

# DISCIPLINARY QUARTERLY REPORT

Reporting Period: January 1, 2012 – March 31, 2012

## REPORT BY DISCIPLINARY COUNSEL

### Final Decisions

Final Decisions of the NM Supreme Court .....7

*Matter of Pedro Pablo Palacios, Esq.* (Disciplinary No. 06-2011-611) New Mexico Supreme Court entered an order of Suspension for a minimum of one year. Respondent must notify all of his clients of the fact of the suspension. Supplemental proceedings are to take place and once completed the Court will enter its final order.

*Matter of Jose Luis Arrieta, Esq.* (Disciplinary No. 10-2009-580) New Mexico Supreme Court entered an order of Contempt resulting in an order of Disbarment. Respondent was ordered to notify all of his clients of his disbarment. Respondent was ordered to not work as a paralegal, law clerk, legal secretary, or in any other quasi-legal capacity for one (1) year and may not work in any such capacity thereafter unless respondent applies for and obtain permission from the Court. Respondent was ordered to pay costs to the disciplinary board.

*Matter of Shawn J. Lunsford, Esq.* (Disciplinary No. 10-2009-579) New Mexico Supreme Court entered an order holding Respondent in Contempt of Court and Disbarring Respondent from the practice of law. The jail sentence for Respondent's contempt of court was deferred on the condition Respondent cooperated with disciplinary counsel, the inventorying attorney, and the Client Protection Fund commission, makes full restitution of client funds and unearned fees, reimburses the Client Protection Fund all monies paid to Respondent's former clients, reimburse the inventorying attorney for time and expenses, and pay costs to the disciplinary board.

*Matter of Rafael Padilla, Esq.* (Disciplinary No. 07-2011-626) New Mexico Supreme Court entered an order of indefinite suspension, which was deferred upon specific requirements. Respondent was placed on unsupervised probation for a period of two (2) years and must apply for reinstatement to non-probationary status upon completion. Respondent shall receive a formal reprimand after successfully completing all terms and conditions of his probation and was ordered to pay costs to the disciplinary board.

*Matter of Jay R. Mueller, Esq.* (Disciplinary No. 09-2011-632) New Mexico Supreme Court entered an order of suspension from the practice of law for six (6) months, and the suspension was deferred for one (1) year. Respondent was further ordered to pay costs to the disciplinary board.

*Matter of Carl J. Schmidt, a disbarred attorney* (Disciplinary No. 07-95-280) New Mexico Supreme Court entered an order of contempt but deferred the imposition of any sanctions. Respondent was holding himself out and allowed others to hold him out as a licensed attorney. The Court ordered that Respondent shall not represent or permit the impression to be created that he is a lawyer; shall not provide legal advice or counsel, whether or not for remuneration; shall not use stationery, cards or other communications that use terms that reasonably could be construed to mean that respondent is a lawyer, including "J.D." or "Esq."; and shall clarify that any representation he purports to provide is not in the capacity of a lawyer.

*Matter of Jane Rocha de Gandara, Esq.*, (Disciplinary No. 06-2011-619) New Mexico Supreme Court entered an order of suspension from the practice of law for one (1) year, and the suspension was deferred for two (2) years. Respondent was placed on probation for two (2) years and ordered to immediately take and pass the Multi-State Professional Responsibility Examination; meet with a counselor, have counselor report to the disciplinary board, and coordinate with disciplinary counsel on an appointment of a qualified supervising attorney. Respondent was further ordered to pay costs to the disciplinary board.

**Resignations in Lieu of Discipline .....0**

**Summary Suspensions**

Total number of attorneys summarily suspended .....1

*Matter of Scott Tidwell, Esq.* (Disciplinary No. 02-2012-777) New Mexico Supreme Court entered an order of Summary Suspension. Respondent was ordered to and shall remain under the jurisdiction of the disciplinary board pending the ultimate disposition of the charges and any criminal sanctions.

**Disability Suspensions**

Total number of attorneys placed on disability suspension ....0

**Charges Filed**

Charges were filed against an attorney for allegations of failure to provide competent representation to a client; failure to act with reasonable diligence and promptness in representing a client; failure to keep the client reasonably informed about the status of the case; failure to promptly comply with reasonable requests for information; failure to obtain a written fee agreement in a contingent fee matter; failure to make reasonable efforts to expedite litigation; by making false or misleading communication about services provided to the client; engaging in conduct which is dishonest, fraudulent, deceptive or constitutes a misrepresentation; and engaging in conduct which is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to act with reasonable

