



FILED

JUL 03 2018

STATE BAR OF NEVADA
BY: Soub
OFFICE OF BAR COUNSEL

1 Case No.: OBC17-0444

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3
4 STATE BAR OF NEVADA

5 SOUTHERN NEVADA DISCIPLINARY BOARD

6 STATE BAR OF NEVADA,)

7)
8 Complainant,)

9 vs.)

10 AMBERLEA DAVIS, ESQ.,)

11 Nevada Bar No. 11551,)
12 Respondent.)

PUBLIC REPRIMAND

13
14 TO: Amberlea Davis, Esq.
15 c/o Lawrence Hill, Esq.
16 3430 East Flamingo Road
Suite 232
Las Vegas, NV 89121

17 Violation of RPC 1.5 (Fees)

18
19 On or about February 24, 2011, Albert and Marla Pascua (the "Pascuas")
20 retained you for the limited scope of stabilizing their financial condition. The Legal
21 Representation Agreement between the Pascuas, yourself, and another attorney,
22 identified a number of services that were included in the representation, such as
23 assisting the Pascuas to determine if bankruptcy would be appropriate and
24 representation during bankruptcy proceedings.
25

1 The Pascuas paid you \$12,000 for up to fifty (50) hours of representation and
2 up to \$1,500 in expenses. This fee was shared between yourself and another attorney.
3 On March 15, 2012 you filed a Chapter 11 bankruptcy on behalf of the Pascuas.

4 However, you did not file a motion to be employed as debtor's counsel in the
5 Chapter 11 case as required by 11 U.S.C. § 327(a). Despite taking payment for your
6 representation of the Pascua's in their Chapter 11 bankruptcy, you did not file a
7 motion for attorneys' fees in the Chapter 11 case as required by Federal Rule of
8 Bankruptcy Procedure 2016.
9

10 RPC 1.5 (Fees) states, in pertinent part, that a lawyer shall not make an
11 agreement for, charge, or collect an unreasonable fee or an unreasonable amount for
12 expenses. Pursuant to applicable bankruptcy law, failure to follow the relevant
13 bankruptcy code is, *per se*, a collection of unreasonable fees.
14

15 Violation of RPC 3.2 (Expediting Litigation)

16 Ultimately, on August 29, 2012 the Pascua's Chapter 11 bankruptcy was
17 dismissed. On September 19, 2012 the Chapter 11 bankruptcy was closed. The
18 Pascuas submitted a grievance to the Office of Bar Counsel ("OBC") on January 24,
19 2014 based on a dispute of your legal fees in their bankruptcy. The OBC referred the
20 Pascuas to fee dispute and dismissed the grievance.
21

22 On March 5, 2014 the Pascuas initiated a fee dispute seeking at least a partial
23 refund of the money they had paid you. The Pascuas alleged that you had not provided
24 them with invoices showing how their fee was earned until after their complaint to
25

1 the OBC. On May 9, 2014 you agreed to binding arbitration regarding the fee dispute.
2 You also acknowledged that the dispute was not one that was presently the subject of
3 a civil action otherwise before the Court. The fee dispute arbitration was scheduled
4 for February 3, 2015.

5 On February 2, 2015 you, through counsel, contacted the arbitration panel and
6 requested a continuance, based on having been sick with the flu. The arbitration panel
7 continued the fee dispute arbitration to March 10, 2015.

8
9 Through counsel you then requested a further continuance of the fee dispute
10 arbitration. The arbitration panel refused to grant the request absent a written motion,
11 including evidence of Respondent's prior illness. No such motion was ever filed.

12 On March 3, 2015 you filed a Complaint for Declaratory Relief, Breach of
13 Contract, Quantum Meruit, and Slander against the Pascuas claiming, *inter alia*, that
14 they owed you additional funds.

15
16 On March 9, 2015, one day prior to the rescheduled fee dispute arbitration you
17 communicated, through counsel, with the arbitration panel via email, stating that the
18 dispute was now before the Eighth Judicial District Court as Case No. A-15-714686-
19 C (the "Davis Suit") and that, as such, the arbitration panel no longer had jurisdiction.
20 You indicated that the March 10, 2015 hearing should be cancelled and that you would
21 not be appearing.
22

23 The March 10, 2015 hearing was not cancelled and you did not attend. The
24 arbitration panel found that you had agreed to binding arbitration of the dispute, that
25

1 you had waived your right to file a civil action over the subject matter of the dispute,
2 or at least had a duty to seek an order in the civil case to stay the arbitration. The
3 arbitration panel also found that you had written off any additional amount the
4 Pascuas owed you. Finally, the arbitration panel found that \$7,500 of the \$12,000 paid
5 to you should be returned.

