

1 Case No. SG14-0127

2 STATE BAR OF NEVADA

3 SOUTHERN NEVADA DISCIPLINARY BOARD

4 STATE BAR OF NEVADA,)
)
 5 Complainant,)
)
 6 vs.)
)
 7 TODD LEVENTHAL, ESQ.)
)
 8 Respondent.)
 9 _____)

10 PUBLIC REPRIMAND

11 TO: TODD LEVENTHAL, ESQ.

12 You were retained by Charlene Ellis ("Ellis") to represent her in four drug cases in the
 13 Fifth Judicial District Court of the State of Nevada; 12CR1339, 12CR01413, 12CR01414 and
 14 11CR00612. The charges against Ellis included: three counts Offer, Attempt or Commission
 15 of Unauthorized Acts(s) Relating to Controlled Substance, First Offense, in violation of NRS
 16 453.321/NRS 195.020, a category B felony; one count Trafficking in a Schedule I Controlled
 17 Substance in violation of NRS 453.3385 (High Level Trafficking greater than 28 grams), a
 18 Category A felony; and one count Conspiracy to Violate the Uniform Controlled Substance
 19 Act in violation of NRS 453.401, a Category C felony.

20 In Case Numbers 12 CR 01413A, 12 CR 01414A and 12 CR 01399A, the allegations
 21 raised by the State were that on February 8, 2011, February 9, 2011 and February 22, 2011,
 22 Ellis directed a co-defendant to sell drugs supplied by her to an undercover officer for which
 23 she received the proceeds of the sale. Case Number 11 CR 00612 pertained to the sale of
 24 drugs which occurred on March 1, 2011. In connection with that case, Ellis was interviewed
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1 and admitted selling drugs for a period of four months, and using her co-defendant for
2 deliveries.

3 When Ellis originally retained your services, she paid \$400 in cash and delivered a jet-
4 ski and trailer, for which you extended \$800 of credit. You advised Ellis that you would be
5 working with Mark Zane ("Zane") of Zane Investigations for investigative services. Mr. Zane's
6 duties would include interviewing witnesses and assisting with the defense of the case.

7 On June 14, 2012, at the preliminary hearing for Case 11 CR 00612, you notified the
8 court that you did not have regular contact with your client and that she was therefore unable
9 or unwilling to retain your services. You stated you were there for the sole purpose of
10 waiving her preliminary hearing and rejecting her plea offer issued by the District Attorney.

11 You subsequently advised Ellis that you would no longer represent her without
12 additional compensation. On July 16, 2012, you entered a "FLAT FEE RETAINER
13 AGREEMENT" with Ellis for a fixed flat fee of \$125,000. The fee agreement stated that the
14 fee was "NON-REFUNDABLE" and was "Paid in full by issuance of Quit Claim Deed APN:
15 41-471-13, Nye County Nevada, without Incumbrance." Your agreement provided for you to
16 pay all back taxes that Ellis owed on the property, including satisfying the County's lien.

17 As referenced in the fee agreement, you prepared a Quit Claim Deed for Ellis'
18 residence described in the deed as Lot 81 of Golden Springs Ranch Unit 3, Nye County,
19 Nevada ("the Property"). The Quit Claim Deed was in favor of TEGO, LLC and TLC
20 NEVADA, INC. TEGO, LLC is a Nevada limited liability company whose Articles of
21 Incorporation were filed on February 13, 2012. You are listed as the Manager of the entity
22 and are also listed as the registered agent. TLC, NEVADA, INC. is a registered Nevada
23 Corporation with Zane listed as President and Director.

24 On February 7, 2013, you attended a preliminary hearing on behalf of Ellis for Case
25 Numbers 12 CR 01413A, 12 CR 01414A and 12 CR 01399A in Pahrump Justice Court. The

1 State called three witnesses, including two police officers and a previous co-defendant. You
2 called no witnesses on behalf of Ellis. At the conclusion of the hearing, the three matters
3 were bound over to the Fifth Judicial District Court of Nye County.

4 On April 8, 2013, you attended a hearing before Judge Lane in District Court
5 Department 2. Ellis was arraigned on the three criminal matters bound over from Justice
6 Court on February 7, 2013. On the same date, in the same department, there was a
7 calendar call on the fourth case. The case numbers were referenced in District Court as CR-
8 7198, CR-7199, CR-7200 and CR-7201.

9 As to the fourth case, set for calendar call, the prosecutor requested the case be
10 continued. You concurred with the request for continuance.

11 Both you and the prosecutor represented to the Judge that they desired to try all four
12 cases consecutively. The prosecutor estimated that each would take no more than two days
13 or a combined total of approximately eight days of trial.

