

STATE BAR OF NEVADA

April 18, 2019



LETTER OF REPRIMAND

Calvin X. Dunlap, Esq.
Dunlap & Laxalt
P.O. Box 3689
Reno, Nevada 89505

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

Re: State Bar of Nevada Disciplinary Grievance No. 18-1016

Dear Mr. Dunlap:

A Screening Panel of the Northern Nevada Disciplinary Board has reviewed the above-referenced grievances and unanimously determined that a Letter of Reprimand be issued for violations of Rules of Professional Conduct (RPC) in the handling of your IOLTA Trust Account.

FACTUAL BACKGROUND:

On August 29, 2018, the Office of Bar Counsel received an overdraft notification from Torrey Pines Bank regarding your IOLTA trust account. A check in the amount of \$77,293.82 was presented for payment on August 27, 2018, and honored despite insufficient funds. The State Bar asked you to provide an explanation for the overdraft.

In response, you stated that the check was issued under very unusual circumstances following the lengthy litigation of a complex multi-part personal injury, insurance and medical lien claim matter. You explained that your personal injury client accumulated approximately \$745,966 in medical bills and the multiple insurance policies available to the client totaled \$465,000, leaving a potential deficit of \$280,966. But, because of the age of the injured client, most of his bills were paid by Medicare. After disbursing a majority of the funds to the client and the medical lienholders, in April 2017, your office secured a refund from Medicare. You asserted an interest in the refunded monies and withdrew them from the IOLTA trust account thinking there would not be a dispute about the disbursement of those funds. However, the client did dispute how those monies should be disbursed. The client asserted that the refund should be disbursed only to him. You believed that amount was overstated by \$39,000, but agreed to the client's figure to settle the dispute. Several meetings were held in August to go over the records and to compare figures and disputed amounts. At the last meeting, held August 24, 2018, the firm issued a check to the client for the \$77,293.82 with, what you thought was, an

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understanding that before the check was deposited, you were “going to check a couple more things.” You and your client claim there was a misunderstanding about delaying the deposit and the client deposited the check immediately.

Your local banker contacted you to report a deficiency in the amount of \$26,503.91 but cleared the check anyway and the client was promptly paid. Upon receiving that notification, you deposited the funds that cleared and eliminated the deficiency.

Because of the overdraft, the State Bar subpoenaed your IOLTA Trust Account records and you were asked to account for a number of large withdrawals that were made in the six months prior to the overdraft, including providing the supporting documentation for each withdrawal. In a supplemental response, you provided documentation for three cases, including the above-referenced case, which explained the majority of the withdrawals. However, you could not readily account for the remaining withdrawals. At the State Bar’s instance, you then researched and provided additional documentation for two more cases that verified the oldest two withdrawals were partial withdrawals of earned fees. Your explanation of these withdrawals indicated that you leave a substantial amount of earned fees in the IOLTA Trust Account and do not always withdraw your earned fees in one lump sum. The documentation does not indicate that you fail to properly disburse funds to clients or lienholders or that you are personally withdrawing more than your earned fees, except in the aforementioned instance of the premature withdrawal.

APPLICABLE RULES OF PROFESSIONAL CONDUCT:

Rule 1.15 (Safekeeping of Property) of the Nevada Rules of Professional Conduct (“RPC”) requires that attorneys keep third-party funds separate from their own funds, except for a *de minimus* amount that can be maintained in an IOLTA trust account for payment of fees associated with the account. It also requires an attorney to hold funds until any dispute regarding disbursement is resolved. In this instance, you prematurely withdrew funds that ultimately were the subject of dispute. In addition, you held more than the *de minimus* amount in your IOLTA Trust Account, which is co-mingling of funds, and your accounting of the funds in the IOLTA Trust Account was incomplete until the State Bar required you to provide a detailed accounting. Your premature withdrawal of funds exposed your client to injury, which was avoided when you were able to quickly transfer the disputed funds back to the IOLTA Trust Account. Your co-mingling of your funds with clients’ funds exposes your clients’ funds to the risk of attachment by your own creditors and the potential that you will overdraw from the account. Your inability to promptly account for the funds withdrawn from the IOLTA Trust Account also exposes the potential that you will overdraw from the account.

Standard 4.12 of the ABA Standards for Imposing Lawyer Sanctions provides that “suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and cause injury or potential injury to a client.” Withdrawing funds in which a third-party (i.e. client) may have an interest before resolving any disputes is dealing improperly with client property. Failing to withdraw earned funds from an IOLTA Trust Account is dealing improperly with client property

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because it is co-mingling the lawyer's property with the client's property. Failing to be able to promptly account for the transactions in an IOLTA Trust Account evidences dealing improperly with the account as well. You have been practicing law for almost 50 years and should know how to properly deal with funds in an IOLTA Trust Account. Your failures had the potential to cause serious injury to a client because client funds could easily be misappropriated under these circumstances. However, no client was ultimately injured by your failures and you have no instances of prior discipline. Therefore, it is appropriate to deviate from the sanction of suspension to the issuance of a Letter of Reprimand.

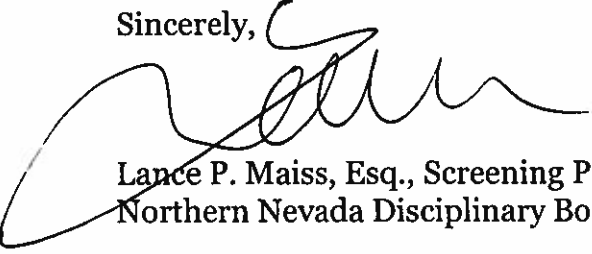
REPRIMAND

Based upon the foregoing, you are hereby REPRIMANDED for your conduct related to representation of the foregoing clients, which conduct violated Nevada Rules of Professional Conduct ("RPC") as follows:

RPC 1.15 (Safekeeping Property) for failing to wait for a client to be able to dispute the distribution of funds prior to your withdrawal of those funds and for failing to timely withdraw all of your earned fees.

Finally, in accordance with Nevada Supreme Court Rule 120 you are assessed costs in the amount of \$1,500.

Sincerely,



Lance P. Maiss, Esq., Screening Panel Chair
Northern Nevada Disciplinary Board

RKF/lp