

# DISCIPLINARY QUARTERLY REPORT

Reporting Period: July 1, 2012 – September 30, 2012

REPORT BY DISCIPLINARY COUNSEL

## Final Decisions

Final Decisions of the NM Supreme Court .....2

*Matter of Benjamin L. Tuohy, Esq.* (Supreme Court No. 33,671) New Mexico Supreme Court entered an order granting Respondent's Petition for resignation in lieu of discipline. Respondent was ordered to make restitution to clients, reimburse the Client Protection Fund, take and pass the New Mexico Multi-state Professional Responsibility Examination, successfully complete a character and fitness evaluation, produce files to the disciplinary board; and may not apply for reinstatement until this is complete and no earlier than three (3) years from the date of the order.

*Matter of Gene N. Chavez, Esq.* (Disciplinary No. 06-2011-621) New Mexico Supreme Court entered an order suspending Respondent for one (1) year, with nine (9) months deferred and Disciplinary counsel determining the date when the suspension will take effect. Respondent will continue supervised probation for one (1) year from November 28, 2012 and submit to random audits. Respondent shall also receive a public censure and must pay costs to the disciplinary board.

## Summary Suspensions

Total number of attorneys summarily suspended .....0

## 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; failure to act with reasonable diligence and promptness; failure to keep clients reasonably informed on the status of the matter; failure to notify client about professional liability malpractice insurance, failure to charge a reasonable fee; improperly splitting fees with a lawyer without the client's agreement in writing, representing a client when there was a significant risk that the representation would be materially limited by the personal interest of the

lawyer, failure to deposit into a client trust account legal fees and expenses that were paid in advance, violating the Rules of Professional Conduct and by engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to have the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation of the 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; knowingly making a false statement of fact to a tribunal and failing to correct the false statement of material fact to the tribunal; failure to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party during pretrial procedure; violating the Rules of Professional Conduct; engaging in conduct involving dishonesty, deceit or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to provide competent representation; failure to diligently represent a client; failure to make reasonable efforts to expedite litigation; and engaging in conduct 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 abide by the client’s decisions concerning the objectives of representation; failure to represent the client diligently; failure to accurately and adequately communicate with the client; charging an unreasonable fee; failure to deposit client’s funds in a client trust account prior to earning the fees; failure to refund the client’s advanced payment of a fee that was not earned; making false statements of material fact to a third person; knowingly making a false statement of material fact in connection with this disciplinary matter; 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; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Charges were filed against an attorney for allegations of failure to competently represent a client; failure to act with reasonable diligence and promptness in representing a client; failure to promptly comply with the client’s reasonable requests for information; failure to cooperate with disciplinary counsel in conducting their investigation of the complaint; and by engaging in conduct 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 clients; making false statements of material fact to the court; communicating with individuals represented by counsel about the subject matter of pending litigation without the consent of their attorney; and engaging in conduct prejudicial to the administration of justice.

**Petitions for Reciprocal Discipline Filed**

Petitions for reciprocal discipline filed .....0

## **Petitions for Reinstatement Filed**

Petitions for reinstatement filed .....0

## **Formal Reprimands**

Total number of attorneys formally reprimanded .....3

*Matter of Orlando Mondragon, Esq.* (Disciplinary No. 02-2012-643) a formal reprimand was issued at the Disciplinary Board meeting of September 21, 2012 for the violation of Rule 16-101 failing to provide competent representation to a client; Rule 16-103 failing to act with reasonable diligence and promptness in representing a client; Rule 16-302 failing to make reasonable efforts to expedite litigation consistent with the interests of the client; and Rule 16-804(D) engaging in conduct prejudicial to the administration of justice. The formal reprimand was published in the State Bar Bulletin issued October 3, 2012.

*Matter of Richard A. Sandoval, Esq.* (Disciplinary No. 01-2012-641) formal reprimand was issued at the Disciplinary Board meeting of September 21, 2012 for the violation of Rule 16-101 failing to provide competent representation to a client; Rule 16-102(A) failing to consult with the client as to the means by which the objectives of representation were to be pursued; Rule 16-103 failing to act with reasonable diligence and promptness in representing a client; and Rule 16-804(D) engaging in conduct prejudicial to the administration of justice. The formal reprimand was published in the State Bar Bulletin issued October 3, 2012.

*Matter of D. Chipman Venie, Esq.* (Disciplinary No. 09-2011-631) a formal reprimand was issued at the Disciplinary Board meeting of September 21, 2012 for the violation of Rule 16-305(D) engaging in conduct intended to disrupt a tribunal and Rule 16-804(D) engaging in conduct that is prejudicial to the administration of justice. The formal reprimand was published in the State Bar Bulletin issued October 3, 2012.

## **Informal Admonitions**

Total number of attorneys admonished .....6

An attorney was informally admonished for failing to act with reasonable diligence and promptness in representing a client and failing to keep the client reasonably informed about the status of the matter in violation of Rules 16-103 and 16-104 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to provide competent representation to a client and failing to act with reasonable diligence and promptness in representing a client in violation of Rules 16-101 and 16-103 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to act with reasonable diligence and promptness in representing a client and failing to keep the client reasonably informed about the status of the matter in violation of Rules 16-103 and 16-104 of the Rules of Professional Conduct.

An attorney was informally admonished for failing to act with reasonable competence, diligence and promptness in representing a client and failing to keep the client reasonably informed about the status of the matter in violation of Rules 16-103 and 16-104 of the Rules of Professional Conduct.

An attorney was informally admonished pursuant to an order issued by the disciplinary board for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 16-804(C) of the Rules of Professional Conduct.

An attorney was informally admonished for charging an unreasonable fee to a client in violation of Rules 16-105(A) of the Rules of Professional Conduct.

**Letters of Caution**

Total number of attorneys cautioned .....20

Attorneys were cautioned for the following conduct: (1) conflict of interest (2 letters of caution issued); (2) general misrepresentation to court; (3) general incompetence; (4) overreaching excessive fees (3 letters of caution issued); (5) trust account violation (6 letters of caution issued); (6) ineffective assistance of counsel; (7) general neglect (2 letters of caution issued); (8) not respecting the rights of a third person; (9) refusal to release documents; (10) inappropriate lien; and (11) failure to communicate.

**Complaints Received**

<i>Allegations</i>	<i>No. of Complaints</i>
Trust Account Violations.....	9
Conflict of Interest.....	1
Neglect and/or Incompetence.....	81
Misrepresentation or Fraud.....	8
Relationship with Client or Court.....	28
Fees.....	9
Improper Communications.....	3
Criminal Activity.....	0
Personal Behavior.....	7
Other.....	33
Total number of complaints received.....	179