

# DISCIPLINARY QUARTERLY REPORT

Reporting Period: July 1, 2013 – September 30, 2013

## REPORT BY DISCIPLINARY COUNSEL

### Final Decisions

Final Decisions of the NM Supreme Court .....3

*Matter of Bradley R. Sims, Esq.* (Disciplinary No. 08-2012-660) New Mexico Supreme Court entered an order of contempt against Respondent. Respondent was sentenced to thirty (30) days in jail and a bench warrant was issued for failure to appear and Respondent was ordered to comply with other orders issued by this Court.

*Matter of Gilbert Vigil, Esq.* (Disciplinary No. 01-2012-642) New Mexico Supreme Court entered an order of contempt for violating the Court's Order of May 1, 2012. Respondent was ordered to not provide legal advice. Respondent was still permitted to work as a non-attorney representative, but cannot provide legal advice regarding the process or filing of paper work.

*Matter of Augustine Rodriguez, Esq.* (Disciplinary No. 08-2012-658) New Mexico Supreme Court entered an order of suspension for six (6) months. Respondent was further ordered to comply with all Rules of Professional Conduct; upon completion of suspension, Respondent shall be on supervised probation for a period of one (1) year; and shall pay costs to the Disciplinary Board.

**Resignations in Lieu of Discipline .....1**

*Matter of Bruce E. Fogarty, Esq.* (Disciplinary No. 12-2012-661) New Mexico Supreme Court entered an order granting Respondent's petition for resignation. Respondent was ordered to repay any claims made with the Client Protection Fund and any clients that may have money in the trust account; not apply for reinstatement for at least 5 years from the date of order; to take the MPRE and undergo a Character and Fitness Evaluation; and is not able to work in any position of a quasi-legal nature without the approval of disciplinary counsel.

### 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 comply with the client's reasonable requests for information; failure to charge the client a reasonable fee; failure to refund the client advance payment of fees and costs that were not earned or incurred; 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.

Charges were filed against an attorney for allegations of failure to provide competent representation of a client; failure to represent a client diligently; failure to communicate with a client; failure to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party; and by 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 to a client; failure to represent a client diligently; failure to communicate with a client; 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 clients; failure to act with reasonable diligence and promptness in representing clients; bringing frivolous claims in lawsuits; failure to make reasonable efforts to expedite litigation consistent with the interests of clients; engaging in conduct intended to disrupt a tribunal; bringing a lawsuit against a person that has no substantial purpose other than to burden them; failure to give full cooperation and assistance to disciplinary counsel; and by engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to return funds of a client that the client is entitled to receive.

Charges were filed against an attorney for allegations of failure to promptly deliver to an inheritor his or her share of the inheritance; failure to render a full accounting of such property; committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer in other respects; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 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.

Charges were filed against an attorney for allegations by filing a frivolous lawsuit with no basis in law or fact, and without a good faith argument for an extension, modification or reversal of existing law; falsely and recklessly alleging that a Judge had conspired with parties in a case; and by engaging in conduct that is prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure to hold property of clients or third persons separate from lawyer's own property; failure to hold in trust fees or expenses paid to the lawyer in advance; failure to promptly deliver to a third person the funds to which

they were entitled; and failure to reconcile the trust account against client ledgers on a quarterly basis.

### **Petitions for Reciprocal Discipline Filed**

Petitions for reciprocal discipline filed .....1

*Matter of Zbigniew Rozbicki, Esq.* (Disciplinary No. 09-2013-673) Respondent was suspended from the practice of law in the State of Connecticut. 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 .....1

*Matter of David G. Housman, Esq.* (Disciplinary No. 10-2010-604) New Mexico Supreme Court entered an order denying Respondent's petition for reinstatement.

### **Formal Reprimands**

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

### **Informal Admonitions**

Total number of attorneys admonished .....8

An attorney was informally admonished for failing to provide competent representation to a client and for 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 provide competent representation to a client; failing to act with reasonable diligence and promptness in representing a client; charging an excessive fee; failing to hold funds separately and provide an accounting; and engaging in conduct that is prejudicial to the administration of justice in violation of Rules 16-101, 16-103, 16-105, 16-115, and 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished for failing to hold clients' property separate from the attorney's own property and failing to have the proper records related to the operation of an IOLTA in violation of Rules 16-115 and 17-204 of the Rules of Professional Conduct.

An attorney was informally admonished for charging an excessive fee in violation of Rule 16-105 of the Rules of Professional Conduct.

An attorney was informally admonished for knowingly disobeying an obligation under the rules of a tribunal and for engaging in conduct that is prejudicial to the administration of justice in violation of Rules 16-304(c) and Rule 16-804(D) of the Rules of Professional Conduct.

An attorney was informally admonished for representation involving concurrent conflict of interest and allowing the firm to knowingly represent a client when any one of the attorneys practicing alone would be prohibited from doing so in violation of Rules 16-107(a) and 16-110(a) of the Rules of Professional Conduct.

An attorney was informally admonished for representation involving concurrent conflict of interest and allowing the firm to knowingly represent a client when any one of the attorneys practicing alone would be prohibited from doing so in violation of Rules 16-107(a) and 16-110(a) of the Rules of Professional Conduct.

An attorney was informally admonished for knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists and making a frivolous discovery request or failing to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party in violation of Rules 16-304(c) and 16-304(d) of the Rules of Professional Conduct.

### Letters of Caution

Total number of attorneys cautioned .....17

Attorneys were cautioned for the following conduct: (1) accounting for funds; (2) general neglect (2 letters of caution issued); (3) conflict of interest (2 letters of caution issued); (4) theft; (5) contact or threats to opposing party (2 letters of caution issued); (6) ineffective assistance of counsel; (7) misrepresentation to a third party; (8) bank overdraft (3 letters of caution issued); (9) advice outside of the duties of an attorney; (10) failure to file; (11) false statements (3 letters of caution issued); and (12) general incompetence.

### Complaints Received

<i>Allegations</i>	<i>No. of Complaints</i>
Trust Account Violations.....	16
Conflict of Interest.....	1
Neglect and/or Incompetence.....	85
Misrepresentation or Fraud.....	18
Relationship with Client or Court.....	30
Fees.....	13
Improper Communications.....	3
Criminal Activity.....	0
Personal Behavior.....	4
Other.....	14
Total number of complaints received.....	184