6
7 On August 7, 2015 the Pascuas filed a Motion to Confirm Arbitration Award
8 in the Eighth Judicial District Court which was assigned Case No. A-15-722805-C
9 (the "Pascua Suit"). Ultimately, the Davis Suit and the Pascua Suit were consolidated
10 (the "Consolidated Suit").

11 On May 6, 2016, the Pascuas were successful in obtaining a judgment against
12 you in the Consolidated Suit for \$13,699.62. On January 29, 2016 the Court issued an
13 Order dismissing the remainder of the Consolidated Suit. The Court found that you
14 had filed the suit "to attempt to avoid arbitration." Subsequently, the Court ordered
15 you to submit to a judgment debtor examination.
16

17 On June 24, 2016, you filed an untimely notice of appeal of the May 6, 2016
18 judgment. You were ordered to attend a Judgment Debtor Examination and provide
19 financial documents on July 27, 2016. However, you failed to appear. Your Judgment
20 Debtor Exam was again scheduled on August 8, 2016. You again failed to appear or
21 provide the requested financial documents.
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1 RPC 3.2 states, in pertinent part, that a lawyer shall make reasonable efforts to
2 expedite litigation consistent with the interests of the client. The above described
3 conduct consists of delaying litigation to serve your own interests.

4 Violation of 8.4(d) (Misconduct)

5 On August 12, 2016, the Pascuas filed an Ex Parte Application for Order to
6 Show Cause why you should not be held in contempt of court for failing to attend the
7 examinations. On August 17, 2016 you filed an Opposition to the Order to Show
8 Cause, along with a signed affidavit in support.

9 The affidavit stated, "My son has been through several surgeries over the past
10 year, including one on July 27, 2016. Plaintiff's counsel scheduled a judgment debtor
11 examination for July 27, 2016 and refused to accommodate the scheduled surgery,
12 forcing me to fil an ex-parte request for rescheduling of the JDX. At the time, I also
13 was hospitalized myself."
14

15 Further, the affidavit stated, "I had a court appearance on August 8, 2016 and
16 went to the appearance under the belief that the JDX was being rescheduled or
17 postponed while they considered the offer."
18

19 These two statements made in the affidavit were not carefully worded, and as
20 a result, were misleading as to your actual actions on July 27, 2016 and August 8,
21 2016.
22

1 You were not hospitalized on July 27, 2016, though you were in the hospital
2 with your son. You did not make a formal appearance in a courtroom on August 8,
3 2016, though you did attend a hearing to provide support to a client.

4 As a result of, *inter alia*, your choice of wording in this affidavit, the Court, in
5 a hearing on the matter held on October 6, 2016, stated that, “[You are] required to be
6 meticulous and careful in the information that [you] relay to the Court, and [you have]
7 failed to do so here.”

8 RPC 8.4(d) states, in pertinent part, that it is professional misconduct for a
9 lawyer to engage in conduct that is prejudicial to the administration of justice. By
10 failing to word your affidavit consistent with your duty to be meticulous and careful
11 in the information that you relay to the Court you have violated RPC 8.4(d).
12

13
14 Discipline

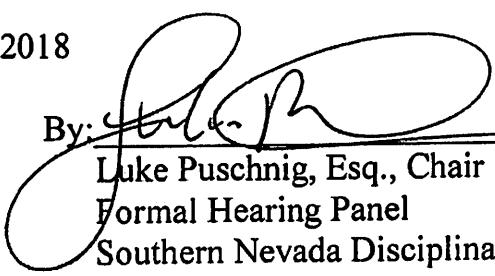
15 Although these offenses might warrant the discipline of a suspension, the Panel
16 has considered your ultimate acceptance of responsibility for your violations of RPC
17 1.5, 3.2, and 8.4(d). The Panel has also considered the mitigating factors of your
18 absence of disciplinary history, your personal or emotional problems at the time of
19 the conduct, and your cooperation with the disciplinary authority in this matter. The
20 Panel finds that these mitigating factors warrant a downward deviation from the
21 proscribed sanction of suspension.
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Therefore, you have violated RPC 1.5 (Fees), 3.2 (Expediting Litigation), and 8.4(d) (Misconduct) and are hereby PUBLICLY REPRIMANDED.

DATED this 29th day of June, 2018

By: 

Luke Puschnig, Esq., Chair
Formal Hearing Panel
Southern Nevada Disciplinary Board