

# DISCIPLINARY QUARTERLY REPORT

Reporting Period: January 1, 2015 – March 31, 2015

REPORT BY DISCIPLINARY COUNSEL

## Final Decisions

Final Decisions of the NM Supreme Court .....8

*Matter of Anthony James Ayala, Esq.* (Disciplinary No. 04-2011-614) New Mexico Supreme Court entered an order reinstating Respondent to non-probationary active status.

*Matter of Patricia S. Ortiz, Esq.* (Disciplinary No. 06-2011-623) New Mexico Supreme Court entered an order reinstating Respondent to non-probationary active status.

*Matter of Martin H. Poel, Esq.* (Disciplinary No. 09-2013-675) New Mexico Supreme Court entered an order placing Respondent on supervised probation for a minimum of one (1) year for filing frivolous claims. Respondent will receive a public censure by the Supreme Court of New Mexico and Respondent was ordered pay costs to the Disciplinary Board.

*Matter of Michelle Renee Mladek, Esq.* (Disciplinary No. 11-2013-680) New Mexico Supreme Court entered an order indefinitely suspending respondent from the practice of law for two (2) years for neglect and incompetence. The suspension was deferred and Respondent was placed on supervised probation with a licensed New Mexico attorney approved by disciplinary counsel; and (a) ordered to meet with and fully cooperate with the supervising attorney once a week for the first year and then once a month (or as needed) the second year; (b) pay restitution; (c) pay the Client Protection Fund for any claims paid to her clients; and (d) attend a minimum of twenty (20) hours of continuing legal education in the area of immigration law. Assuming successful conclusion of her supervised probation, Respondent will receive a public censure by the Supreme Court of New Mexico. Respondent was also ordered pay costs to the Disciplinary Board.

*Matter of Trace L. Rabern, Esq.* (Disciplinary No. 05-2014-692) New Mexico Supreme Court accepted a conditional agreement and entered an order indefinitely suspending respondent from the practice of law for failure to communicate, which was deferred upon the following conditions: (a) Respondent was placed on supervised probation for a period of three (3) years with a licensed New Mexico attorney approved by disciplinary counsel; (b) Respondent must meet with and fully cooperate with her supervising attorney once a month for the first six (6) months and then as need according to the supervising attorney; and (c) Respondent will observe other conditions as imposed by the Court. Respondent was also ordered pay costs to the Disciplinary Board.

*Matter of Jose Angel Silva, Jr., Esq.* (Disciplinary No. 02-2009-564) New Mexico Supreme Court entered an order reinstating Respondent, subject to his compliance with continuing minimum education requirements. Respondent presently remains on administrative

suspension until such time as the MCLE Board notifies the Court that Respondent has completed all outstanding MCLE requirements. Upon receipt of such notice, Respondent shall be reinstated to active status.

*Matter of Joshua Carpenter, Esq.* (Disciplinary No. 09-2014-700) New Mexico Supreme Court accepted a conditional agreement and entered an order indefinitely suspending respondent from the practice of law for a minimum of two (2) years for incompetence, breach of confidentiality, a conflict of interest, and other misconduct, which was deferred upon the following conditions: (a) Respondent must repay the Client Protection Fund for any claims paid to his clients; (b) Respondent may not have personal firearms of any type in his law office; (c) Respondent must write letters of apology to former employees; (d) Respondent must submit to three law office practice management including unannounced site visits by the auditor and/or the office of disciplinary counsel. Further, Respondent is under supervised probation with a licensed New Mexico attorney approved by disciplinary counsel, and he must meet with and fully cooperate with the supervising attorney once a week for the first six (6) months and then once a month for the remainder of the probationary period. Assuming successful completion of his probation, Respondent will receive a Formal Reprimand. Respondent was ordered pay costs to the Disciplinary Board.

*Matter of Tom Alan Van Buskirk, Esq.* (Disciplinary No. 11-1998-362) New Mexico Supreme Court entered an order reinstating Respondent to active status.

