

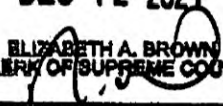
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
ALEX B. GHIBAUDO, BAR NO. 10592  
and MICHANCY M. CRAMER, BAR NO.  
11545.

No. 86960

**FILED**

DEC 12 2024

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

*ORDER OF SUSPENSION  
AS TO ALEX B. GHIBAUDO*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Alex B. Ghibaudo be publicly reprimanded for multiple violations of RPC 3.1 (meritorious claims and contentions), RPC 3.4(c), (d) (fairness to opposing party and counsel), RPC 3.5(d) (decorum of the tribunal), RPC 4.4(a) (respect for rights of third persons), and RPC 8.4(a), (d) (misconduct). The State Bar challenges the hearing panel's finding that Ghibaudo had a negligent mental state when committing his various acts of misconduct. Ghibaudo disagrees and also challenges several of the panel's findings as to the RPC violations.

The State Bar has the burden of showing by clear and convincing evidence that Ghibaudo committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). "Our review of the panel's findings of fact is deferential, so long as they are not clearly erroneous and are supported by substantial evidence." *In re Discipline of Colin*, 135 Nev. 325, 330, 448 P.3d 556, 560 (2019) (citing SCR 105(3)(b)). However, we apply de novo review to the panel's conclusions of law. SCR 105(3)(b).

Having reviewed the record and considered the parties' arguments, we agree with the hearing panel that Ghibaudo violated RPC 3.1 and RPC 3.4 by issuing a deposition notice for a legal holiday and in person. In doing so, Ghibaudo disobeyed rules of the tribunal, one of which precluded in-person depositions at the time, and Ghibaudo did not have a non-frivolous basis for his actions. See RPC 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . . ."); RPC 3.4(c) (providing that a lawyer shall not disobey the rules of a tribunal), (d) (directing lawyers to refrain to make frivolous discovery requests). We also agree with the panel's findings and conclusion that Ghibaudo violated RPC 3.4(c) by disobeying the court's admonitions during a hearing on October 20, 2020, and that he violated RPC 4.4(a) by sending six separate emails with language that had "no substantial purpose other than to embarrass" a third party. RPC 4.4(a). Finally, the record supports the panel's findings and conclusion that Ghibaudo violated RPC 8.4 by committing the violations of the rules as noted herein by his actions during the October 20, 2020, court hearing.<sup>1</sup> See RPC 8.4(a) (explaining that it is misconduct when an attorney violates the rules of professional conduct).

We agree with Ghibaudo, however, as to two of the violations. First, we conclude that Ghibaudo's conduct during the October 20, 2020, court hearing did not disrupt proceedings and therefore the RPC 8.4(d) violation must be dismissed. See RPC 8.4(d) ("It is professional misconduct for a lawyer to . . . [e]ngage in conduct that is prejudicial to the administration of justice."); *In re Discipline of Colin*, 135 Nev. 325, 332, 448

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<sup>1</sup>We reject Ghibaudo's argument that the RPC 8.4 charges should be dismissed as duplicative, as his actions violated multiple rules.

P.3d 556, 562 (2019) (explaining that conduct that “is intended to or does disrupt a tribunal” may constitute an RPC 8.4(d) violation). Second, we conclude that substantial evidence does not support the panel’s findings as to the RPC 3.5(d) violation. The plain language of RPC 3.5(d) provides that “[a] lawyer shall not engage in conduct intended to disrupt a tribunal.” Here, the panel found that Ghibaudo violated RPC 3.5(d) during an October 20, 2020, court hearing when he made inappropriate comments to opposing counsel and a district court judge. Although we conclude that Ghibaudo acted with a knowing mental state during that hearing, the record does not support that he acted with an intent to disrupt the court proceedings. Accordingly, we conclude that the panel erred in finding that Ghibaudo violated RPC 3.5(d).

In determining the appropriate discipline for Ghibaudo’s violations of RPC 3.1, RPC 3.4, RPC 4.4, and RPC 8.4(a), 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 or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). The record supports that Ghibaudo violated four duties to the legal profession (meritorious claims and contentions, fairness to opposing party and counsel, respect for rights of third persons, and misconduct). And we agree with the hearing panel that Ghibaudo’s actions caused actual or potential injury because they may have delayed proceedings and resolution of the issues in the litigation.

