of the client.

MENTAL STATE

You are an experienced attorney. You know or should know the Nevada Rules of Professional Conduct, Nevada Supreme Court Rules, and the Nevada Rules of Appellate Procedure if you are handling criminal appeals. In this matter, however, we find you were negligent handling this appeal. A respondent acts negligently if he fails "to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation." ABA Standards for Imposing Lawyer Sanctions (2d ed. 2019), p. xxi ("ABA Standard").

We recognize that a fellow attorney and member of the defense team initially agreed to assist you with this appeal but then declined. However, this attorney declined to assist you long before the Court first sanctioned you. Difficulties obtaining the transcript from the court reporter later troubled your ability to timely file an opening brief and appendix. By your own admissions to the State Bar, you "had not prepared an appeal to the Nevada Supreme Court in many years and his office staff of two had no experience in appeal work." You did apologize to the Court for the late filings in your motion for enlargement of time.

INJURY

An injury can range from "serious or potentially serious" to "little or no" actual or potential injury. In this matter, we find you caused an injury or potential injury to (1) your client by failing to provide diligent representation and (2) the legal system by engaging in conduct prejudicial to the administration of justice by failing to expedite litigation. The degree of injury or potential injury to your client and the legal system was moderate.

APPLICATION OF ABA STANDARDS

Pursuant to Annotated Standards for Imposing Lawyer Sanctions (2019 ed.) (hereinafter "ABA Standard") 3.0, when imposing a sanction after a finding of lawyer misconduct, the Screening Panel should consider the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating circumstances.

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> filing fees and costs) …for a minimum retainer fee, which is earned when paid with regard to: [a discussion what portion of the flat fee is earned after enumerated milestones]. The Client understands that this fee is not based upon an hourly rate and that the undersigned lawyer will not be keeping track of the amount of minutes, hours and/or days that he will spend working on the client's case. … Client also understands and agrees that should Client wish to terminate services … Client's case shall then be calculated using the *Flat Fee per Task* section in the attached [Rate Sheet]. Any remaining funds for uncompleted work shall be refunded to Client.

A balancing of these aggravating and mitigating circumstances does justify a decrease to the ABA baseline sanction: a Reprimand, which is also consistent with ABA Standard 5.14 based upon your violation of RPC 8.4(c).

ABA Standard 5.14 (Failure to Maintain Personal Integrity) states that an Admonition is generally appropriate when a lawyer engages in other misconduct that reflects adversely on the lawyer's fitness to practice law.

CONCLUSION

In light of the foregoing, you violated RPC 1.3 (Diligence), RPC 1.4(a) (Communication), RPC 1.4(b) (Communication), RPC 1.5 (Fees), RPC 1.15(a) (Safekeeping Property), RPC 1.15(c) (Safekeeping Property), RPC 1.16(d) (Declining or Terminating Representation), and RPC 8.4(c) (Misconduct) and are hereby ADMONISHED.

You are ordered to participate in good faith with any fee dispute that arises for the next twelve (12) months. Based upon the facts and circumstances and your violation of RPC 1.5(a), RPC 1.16(d), and RPC 8.4(c), this condition is intended to create protection of the public and increase confidence in the integrity of the legal profession. *See* SCR 102(2); ABA Model Rule 1.5 (Fees), cmt. [9] ("If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar … even when it is voluntary, the lawyer should *conscientiously consider* submitting to it.") (emphasis added).

You are ordered to pay costs, provided for in SCR 120, in the amount of $750 plus the hard costs of these proceedings within thirty (30) days after the filing of an order accepting this Admonition.

ENDNOTES:

1. We reject Ghibaudo's argument that the RPC 8.4 charges should be dismissed as duplicative, as his actions violated multiple rules.
2. The panel also found the mitigating circumstance of mental disability, but there is no medical evidence in the record concerning Ghibaudo's diagnosis or that it caused the misconduct at issue here. See SCR 102.5(2)(i) (listing requirements to consider a mental disability as a mitigating circumstance).
3. Ghibaudo shall pay the State Bar's costs jointly and severally with attorney Michancy M. Cramer, but Ghibaudo is solely responsible for the $2,500 fee pursuant to SCR 120(3).
4. While some of the panel's mitigating circumstances are not listed in SCR 102.5, the rule provides that the list "is illustrative and … not exclusive." SCR 102.5(4).
5. The State Bar also brought additional allegations against Cramer, which the hearing panel found unproven. The State Bar does not challenge those findings.
6. We reject Cramer's argument that the RPC 8.4 charges should be dismissed as duplicative. We agree with Cramer, however, that her line of questioning about a car insurance policy during a hearing on September 11, 2020, was for a proper purpose.
7. We reject Cramer's argument that a negligent mental state is supported by her testimony that she was suffering from a stress-related medical condition when she committed the misconduct. Although Cramer's medical condition may be considered as a mitigating circumstance (e.g., personal or emotional problems and physical or mental disabilities) "after misconduct has been established," Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standards 9.1, 9.3 (Am. Bar Ass'n 2023); see also SCR 102.5(2) (listing mitigating circumstances), we are not convinced that it establishes negligence with respect to the misconduct.
8. Cramer shall pay the State Bar's costs jointly and severally with attorney Alex B. Ghibaudo, but Cramer is solely responsible for the $1,500 fee pursuant to SCR 120(3).