

SUPREME COURT OF NEVADA

In re Gardner

429 P.3d 1247 (Nev. 2018) · Decided November 9, 2018

SUMMARY

The Nevada Supreme Court approved a conditional guilty plea agreement concerning attorney Douglas J. Gardner's violations of Nevada Rule of Professional Conduct 1.15 involving the handling of client property. The court imposed a 24-month suspension, with all but the first three months stayed, followed by two years of probation and specified conditions.

CASE DETAILS

COURT	Supreme Court of Nevada
JURISDICTION	Nevada
DECIDED	November 9, 2018
DISPOSITION	approved
PROCEDURAL POSTURE	Automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation to approve a conditional guilty plea agreement and specified attorney discipline.
STANDARD OF REVIEW	Automatic review of the agreed-upon attorney discipline under SCR 113; the court independently determined whether the discipline sufficiently protected the public, the courts, and the legal profession.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential value not otherwise specified in the source text.

TOPICS

appellate procedure

remedies

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether the conditional guilty plea agreement and agreed-upon discipline sufficiently protect the public, the courts, and the legal profession.
2. What discipline is appropriate for Gardner's admitted violations of RPC 1.15.

HOLDINGS

1. The agreed-upon discipline is appropriate and sufficiently protects the public, the courts, and the legal profession.
2. Gardner is suspended for 24 months, with all but the first three months stayed, commencing on the date of the order, and is placed on probation for two years subject to payment, reporting, continuing-legal-education, and cost-payment conditions.

KEY QUOTATIONS

"In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating and mitigating factors.""

FACTUAL BACKGROUND

Gardner admitted that he violated RPC 1.15 by allowing his trust account to be out of balance on three occasions, depositing personal funds into the account, and making personal payments from it. One client may have suffered actual harm, and Gardner's personal use of the trust account exposed other clients to potential injury; the record also supported four aggravating and seven mitigating circumstances.

PROCEDURAL HISTORY

Attorney Douglas J. Gardner entered a conditional guilty plea agreement admitting violations of RPC 1.15 and agreeing to a 24-month suspension, with all but the first three months stayed for two years subject to conditions. A Southern Nevada Disciplinary Board hearing panel recommended approval, and the Nevada Supreme Court conducted automatic review under SCR 113.

DISPOSITION

approved

CASES CITED

- State Bar of Nev. v. Claiborne, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988)
- In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008)

OPINION

PER CURIAM.

Douglas J. Gardner Bar Counsel, State Bar of Nevada Executive Director, State Bar of Nevada Admissions Office, U.S. Supreme Court ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Douglas J. Gardner.

Under the agreement, Gardner admitted to violating RPC 1.15 (safekeeping property) and agreed to a 24-month suspension, with all but the first 3 months stayed for a period of 2 years with conditions. Gardner has admitted to the facts and violation as part of his plea agreement.

The record therefore establishes that Gardner violated RPC 1.15 (safekeeping property) by having his trust account out-of-balance on three occasions, depositing personal funds into his trust account, and making personal payments from his trust account.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline).

In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating and mitigating factors."

In *re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Gardner has admitted that he violated his duty to his clients to safekeep their property. His mental state was knowing as he acknowledged that he had poor record keeping habits. One of Gardner's clients may have actually been harmed, but regardless, Gardner's personal use of his trust account exposed additional clients to potential injury.

Thus, the baseline sanction before considering aggravating and mitigating circumstances is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.").

The record supports the panel's findings of four aggravating circumstances (pattern of misconduct, multiple offenses, vulnerability of victim, and substantial experience in the practice of law) and seven mitigating circumstances (absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to disciplinary authority or cooperative attitude toward proceedings, character and reputation, physical disability, and remorse).

Considering all four factors, we conclude that the agreed-upon discipline is appropriate. Accordingly, we hereby suspend attorney Douglas J. Gardner for 24 months, with all but the first 3 months stayed, commencing from the date of this order. Further, Gardner is placed on probation for two years as of the date of this order subject to the following conditions: (1) if Gardner is unable to provide proof of payment of \$21,955.32 to Hedy Calabrese, he shall pay her that amount within the probationary period; (2) Gardner shall provide quarterly documentation to the State Bar as agreed upon in the plea agreement; (3) during his probation, he shall complete six live CLE

hours relating to law office management, in addition to the annual CLE requirements, unless the State Bar agrees to an alternative format for those CLE hours; and (4) he shall pay the costs of the bar proceeding, including \$2,500 under SCR 120, within 120 days from receipt of the State Bar's invoice.

The parties shall comply with SCR 115 and SCR 121.1. It is so ORDERED.