

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
BRIAN J. SMITH, BAR NO. 11279.

No. 89309

FILED

FEB 27 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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 Brian J. Smith. Under the agreement, Smith admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 1.15 (safekeeping property) and agreed to a six-month-and-one-day suspension stayed until December 13, 2026, subject to certain conditions.¹

Smith admitted the facts and violations as part of the conditional guilty plea agreement. Smith failed to diligently represent his client in removing the client's name from the Nevada sex offender list, failed to respond to the client's inquiries, and did not properly safekeep the client's retainer. As a result, the client had to handle the matter separately and did not receive a refund of the unearned portion of the retainer.

The issue for this court is whether the agreed-upon discipline sufficiently "protect[s] the public, the courts, and the legal profession." *In*

¹Under the agreement, this stayed suspension would be concurrent with the stayed suspension in *In re Discipline of Smith*, No. 87435, 2023 WL 8660948 (Nev. Dec. 14, 2023) (Order Approving Conditional Guilty Plea Agreement).


re Discipline of Arabia, 137 Nev. 568, 571, 495 P.3d 1103, 1109 (2021) (stating the 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 or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Smith admitted to knowingly violating duties owed to his client (diligence, communication, and safekeeping property). Smith further admitted his conduct caused actual injury to the client because there were no funds available to return to the client when Smith failed to perform the agreed-upon legal services. The baseline sanction for such violations, before considering the aggravating or mitigating circumstances, is suspension. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standards 4.12, 4.42(a) (Am. Bar Ass’n 2023) (providing that suspension is 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” and when “a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client”). The record supports one aggravating circumstance (substantial experience in the practice of law) and four mitigating circumstances (personal or emotional problems; full and free disclosure to the disciplinary authority and cooperative attitude towards the proceeding; imposition of other penalties; and remorse). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.


Accordingly, we hereby suspend attorney Brian J. Smith from the practice of law in Nevada for six months and one day, with the suspension stayed until December 13, 2026, subject to the conditions

outlined in the conditional guilty plea agreement. Those conditions include that Smith receive no discipline for conduct engaged in during the stay period; not engage in solo practice; submit to an evaluation with the Nevada Lawyer Assistance Program and follow any recommendations; report monthly to the Office of Bar Counsel; return \$2,500 to the client within five months following the date of this order; and return the remaining \$2,500 to the client within one year following the date of this order. Smith shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within one year following the date of this order. The State Bar shall comply with SCR 121.1.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Brian J. Smith
Chair, Southern Nevada Disciplinary Board
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court