



FILED

FEB -3 2016

STATE BAR OF NEVADA  
BY: *Jana P. Craft*  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 ADAM S. KUTNER, ESQ., )  
 Nevada Bar No. 4310 )  
 )  
 Respondent. )

**CONDITIONAL GUILTY PLEA  
IN EXCHANGE FOR A  
STATED FORM OF DISCIPLINE**

ADAM S. KUTNER, ESQ., (“Respondent”) hereby tenders to Bar Counsel for the State Bar of Nevada (“State Bar”) this Conditional Guilty Plea pursuant to Supreme Court Rule 113(1) in exchange for the imposition of a stated form of discipline in the above-captioned Case, as more fully set forth herein.

**I.**  
**TENDER OF GUILTY PLEA**

Respondent hereby agrees to plead guilty and admit that, as set forth in the Complaint filed on September 4, 2015, he violated Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct (“RPC”) when he, on two separate occasions, through negligence inappropriately sent a non-lawyer assistant to the hospital to meet with and establish the initial relationship with a client. This was particularly a problem, in both instances, due to the poor condition of the grievants when his non-lawyer assistant met with them. In addition, he violated the same Rule 5.3 when he had one or more members of his staff obtain liens for medical services on a client’s behalf.

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**II.**  
**STIPULATION OF FACTS**

Respondent understands that by pleading guilty he admits the facts that support all elements of the rules to which he tenders his plea of guilty as follows:

**COUNT 1**  
**SG12-0090 / May Nipper**

1. On or about September 5, 2011, May Nipper (“Grievant”) fell and fractured her shoulder.

2. While the grievant was at Summerlin Medical Center following a shoulder replacement surgery, the grievant’s husband contacted Respondent’s office for possible representation.

3. While the grievant was still in the hospital, a Mr. Rodriguez from Respondent’s office came and met with the grievant.

4. According to Respondent, Mr. Rodriguez is a “runner” in Respondent’s office but performs various duties, including going to the hospital and meeting a potential client when no one else is available.

5. Mr. Rodriguez is not an attorney.

6. According to Respondent, Mr. Rodriguez has been fully trained on getting intake information and having the client sign some documents.

7. Mr. Rodriguez spoke to the grievant at the hospital, and the grievant told him what had happened to her.

8. In addition, at this time Mr. Rodriguez had the grievant sign multiple forms- an authorization for use and disclosure of protected health information, a general authorization, and a 30 day investigation agreement.

9. According to the grievant, she was on pain medication at this time.

10. According to the grievant, she was unable to read the forms she signed because she did not have her reading glasses with her at the hospital





1 train and supervise his nonlawyer assistants. Under these facts, this would fit under negligent  
2 misconduct.

3 Both parties note that “[r]eprimand is generally appropriate when a lawyer negligently  
4 engages in conduct that is a violation of a duty owed as a professional, and causes injury or  
5 potential injury to a client, the public, or the legal system.” *Annotated Standards for Imposing*  
6 *Lawyer Sanctions*, Standard 7.3. The parties state that the more severe penalty of a public  
7 reprimand in this matter reflects a weighing of the aggravating and mitigating factors, as listed  
8 above.

9  
10 **V.**  
**STATED FORM OF DISCIPLINE**

11 Pursuant to the Conditional Guilty Plea and Stipulation of Facts as set forth above,  
12 Respondent agrees to the following:

13 1. Respondent shall receive a **Public Reprimand** for two violations of RPC 5.3  
14 (Responsibilities Regarding Nonlawyer Assistants). The **Public Reprimand** shall be substantially  
15 the same as Exhibit A. *See Exhibit A.*

16 2. Both parties agree that there is no representation or limitation included herein that  
17 the State Bar will seek, or not seek, any particular punishment in any future disciplinary case  
18 against the Respondent.

19 3. In addition to the annual requirement of Continuing Education for 2016,  
20 Respondent shall take an additional ten (10) CLE credits, five (5) will be in law office  
21 management and five (5) will be in ethics. The additional ten (10) CLE credits will be reported to  
22 the State Bar Counsel upon completion, not the Continuing Education Board.

23 4. Respondent shall pay the actual costs of these disciplinary proceedings, excluding  
24 Bar Counsel and staff salaries.

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1 **VI.**  
2 **CONDITIONAL APPROVAL AND AGREEMENT BY STATE BAR**

3 Conditional to Respondent's execution of the instant plea and final ratification of the  
4 agreement at the hearing in this matter, the State Bar accepts the Plea and recommends approval of  
5 the stated form of punishment by the Formal Hearing Panel, and further agrees to:

- 6 1. Pursuant to negotiations, as to count 1 alleged violations of Rule of Professional  
7 Conduct 1.4 (Communication), RPC 1.18 (Duties to Prospective Client) and RPC  
8 5.5 (Unauthorized Practice of Law) are dismissed.
- 9 2. Pursuant to negotiations, as to count 2 alleged violations of Rule of Professional  
10 Conduct 1.15 (Safekeeping Property), RPC 5.5 (Unauthorized Practice of Law),  
11 and RPC 8.1 (Bar Admission and Disciplinary Matters) are dismissed.
- 12 3. Pursuant to negotiations, the State Bar agrees that this public reprimand will not be  
13 used by the State Bar as an aggravating factor in any future bar disciplinary matters  
14 or hearings against the Respondent, although the State Bar must disclose the public  
15 reprimand to the panel in any future disciplinary matters or hearings against the  
16 Respondent.

