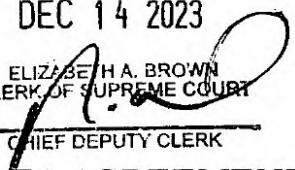


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
BRIAN J. SMITH, BAR NO. 11279.

No. 87435
FILED

DEC 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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 modified conditional guilty plea agreement in exchange for a stated form of discipline for attorney Brian J. Smith. Under the modified agreement, Smith admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation), and RPC 8.4 (misconduct). He agreed to an 18-month suspension, with all but 6 months stayed subject to a 3-year probation and compliance with certain conditions.

Smith admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that Smith violated RPC 1.3, RPC 1.4, and RPC 1.16 by failing to adequately represent two clients, failing to respond to clients' requests for information and inform clients of pending matters, failing to terminate representation when he was unable to continue diligently representing clients, comingling his own funds with client funds in his client trust account, and depositing a client's unearned advanced fee into his operating account. Additionally, Smith violated RPC 8.4, as he was convicted of misdemeanor DUI and felony reckless driving.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. *See In*

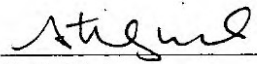
re Discipline of Arabia, 137 Nev. 568, 571, 495 P.3d 1103, 1109 (2021) (stating the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).


Smith admitted to knowingly violating duties owed to his clients (diligence, communication, safekeeping property, and declining or terminating representation) and the public (misconduct). Smith’s clients were potentially injured by his actions. The baseline sanction for such misconduct, before consideration of 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.”); *id.* at Standard 4.42 (“Suspension is generally appropriate when . . . a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.”). The record supports the panel’s findings of two aggravating circumstances (substantial experience in the practice of law and a pattern of misconduct) and five mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest motive, personal and emotional problems, cooperative attitude toward proceedings, and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney Brian J. Smith from the practice of law in Nevada for 18 months, with all but 6 months stayed,

retroactive to the temporary suspension imposed on June 16, 2023. *In re Discipline of Smith*, No. 86497, 2023 WL 4056933 (Nev. Jun. 16, 2023) (Order Imposing Temporary Suspension and Referring Attorney to Disciplinary Board). After the six-month actual suspension, Smith will be on probation and monitored by the State Bar for three years subject to the following conditions: (1) Smith must receive no discipline for conduct engaged in during the stay period; (2) Smith shall not engage in solo practice and shall practice in an office with at least one other lawyer and with a supervisor or mentor; (3) Smith shall submit to a NLAP evaluation and follow any recommendations; (4) Smith shall report monthly to the Office of Bar Counsel; (5) Smith shall return \$3,000 to Jason Merten within 60 days from the date of this order; (6) Smith shall return \$2,000 to Katrina Rizvanova within 60 days from the date of this order; and (7) Smith shall comply with the monetary and probationary requirements in EJDC Case No. C-22-370091-1. Additionally, Smith must pay the costs of the disciplinary proceedings, including fees in the amount of \$2,500, *see* SCR 120(1), as invoiced by the State Bar within 60 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Chair, Southern Nevada Disciplinary Board
Law Office of Gabriel L. Grasso, P.C.
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court