**Summary Suspensions**

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

**Administrative Suspensions**

Total number of attorneys administratively suspended.....1

*Matter of Brandon Hertzler, Esq.* (Disciplinary No. 01-2015-713) New Mexico Supreme Court entered an order placing Respondent on administrative suspension for failure to cooperate with the Disciplinary Board, failure to respond to the Petition of Administrative Suspension, and failure to appear for oral argument. Chief Disciplinary Counsel or his designee was appointed as inventory attorney and ordered to take possession of any client files and IOLTA accounts.

**Disability Suspensions**

Total number of attorneys placed on disability suspension .....2

*Matter of .....* (Sealed matter) New Mexico Supreme Court entered an order placing Respondent on disability inactive status effective January 26, 2015. Respondent was further ordered to turn all files over to disciplinary counsel and to give disciplinary counsel access to any IOLTA accounts.

*Matter of* ..... (Sealed matter) New Mexico Supreme Court entered an order placing Respondent on disability inactive status effective March 16, 2015. Respondent was further ordered to turn all files over to disciplinary counsel and to give disciplinary counsel access to any IOLTA accounts.

### **Charges Filed**

Charges were filed against an attorney for allegations of failure to hold client's funds or property separate from their own and failure to ensure that the conduct of nonlawyers in the office, over whom the attorney had supervisory authority, was compatible with the attorney's professional obligations.

Charges were filed against an attorney for allegations of failure to represent the client diligently; failure to charge a reasonable fee; failure to ensure that the conduct of nonlawyers in the office, over whom the attorney had supervisory authority, was compatible with the attorney's professional obligations; and by engaging in conduct prejudicial to the administration of justice.

Charges were filed against an attorney for allegations of failure hold the property of another separately from the lawyer's own and failure to maintain complete records of all client funds.

Charges were filed against an attorney for allegations of failure to hold property of clients in a separate account; failure to hold in trust fees or expenses paid to the lawyer in advance; failure to maintain the required records of clients' funds; and by committing a criminal act (conversion) which reflects adversely on the lawyer's fitness as a lawyer.

### **Petitions for Administrative Suspension Filed**

Petitions for administrative suspension filed.....0

*Matter of Brandon Hertzler, Esq.* (Disciplinary No. 01-2015-713) The office of Disciplinary Counsel filed a petition for administrative suspension against Respondent for failing to respond to repeated requests for information.

### **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 .....0

### **Informal Admonitions**

Total number of attorneys admonished .....3

An attorney was informally admonished for failing to properly limit the scope of the representation by obtaining informed consent and a conflict of interest toward a former client in violation of Rules 16-102(C) and 16-109(A) of the Rules of Professional Conduct.

An attorney was informally admonished for soliciting a substantial gift from a client, including a testamentary gift and by engaging in conduct prejudicial to the administration of justice in violation of Rules 16-108(C) and 16-804 (D) of the Rules of Professional Conduct.

An attorney was informally admonished for *ex parte* communication and engaging in conduct prejudicial to the administration of justice in violation of Rules 16-305(B) and 16-804(D) of the Rules of Professional Conduct.

### **Letters of Caution**

Total number of attorneys cautioned .....8

Attorneys were cautioned for the following conduct: (1) conflict of interest; (2) failing to communicate (3 letters of caution issued); (3) overreaching/excessive fees; (4) general incompetence; (5) general misrepresentation to Court; and (6) disclosure of confidence.

### **Complaints Received**

<i>Allegations</i>	<i>No. of Complaints</i>
Trust Account Violations.....	1
Conflict of Interest.....	0
Neglect and/or Incompetence.....	83
Misrepresentation or Fraud.....	14
Relationship with Client or Court.....	21
Fees.....	9
Improper Communications.....	3
Criminal Activity.....	3
Personal Behavior.....	18
Other.....	8
Total number of complaints received.....	160