

1 Case Number: OBC18-0222



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3 DEC 17 2018

4 STATE BAR OF NEVADA

5 BY: [Signature]
6 OFFICE OF BAR COUNSEL

7 STATE BAR OF NEVADA

8 NORTHERN NEVADA DISCIPLINARY BOARD

9 STATE BAR OF NEVADA,)

10 Complainant,)

11 vs.)

12 KENNETH A. STOVER, ESQ.)

13 STATE BAR NO. 5792)

14 Respondent.)

PUBLIC REPRIMAND

15 TO: Kenneth A. Stover, Esq.
16 c/o John Arrascada, Esq.
17 Arrascada & Armini
18 145 Ryland Street
19 Reno, Nevada 89501

20 You represented Client in a criminal matter pending in the Second Judicial District
21 Court in which Client was charged with trafficking in a controlled substance. Client had
22 been convicted of, at least, two felonies prior to the commencement of the underlying
23 criminal matter. One of Client's prior convictions had been for the violation of NRS
24 202.360, Being an Ex-Felon in Possession of a Firearm, and trafficking in a controlled
25 substance.

In the underlying criminal matter, you were attempting to negotiate a guilty plea
resolution with the District Attorney's office on Client's behalf. You advised Client that

1 under Nevada law he was ineligible for probation or a reduced sentence unless he
2 performed substantial assistance pursuant to NRS 453.3405(2). You knew that Client
3 was an ex-felon, but still suggested to Client that getting weapons off the streets and
4 providing them to law enforcement could be considered substantial assistance.

5 Client initially declined to try to provide the "substantial assistance." Nonetheless,
6 you mentioned to the Deputy District Attorney ("DDA") handling Client's matter that you
7 believed Client could provide "substantial assistance" by providing weapons, removed
8 from the streets, to law enforcement. The DDA told you to deal with law enforcement and
9 if weapons were turned over to it, then she would consider it within the potential guilty
10 plea resolution. You did not make prior arrangements with law enforcement regarding
11 acceptance of any weapons from Client. Further, you were unaware that, under Federal
12 policy and procedure, substantial assistance had to be performed under the guidance
13 and supervision of law enforcement.

14 As the matter proceeded, you, again, suggested that Client, an ex-felon, could
15 collect and turn in weapons to create "substantial assistance" that might mitigate the
16 sentence in the pending criminal matter. In early July, 2018, Client decided to perform
17 substantial assistance and you understood that Client set about acquiring weapons on
18 the streets for the purpose of turning them over to law enforcement through you, as
19 "substantial assistance." Although you had no actual knowledge of how Client acquired
20 the weapons, you contemplated that Client was probably purchasing and/or trading drugs
21 for the weapons.

22 On July 10, 2018, you provided your car to Client so that Client could place the
23 weapons, obtained from the streets, in the car's trunk to be turned over to law
24 enforcement to create "substantial assistance" in Client's pending criminal case. You had
25 not made any pre-arrangements to turn-in the weapons and when you initially contacted

1 law enforcement, it declined to receive the weapons. You felt he had no choice but to
2 store the cache of weapons at your home until you were finally able to facilitate the Reno
3 Police Department's receipt of the weapons. On July 11, 2017, the Reno Police
4 Department ("RPD") agreed to accept the weapons from you and you provided twelve
5 guns and three boxes of ammunition to a detective.

6 On or about August 1, 2017, the same or similar process occurred again with eight
7 more weapons— you provided your car to Client, who put acquired weapons in it. Again,
8 you had not made pre-arrangements with the Reno Police Department or any law
9 enforcement agency, to turn in additional weapons.

10 In September 2017, Client failed to appear at the continued arraignment and a
11 warrant was issued for his arrest. Client was arrested on the warrant on or about
12 October 23, 2017. He had seven weapons in his possession at the time of his arrest.
13 Client is now facing Federal criminal charges in United States District Court because of
14 the weapons he possessed when he was arrested.

15 You had no existing pre-arrangement with RPD to turn in additional weapons. On
16 or about October 29, 2017, you provided your car to an unknown associate of Client, who
17 took your car from your home, filled the trunk of the car with 36 more weapons, and
18 returned the car to your home. You then contacted RPD. RPD took possession of the
19 weapons.

20 On December 20, 2017, Client entered a guilty plea, by executing a Guilty Plea
21 Memorandum. At the February 7, 2018 Sentencing Hearing, you stated (i) the facts of
22 Client's acquisition of over 50 weapons and your own part in facilitating the
23 relinquishment of the weapons to RPD and (ii) that only after the three separate times
24 weapons were turned over to law enforcement did you learned from a U.S. Attorney that
25

1 under Federal procedure and policy substantial assistance had to be performed under
2 supervision of law enforcement.

3 At the Sentencing Hearing, you argued that the “substantial assistance” had been
4 performed and that it warranted a sentence of probation instead of a prison sentence.
5 The DDA at the hearing acknowledged that substantial assistance had been performed
6 and argued that a 12 to 30 months sentence adequately accounted for the “substantial
7 assistance.” The Court acknowledged that Client could have been sentenced for 10
8 years or more, but it accepted the agreement of the DDA regarding the “substantial
9 assistance.” The Court followed the DDA’s argument and sentenced Client to 30 months
10 in the Nevada Department of Corrections with parole eligibility after 12 months and a
11 \$5,000 fine.

12 Pursuant to RPC 1.1 (Competence), you are required to have the legal knowledge,
13 skill, thoroughness, and preparation reasonably necessary for the representation in which
14 you engage. You knowingly violated RPC 1.1 (Competence) because you failed to
15 consider that your counsel and assistance to your client created (i) additional, significant,
16 risk for your client, including, but not limited to, in Federal Court because you were
17 unaware that under Federal Rules substantial assistance must be performed under the
18 supervision and guidance of law enforcement and (ii) the potential that your ability to
19 advocate on behalf of your client would be materially limited by third-party interests or
20 your own personal interest. Your client was injured and/or could have been injured
21 because of your failure to thoroughly research and have the legal knowledge regarding
22 Federal Law and policy for substantial assistance and your failure to adequately analyze
23 the risks of providing such “substantial assistance” and so advise your client. The
24 integrity of the profession was injured because of your failure to employ the legal
25 knowledge, skill and thoroughness of analysis necessary for the representation.

1 In evaluating the appropriate sanction for your misconduct, the Panel has
2 considered the aggravating factor of your substantial experience in the practice of law
3 and the mitigating factors of your absence of a disciplinary record, your remorse, and that
4 you accepted responsibility for your misconduct by offering a Conditional Guilty Plea.

5 In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.1
6 (Competence) and are hereby PUBLICLY REPRIMANDED.

7 DATED this 17th day of December, 2018.

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9 By: Bart Aaron
10 BARTH AARON, ESQ.
11 Formal Hearing Panel Chair
12 Northern Nevada Disciplinary Board
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