However, we disagree that Ghibaudo had a negligent mental state in committing the various acts of misconduct. We first reject Ghibaudo’s argument that a negligent mental state is supported by his testimony that he was suffering from bipolar disorder and was unable to

secure treatment or medication for that condition at the relevant time. Although physical or mental disabilities may be considered as mitigating circumstances when deciding appropriate discipline “after misconduct has been established,” Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standards 9.1, 9.3 (Am. Bar Ass’n 2023) (*Standards*); see also SCR 102.5(2) (listing mitigating circumstances), we are not convinced that they support a negligent mental state. The record reflects that Ghibaudo had a knowing mental state during the October 20, 2020, hearing. *Standards* at 452 (explaining that an attorney acts with a knowing mental state when he acts with “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result”). The record also reflects that Ghibaudo acted with an intentional mental state when sending the emails, as each evince that he had a “conscious objective or purpose to accomplish a particular result,” *id.* (defining an intentional mental state), particularly where he copied third parties including a mediator and the administrator of a court-watching website. Finally, the record reflects that Ghibaudo acted with an intentional mental state by setting an in-person deposition for a holiday (Christmas Day) when there was a standing district court order prohibiting in-person depositions due to the COVID-19 pandemic.

Because the most serious misconduct was Ghibaudo’s intentional violation of his duty to respect the rights of third parties, the baseline sanction, before considering aggravating or mitigating circumstances, is suspension. See *Standards*, Standard 6.22 (“Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a



party, or causes interference or potential interference with a legal proceeding.”). Substantial evidence in the record supports four aggravating circumstances (prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and six mitigating circumstances (absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to disciplinary authority or cooperative attitude toward proceeding; character or reputation, interim rehabilitation, and remorse).<sup>2</sup> See SCR 102.5 (listing “[a]ggravating and mitigating circumstances [which] may be considered in deciding what sanction to impose”). Considering all of the *Lerner* factors, we conclude that a 90-day actual suspension serves the purpose of attorney discipline. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (recognizing that the purpose of attorney discipline is to protect the public, the courts, and the legal system).

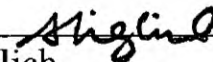
Accordingly, we hereby suspend attorney Alex B. Ghibaudo for a period of 90 days for violating RPC 3.1 (meritorious claims and contentions), RPC 3.4(c), (d) (fairness to opposing party and counsel), RPC 4.4(a) (respect for rights of third persons), and RPC 8.4(a) (misconduct). Ghibaudo shall pay the costs of the disciplinary proceedings, plus fees in the amount of \$2,500, see SCR 120(3), within 30 days from the date of this

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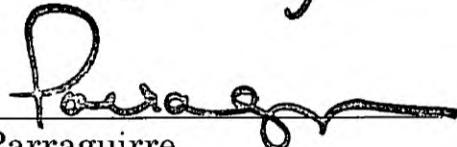
<sup>2</sup>The panel also found the mitigating circumstance of mental disability, but there is no medical evidence in the record concerning Ghibaudo’s diagnosis or that it caused the misconduct at issue here. See SCR 102.5(2)(i) (listing requirements to consider a mental disability as a mitigating circumstance).

order.<sup>3</sup> Ghibaudo shall continue active treatment for his bipolar disorder and obtain a State Bar-approved mentor to ensure he is undergoing treatment and who will report any relapses to the State Bar. Finally, Ghibaudo must complete an additional six (6) hours of continuing legal education in the area of civility, in addition to his annual CLE requirement. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

cc: Chair, Southern Nevada Disciplinary Board  
Glenn Machado  
Rob W. Bare  
Bar Counsel, State Bar of Nevada  
Executive Director, State Bar of Nevada  
Admissions Office, U.S. Supreme Court

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<sup>3</sup>Ghibaudo shall pay the State Bar's costs jointly and severally with attorney Michancy M. Cramer, but Ghibaudo is solely responsible for the \$2,500 fee pursuant to SCR 120(3).