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October 22, 2021

LETTER OF REPRIMAND

Preston Rezaee, Esq.
c/o Rob Bare, Esq.
The Law Office of Rob Bare, PLLC
150 Las Vegas Boulevard N, Unit 1812
and c/o Glenn Machado, Esq.

Re: State Bar of Nevada Grievance: OBC21-0120

Dear Mr. Rezaee:

A Screening Panel of the Southern Nevada Disciplinary Board has reviewed the above-referenced grievance and unanimously determined that a Letter of Reprimand be issued for violation of Rule 1.15 of the Rules of Professional Conduct ("RPC").

GRIEVANCE

Maria Quijano was in two car accidents four months apart: one on April 26, 2018, and a second on August 16, 2018. Quijano retained your law office on April 30, 2018, to represent her in claims for the first accident and on August 17, 2018, for the second accident.

Both retainer agreements provided for a contingency fee of 35% if the matter was resolved pre-litigation and 40% if suit was filed. The retainer agreements each contained language allowing you to settle the client's cases without prior consent.

There were four policies of insurance for both accidents. A demand letter was sent to all insurance carriers.

For the first accident, your office sent a demand letter to Allstate Insurance on or about September 4, 2019, seeking $1,000,000 in damages. On December 10, 2019, Allstate responded with a letter offering to resolve the claim for $3,300.88. You reviewed the offer with Quijano and she asked that you try to get a higher offer. On January 13, 2020, Allstate increased its settlement offer to $4,543.88. You then sought reductions from Quijano's treating chiropractor.

On February 19, 2020, Quijano signed a release of all claims for the Allstate settlement in the amount of $4,543.88. On March 11, 2020, the $4,543.88 check was deposited into your IOLTA account. You sought additional reductions from the medical providers because the treatment related to the first accident overlapped with the treatment related to the second accident.

On or about July 1, 2020, you distributed $1,029.57 to Quijano, constituting her portion of the first settlement related to the first accident. However, the distribution sheet inaccurately identified the total settlement as the initial offer of $3,3300.88, not the final settlement amount of $4,543.88. When substitute counsel brought this discrepancy to your attention, you corrected the error and provided new counsel with a check to pay Quijano the remaining $1,243 due to her from the settlement.

For the second accident, your office sent a demand letter to Liberty Mutual Insurance on or about September 4, 2019, seeking $1,000,000 in damages. On September 27, 2019, Liberty Mutual accepted a counteroffer, sending a letter confirming a settlement of $25,000.

On October 10, 2019, the $25,000 check was deposited into your IOLTA account. On October 16, 2019, you issued a check in the amount of $8,905.25 for fees and costs relating to this accident. This was based on the agreed upon contingency fee of 35%. At the time that you withdrew alleged fees and costs, the settlement distribution drafted for Quijano's matters showed that, without any lien reductions, she would owe $24,227.25 to medical providers. Thus, the potential of there being insufficient funds to pay all lienholders, including you, from the settlement funds was apparent.

On November 12, 2019, you sent a demand letter to GEICO as a result of Quijano's UM/UIM coverage. The demand was for $1,000,000 in damages incurred by Quijano in the second accident. GEICO offered to settle the claim for $1,645.00.

On March 20, 2020, you explained to Quijano that you recommended filing a lawsuit against GEICO because you believed their offer was too low. On September 29, 2020, you sent an email to update Quijano that a lawsuit was filed against GEICO in federal court for failure to pay funds from her coverage.

In October 2020, Quijano was confused regarding the procedures and posture of the representation and chose to retain substitute counsel to replace you.

On December 14, 2020, you sent new counsel the remainder of Quijano's funds from the Liberty Mutual settlement. Before forwarding the funds, however, you mistakenly deducted an additional $1,094.75, or 5% of the settlement amount, and issued a check to yourself for the additional fees. The total fees retained by your firm was $10,000.00 and the check sent to the substitute counsel was in the amount of $15,000.

In a letter dated January 27, 2021, new counsel requested that you tender the remaining $10,000.00 to their office. You did not. On February 1, 2021, new counsel filed a grievance with the State Bar of Nevada.

You have acknowledged that asserting the 40% contingency fee on settlement funds received pre-litigation was not appropriate. You have agreed to refund Quijano—through her new counsel—the $1,094.75 that was mistakenly deducted.

VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT

RPC 1.15 (Safekeeping Property) states, in pertinent part:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. . . .
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> (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
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> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

When liens exceed the settlement amount and the lienholders cannot mutually agree upon reductions, then the law requires a lawyer to interplead the funds with the Court and seek Court order for the distribution. While a lawyer's lien for attorney's fees and costs most often has priority over other liens, the lawyer must still fulfill his or her ethical obligations to retain *all* funds in a Client Trust Account until the interests are no longer in dispute. *See Golightly & Vannah, PLLC v. TJ Allen, LLC,* 132 Nev. 416, 421 (Nev. 2016); *see e.g. In re Conduct of Starr*, 326 Or. 328, 341, 952 P.2d 1017, 1025 (1998).

In Quijano's matter, lienholders held claims in excess of the settlement amount. This means their interests conflicted with your interests.

When you received the $25,000 settlement check, you knew that the medical providers who treated your client held liens that exceeded the amount of the settlement. Thus, you and the medical providers held competing liens. Yet, you immediately satisfied your own lien before all the remaining liens were resolved. The client had not been informed of the potential distribution of the settlement funds, including the payment of your contingency fee, when you satisfied your lien by transferring funds to your operating account. You violated RPC 1.15 (Safekeeping Property) when you paid your own lien and disregarded the required adjudication of the other lienholders' interests and your client's interests. Compliance with RPC 1.15 requires you retain all funds in your trust account until a matter is fully resolved.

APPLICATION OF THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

Standard 4.12 of the ABA Standards for Imposing Lawyer Sanctions provides that "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."

An attorney has an obligation to safekeep client funds until all disputes regarding distribution of those funds are resolved. You failed to keep all of Quijano's funds in your Client Trust Account until they were ready to be distributed to all persons with an interest therein. Your conduct has the potential to cause Quijano injury if the final lien amounts exceed the remaining funds.

The Panel has considered the mitigating factors of your acceptance of responsibility for your misconduct, your cooperation with the disciplinary proceeding, and your expressed remorse for failing to abide by the Rules of Professional Conduct. These mitigating factors warrant a downward deviation in the sanction for your misconduct.

REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your knowing violation of RPC 1.15 (Safekeeping Property).

You are also cautioned that, in the future, a fee agreement that delegates blanket settlement authority to you would be a violation of RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer). You are further cautioned that increasing the contingency fee associated with a particular recovery of funds after the funds are received would be considered a violation of RPC 1.5 (Fees).

Finally, in accordance with Nevada Supreme Court Rule 120, you are assessed costs in the amount of $1,500.

Sincerely,

Robert J. Caldwell, Esq.,
Screening Panel Chair
Southern Nevada Disciplinary Board

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