17 **VII.**  
18 **APPROVAL OF RESPONDENT**

19 Respondent certifies and acknowledges the following:

20 He has read the Conditional Guilty Plea in Exchange for a Stated Form of Discipline and  
21 understands that by pleading guilty he admits the facts that support all elements of the offenses.

22 He has discussed the plea with counsel and he fully understands the terms and conditions  
23 set forth herein and the consequences of this plea.

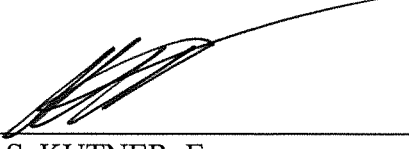
24 He is signing this agreement voluntarily and is not acting under duress or coercion or by  
25 virtue of any promises except as set forth herein.

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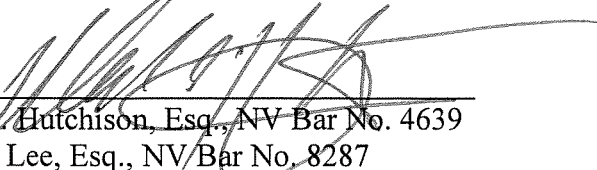
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1 He further understands a failure to fully adhere to any of the subject terms and conditions  
2 of the instant plea shall constitute grounds upon which the State Bar may directly seek relief from  
3 the Nevada Supreme Court or the Southern Nevada Disciplinary Board for said noncompliance.

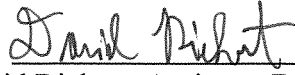
4 DATED this 3<sup>rd</sup> day of February, 2016.

5  
6 By:   
ADAM S. KUTNER, Esq.  
7 NV Bar No. 4310  
8 Respondent

9 DATED this 3<sup>rd</sup> day of February, 2016

10 By:   
11 Mark A. Hutchison, Esq., NV Bar No. 4639  
12 Patricia Lee, Esq., NV Bar No. 8287  
13 Todd W. Prall, Esq., NV Bar No. 9154  
14 Counsel for Respondent

15 STATE BAR OF NEVADA  
16 C. Stanley Hunterton, Bar Counsel  
DATED this 3<sup>rd</sup> day of February, 2016

17 By:   
18 David Rickert, Assistant Bar Counsel  
19 NV Bar No. 9662  
3100 W. Charleston Boulevard, Suite 100  
20 Las Vegas, Nevada 89102  
(702) 382-2200  
Attorney for State Bar of Nevada

# Exhibit “A”



FILED

FEB - 3 2016

STATE BAR OF NEVADA  
BY: *W. Leahy-Helin*  
OFFICE OF BAR COUNSEL

1 Case Nos.: SG12-0090 & SG12-0777

4 STATE BAR OF NEVADA

5 SOUTHERN NEVADA DISCIPLINARY BOARD

6 STATE BAR OF NEVADA, )  
7 Complainant, )  
8 vs. )  
9 ADAM S. KUTNER, ESQ., )  
10 NV Bar No. 4310 )  
11 Respondent. )  
\_\_\_\_\_ )

13 PUBLIC REPRIMAND

14 TO: ADAM S. KUTNER, ESQ.

15 This public reprimand is issued pursuant to a "Conditional Guilty Plea" you entered on  
16 February 3, 2016.

17 In September 2011 your office was contacted for possible representation by a woman who had  
18 fallen and fractured her shoulder. While she was at Summerlin Medical Center, your office  
19 inappropriately sent a non-lawyer assistant to the hospital to meet with her and establish the initial  
20 relationship with the client.

21 During this meeting, your assistant had the woman sign an authorization for use and disclosure  
22 of protected health information, a general authorization, and a 30 day investigation agreement. She  
23 was not given copies of the forms she signed, and no attorney from your office ever explained any of  
24 the forms to her.

1 At the time your assistant met with her and got her to sign, the woman was in her eighties and  
2 recovering from shoulder replacement surgery. She was in great pain, and on pain medication. In  
3 addition, she was unable to read the forms she signed because she lacked her reading glasses.

4 In a separate incident, in March 2012 your office was contacted for possible representation of a  
5 woman whose hip was broken by her neighbors' dogs. While she was still at Mountain View Hospital  
6 for her injuries, your office again inappropriately sent a non-lawyer assistant to the hospital to meet  
7 with her and establish the initial relationship with the client.

8 During this meeting, your assistant had the woman sign one or more forms related to possible  
9 representation by your office. At the time your assistant met with her and got her to sign, she was in  
10 her sixties, in great pain, on pain medication, and pending surgery on her hip.

11 After this meeting, the woman's husband contacted your office multiple times by phone to  
12 inquire about the medical bills they were receiving. At least one of your non-lawyer employees stated  
13 to him that she would get the liens handled herself. In later correspondence with the State Bar, you  
14 acknowledged that "due to the excellent work of my staff" numerous medical entities agreed to liens  
15 related to this case. It was inappropriate for you to have your non-lawyer assistant(s) obtain liens for  
16 medical services on the client's behalf.

17 Pursuant to negotiation and your "Conditional Guilty Plea," in light of the foregoing, you  
18 violated Rule of Professional Conduct ("RPC") 5.3 (Responsibilities Regarding Nonlawyer Assistants)  
19 in both instances and are hereby **PUBLICLY REPRIMANDED**.

20 Dated this 3rd day of February, 2016.

21  
22 By: 

23 JEFFREY G. SLOANE, ESQ.  
24 Formal Hearing Panel Chair  
25 Southern Nevada Disciplinary Board