

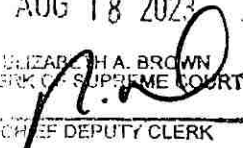
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
LESLIE SHAW, BAR NO. 1512.

No. 86377

FILED

AUG 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER REJECTING RECOMMENDATION

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Leslie Shaw be issued a letter of reprimand based on a violation of RPC 1.7 (conflicts of interest: current clients). Shaw has filed a brief and the State Bar has filed a response.

The State Bar has the burden of showing by clear and convincing evidence that Shaw violated RPC 1.7. *See In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). That rule prohibits a lawyer from concurrently representing clients that have conflicting interests, which the rule defines as when "[t]he representation of one client will be directly adverse to another client; or . . . [t]here is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(1)-(2).

Here, the record does not provide clear and convincing evidence that Shaw violated RPC 1.7. Shaw represented a client with diminished capacity. That client had previously, while competent, executed a power of attorney naming her daughter as her attorney-in-fact, and giving her daughter the power to seek guardianship over the client in the event of the

client's incompetence or incapacity. After a medical professional found the client to be incompetent and possibly being subjected to undue influence, Shaw, who was also concerned with nonfamily members taking advantage of the client, represented the daughter in seeking temporary guardianship over the client.¹ In the months preceding the guardianship petition, Shaw was unable to directly contact the client as nonfamily members had removed her from her assisted living facility. At the guardianship hearing, the client stated she did not wish to have a guardian, the district court noted concerns about a conflict of interest, Shaw withdrew from representing the daughter, and the petition was ultimately dismissed. Shaw testified that the guardianship hearing was the first time he heard the client oppose guardianship.

Based on these facts, Shaw's representation of the daughter was not adverse to his client's interest as contemplated by RPC 1.7, and there was no concurrent conflict of interest between the client and the daughter when Shaw filed the guardianship petition. As soon as the conflict arose—when the client expressed her disagreement with the guardianship—Shaw moved to withdraw. Moreover, RPC 1.14(b) permits an attorney to “take reasonably necessary protective action” when they “reasonably believe that [their] client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest.” Indeed, RPC 1.14(b) contemplates an attorney with such a client may need to “seek[] the appointment of a guardian ad litem, conservator or guardian.” The record

¹The guardianship petition sought an order granting the daughter temporary guardianship to take the client to an interview where the client would be assessed for a professional guardian.

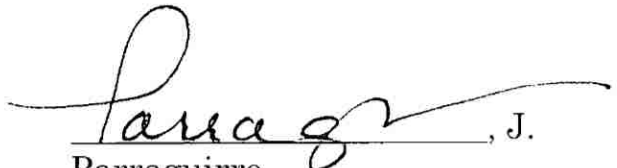
demonstrates that Shaw had a reasonable belief that his client had diminished capacity and was at risk of harm without intervention. And the rule does not explicitly prohibit the attorney from representing another person in petitioning for that guardianship. While the hearing panel below and the State Bar on appeal rely on an ABA opinion discussing RPC 1.14(b) to support their assertion that the rule prohibits an attorney from representing a third party in seeking the guardianship, *see* The ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 96-404 (1996), that opinion fails to acknowledge RPC 1.14(b)'s broad language and we therefore do not find it to be persuasive. *See In re Thetford*, 574 S.W.3d 362, 377-78 (Tex. 2019) (discussing the ABA opinion and noting that RPC 1.14(b)'s language is broader than the ABA opinion's analysis insinuates).

For the reasons stated above, we conclude that clear and convincing evidence does not support the disciplinary panel's recommendations. Accordingly, we disapprove and reject the panel's recommendation.

It is so ORDERED.²


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

²We decline to address Shaw's due process arguments as he failed to support those arguments with citations to relevant authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider claims that were not supported by relevant authority).

cc: Leslie J. Shaw
Chair, Northern Nevada Disciplinary Board
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court