diligence and promptness in representing a client; failure to keep the client reasonably informed about the status of the case; failure to promptly comply with reasonable requests for information; by collecting unreasonable fees; failure to refund any advance payment of fee or expenses that were not earned or incurred; failure to respond to a lawful demand for information from a disciplinary authority; failure to give full cooperation and assistance to a disciplinary authority; and engaging in conduct which is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to provide competent representation to a client; failure to consult with client as to the means by which the objectives of representation were to be pursued; failure to act with reasonable diligence and promptness in representing a client; failure to consult with the client or keep the client informed of the status of the case; and engaging in conduct which is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to provide competent representation to a client; failure to act with reasonable diligence and promptness in representing a client; failure to keep a client reasonably informed about the status of a matter; failure to keep complete records of account funds being held separately for a client; failure to promptly deliver to a client funds the client is entitled to receive; failure to make reasonable efforts to ensure a non-lawyer's conduct is compatible with the professional obligations of the lawyer; failure to provide full cooperation and assistance to disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline and disciplinary procedures; attempting to violate the Rules of Professional Conduct through the acts of another; and engaging in conduct which is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to provide competent representation to a client; failure to act with reasonable diligence and promptness in representing a client; failure to make reasonable efforts to expedite litigation consistent with the interests of the client; and by engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of counseling a client to engage in criminal conduct; knowingly violating a temporary domestic order; committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness and fitness to practice law; by engaging in conduct involving dishonesty; and engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of charging an unreasonable fee; failure to keep complete records of account funds being held separately for a client; failure to deposit a client's funds in a client trust account prior to earning fees; failure to promptly deliver to a client the unearned portion of the client's funds; failure to refund to the client advance payment of a fee that was unearned; and failure to give full cooperation and assistance to the disciplinary board and disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline and disciplinary procedures.

**Petitions for Reciprocal Discipline Filed**

Petitions for reciprocal discipline filed .....1

*Matter of G. Paul Howes, Esq.* (Disciplinary No. 03-2012-648) Respondent was disbarred from the practice of law in the District of Columbia. The Disciplinary Board has petitioned the Supreme Court to impose Reciprocal Discipline. The matter is still pending and awaiting an order from the Supreme Court.

**Petitions for Reinstatement Filed**

Petitions for reinstatement filed .....2

*Matter of James Klipstine, Jr., Esq.*, (Disciplinary No.11-2009-583) New Mexico Supreme Court entered an order reinstating Respondent to supervised probation for a period of two (2) years and must comply with all terms and conditions.

*Matter of Albert J. Granger, Esq.*, (Disciplinary No. 02-2012-644) New Mexico Supreme Court entered an order remanding Respondent’s Petition for Reinstatement to the Disciplinary Board for further action.

**Formal Reprimands**

Total number of attorneys formally reprimanded .....0

**Informal Admonitions**

Total number of attorneys admonished .....7

An attorney was informally admonished for failing to provide competent representation to a client; failing to promptly comply with reasonable requests for information; failing to provide an accounting of funds and return unearned fees to the client; failing to hold unearned fees in a client trust account; and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-101, 16-104(a)(4), 16-105, 16-115(A),16-115 (D), and 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished following a period of probation for failure to manage a law practice in particular the adherence to court imposed deadlines in violation of Rules 16-101, 16-103, 16-116(D), 16-302, 16-304(C), and 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished pursuant to an order issued by the disciplinary board for failing to hold clients’ property separate from own property; failing to properly safeguard clients’ property; and failing to give full cooperation and assistance to the disciplinary

board and disciplinary counsel in discharging functions and duties as a lawyer with respect to the disciplinary process in violation of Rules 16-115 and 16-803(D) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; and failing to provide an accounting of funds and return unearned fees to the client in violation of Rules 16-101, 16-103, and 16-105 of the Rules of Professional Conduct.

An attorney was informally admonished for having communications with an opposing party who is represented by counsel and attempting to violate the Rules by knowingly assisting or inducing another to do so in violation of Rules 16-402 and 16-804(A) of the Rules of Professional Conduct.

An attorney was informally admonished for making false statements of material fact or law to a third person, failing to make reasonable efforts to correct the misunderstanding of a non-attorney; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rules 16-401, 16-403, and 16-804(C) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; failing to deposit unearned fees into a client trust account until earned in violation of Rules 16-101, 16-103, and 16-105 of the Rules of Professional Conduct.

### **Letters of Caution**

Total number of attorneys cautioned .....11

Attorneys were cautioned for the following conduct: (1) failure to file; (2) general incompetence; (3) contact or threats to opposing party; (4) fee splitting; (5) general neglect (2 letters of caution issued); (6) overreaching excessive fees; (7) conflict of interest adverse to client's interest; (8) inappropriate filing of pleadings; (9) accounting for funds; (10) ineffective assistance of counsel.

### **Complaints Received**

<i>Allegations</i>	<i>No. of Complaints</i>
Trust Account Violations.....	8
Conflict of Interest.....	6
Neglect and/or Incompetence.....	72
Misrepresentation or Fraud.....	16
Relationship with Client or Court.....	13
Fees.....	19

Improper Communications.....	4
Criminal Activity.....	2
Personal Behavior.....	1
Other.....	24
Total number of complaints received.....	155