

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
SANDY VAN, BAR NO. 10785.

No. 88974

FILED

OCT 24 2025

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

ORDER OF REMAND

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Sandy Van be suspended for three years for violating RPC 5.4 (professional independence of a lawyer), with the suspension stayed for three years subject to certain conditions. Both Van and the State Bar challenge the hearing panel's determinations, as well as an interlocutory order dismissing multiple counts in the disciplinary complaint.

After receiving grievances from multiple clients and conducting an almost year-long investigation, the State Bar filed a disciplinary complaint against Van. The complaint alleged numerous RPC violations relating to Van's representation of multiple clients, an improper business relationship with a nonlawyer (Ngan Van Le), and improper solicitation of clients. In response, Van filed a motion to dismiss, or alternatively, for a more definite statement. Van argued that the complaint was not sufficiently pleaded and, further, that the complaint should be dismissed due to alleged breaches of confidentiality by the State Bar. After a telephonic hearing, the panel chair issued an order granting in part and denying in part Van's motion.

The State Bar filed an amended complaint, and the matter proceeded to a four-day disciplinary hearing. The hearing panel found one violation, determining Van had violated RPC 5.4 (professional independence of a lawyer). The hearing panel found that the State Bar had failed to prove Van had violated RPC 5.3 (responsibilities regarding nonlawyer assistants) and RPC 5.5 (unauthorized practice of law). The State Bar challenges the prehearing dismissal of two counts, and both Van and the State Bar challenge the hearing panel's findings of fact and recommendation.

Prehearing dismissal of the RPC 1.7 and RPC 7.3 charges

The State Bar challenges the panel chair's dismissal of two counts without leave to amend based, in part, on alleged breaches of confidentiality by the State Bar. The counts at issue involved violations of RPC 1.7 and RPC 7.3.

Van alleged, and the panel chair considered, breaches of confidentiality occurring both before and after the filing of the complaint. Specifically, the parties agree that before filing the complaint, the State Bar shared Van's initial narrative responses with the clients who filed the grievances or their attorney of record. Van also alleged that the State Bar leaked other confidential documents before filing the complaint, but Van does not provide evidence to support these allegations. Van further alleged that after the complaint was filed, the State Bar improperly shared information in response to public records requests.

Even assuming there was a breach of confidentiality, we conclude that dismissal is not an appropriate remedy. This court has never held that dismissal is an appropriate remedy for a breach of confidentiality by the State Bar. And, assuming that the concept of prosecutorial

misconduct applies in bar disciplinary proceedings, we conclude that the alleged misconduct would not warrant dismissal here. In the criminal context, dismissal of an indictment or charging document on the basis of governmental misconduct is an extreme sanction that should be utilized infrequently. *Sheriff v. Keeney*, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990). To warrant dismissal of a charging document, “the defendant must show substantial prejudice.” *Lay v. State*, 110 Nev. 1189, 1198, 886 P.2d 448, 454 (1994). Dismissal *with prejudice* is an even more extreme remedy “warranted when the evidence against a defendant is irrevocably tainted or the defendant’s case on the merits is prejudiced to the extent that notions of due process and fundamental fairness would preclude reindictment.” *State v. Gonzalez*, 139 Nev. 304, 307, 535 P.3d 248, 252 (2023) (quoting *State v. Babayan*, 106 Nev. 155, 171, 787 P.2d 805, 818 (1990)).

Applying the same standard here, neither Van nor the panel chair’s order identify any prejudice that Van suffered as a result of the alleged misconduct by the State Bar. At most, they point to conclusory allegations of hardships Van has suffered outside of the disciplinary process. And neither Van nor the order demonstrate how the purported misconduct irrevocably tainted evidence or prejudiced Van’s defense. Finally, dismissal, especially dismissal with prejudice, under such circumstances does not serve the purpose of attorney discipline, which “is to protect the public, the courts, and the legal profession.” *Matter of Discipline of Arabia*, 137 Nev. 568, 571, 495 P.3d 1103, 1109 (2021). Accordingly, the panel chair erred by premising the dismissal of the RPC 1.7 and RPC 7.3 counts on confidentiality breaches. And to the extent the panel chair relied on NRCP 12(b)(5) to dismiss those counts, the panel chair erred because the record would not support dismissal under that rule either.