14 The Court set a calendar call for all four matters on December 16, 2013. He directed
15 that the parties at that time could advise him which case would begin first. Trial was set for
16 four days from January 14, 2014 through January 17, 2014. The Judge stated he would wait
17 to provide other days pending the outcome of settlement negotiations.

18 On December 16, 2013, the day scheduled for calendar call, you brought a Motion to
19 Continue, stating you had a federal trial during this trial setting and requested a later setting.
20 The request for continuance was granted based on a lack of objection from the State.

21 On January 24, 2014, Ellis submitted a grievance to the State Bar stating that she had
22 received a 30 day notice to vacate the premises which was served by Zane. She
23 subsequently received a 5 day notice to vacate, also served by Zane who had filed eviction
24 proceedings against Ellis. The eviction was upheld in the court, but the Judge had cautioned
25 you and Zane to seriously consider the ethical implications of your conduct. At that hearing,
Zane explained to the Court that Ellis had sent a "text" message proposing to flood the

1 property for the ostensible purpose of collecting insurance proceeds which you construed as
2 an attempt to commit fraud and, based upon that, decided to have her evicted.

3 Ellis appealed the eviction judgment of the Justice Court to District Court. Ellis also
4 filed a civil action separate of the appeal in District Court by and through retained counsel,
5 Matthew Callister ("Callister"). On July 3, 2014, Callister sent you a letter on behalf of Ellis
6 terminating your services in her criminal matters.

7 On July 23, 2014, you filed an Ex Parte Motion for an Order Shortening Time and a
8 Motion to Withdraw as Counsel for all of criminal matters pertaining to Ellis. As part of the
9 Motion to Withdraw, you submitted an Affidavit claiming that the eviction proceedings "were
10 undertaken by one of the owners of the property." You claimed this was done due to threats
11 made by Ellis to commit insurance fraud.

12 On August 4, 2014, Respondent's Motion to Withdraw as Counsel was granted. On
13 August 5, 2014, the Court appointed new counsel for Ellis. Ellis never received any work
14 product or investigative materials from you or Zane following your termination as her counsel.

15 The non-refundable fee agreement and subsequent deed transfer failed to comply
16 with the Rules of Professional Conduct, as well as the guidelines set forth in State Bar of
17 Nevada Standing Committee on Ethics and Professional Responsibility Formal Opinions 15
18 and 37. You failed to reasonably explain the terms of the fee agreement to Ellis in a manner
19 she could properly understand and failed to provide Ellis a reasonable opportunity to obtain
20 the advice of independent counsel as to whether it would be in her best interests to enter the
21 agreement.

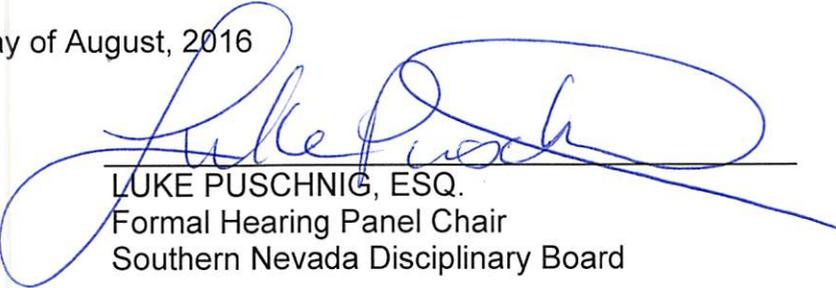
22 The transaction was also unreasonable in light of your failure to provide the promised
23 services to Ellis. Although you argued she improperly fired you, in fact, you created a conflict
24 of interest with Ellis by using Zane to evict her from the home, which resulted in your
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1 foreseeable termination. Finally, your inclusion of Zane's entity on the deed also represented
2 an improper sharing of legal fees with a non-attorney.

3 The Formal Hearing Panel, in reaching their findings and conclusions, noted your
4 reputation as an excellent attorney, otherwise unblemished longstanding legal career and
5 your character and reputation in the community.

6 In light of the foregoing, you violated Rule of Professional Conduct ("RPC) 1.5 (Fees),
7 RPC 1.7 (Conflicts of Interest: Current Clients), RPC 1.8 (Conflict of Interest: Current Clients:
8 Specific Rules), RPC 5.4 (Professional Independence of a Lawyer) and RPC 8.4
9 (Misconduct) and are hereby **PUBLICLY REPRIMANDED**. You are also directed to prepare
10 and file a deed transferring full title of the Property back to Ellis.

11 Dated this 23rd day of August, 2016

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14 LUKE PUSCHNIC, ESQ.
15 Formal Hearing Panel Chair
16 Southern Nevada Disciplinary Board
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