Evidentiary issues

The parties also raise two evidentiary issues. First, the State Bar argues that the hearing panel erred in precluding an adverse inference based on Van's invocation of the Fifth Amendment during the investigation. Van invoked the Fifth Amendment in a written response to a letter from the State Bar requesting information or documents. An adverse inference may be drawn in a civil proceeding from a party's assertion of the Fifth Amendment, so long as "independent evidence exists of the fact to which the party refuses to answer." *Aspen Fin. Servs., Inc. v. Eighth Jud. Dist. Ct.*, 128 Nev. 635, 647 n.3, 289 P.3d 201, 209 n.3 (2012) (quoting *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000); see also *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) ("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.")). Disciplinary proceedings in Nevada are treated as civil actions. *In re Discipline of Arabia*, 137 Nev. at 571, 495 P.3d at 1109-10. Thus, an adverse inference may be drawn in a disciplinary proceeding based upon the attorney's invocation of the Fifth Amendment. Accordingly, the hearing panel should have considered whether it was appropriate to draw an adverse inference in this case. Although the hearing panel erred, the error did not adversely affect the disciplinary proceeding, as the hearing panel found Van violated RPC 5.4, which was the charge related to the questions for which Van invoked the Fifth Amendment. On remand, however, if the State Bar raises this argument again, the panel should consider whether it is appropriate to draw an adverse inference under the circumstances.

Second, Van argues the hearing panel improperly admitted text messages into evidence and challenges their authenticity, specifically text

messages between Van, Le, and a former employee of Van's. These text messages provided important evidence supporting the RPC 5.4 violation the hearing panel found.

Even assuming Van met the requirements outlined in the rules of disciplinary procedure to properly raise this evidentiary issue, Van's argument lacks merit. Authentication requirements can be met by "evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims." NRS 52.015(1). Such evidence includes "[t]he testimony of a witness . . . [who] has personal knowledge that a matter is what it . . . claim[s] to be," NRS 52.025; circumstantial evidence that corroborates the message author's identity; or the message's "context or content" that is unique to the involved parties, *Rodriguez v. State*, 128 Nev. 155, 161, 273 P.3d 845, 849 (2012). Here, Van testified that she remembered specific text conversations with the former employee and that the text messages from the former employee to Le were using Le's phone number. The former employee also testified as to the authenticity of the text messages. Further, the nature of the text messages is consistent with text messages between colleagues at a law firm and includes specific references to cases and events at the Van Law Firm. Accordingly, the text messages were properly admitted as evidence.

Record support for disciplinary charges

The parties challenge the hearing panel's findings as to whether Van violated RPC 5.3 (responsibilities regarding nonlawyer assistants), RPC 5.4 (professional independence of a lawyer), and RPC 5.5 (unauthorized practice of law). The State Bar argues that, contrary to the hearing panel's findings, the record demonstrates that Van violated RPC 5.3 and RPC 5.5 in her representation of one of her clients, Ariana Perez-

Nunez. And Van disputes the panel's finding that her relationship with Le violated RPC 5.4.

The State Bar has the burden of showing by clear and convincing evidence that Van committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). To be clear and convincing, evidence "need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001) (internal quotation marks omitted), *opinion modified on denial of reh'g*, 31 P.3d 365 (2001). This court's review of the panel's findings of fact is deferential, SCR 105(3)(b), and the court will uphold the factual findings regarding an attorney's misconduct if "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).

Alleged violations of RPC 5.3 and RPC 5.5 relating to Perez-Nunez

The State Bar argues that the panel's findings regarding the Perez-Nunez grievance were clearly erroneous and unsupported by substantial evidence. We disagree.

The evidence the State Bar points to in support of the rule violations is minimal and often conflicting. For example, the State Bar points to internal case notes created by case managers as evidence that the case managers prepared the settlement demand, but other evidence indicates these case notes were made under the direction of attorneys. The State Bar also notes that the demand letter sent to the insurance company on behalf of Perez-Nunez featured a typed signature, as opposed to a physical or electronic signature, but this is permissible under Nevada law, NRS 719.100 (defining electronic signatures); NRS 719.260 (concerning effects of electronic signatures). And while Perez-Nunez testified she never

met with an attorney, this is contradicted by other evidence, like the retainer agreement signed by attorney Michael Nixon, Van's testimony that Perez-Nunez spoke to Nixon, and that an additional attorney from the firm contacted and left a voicemail for Perez-Nunez. *See Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) ("The credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact."). Although the hearing panel's written decision contains conflicting language about de minimis misconduct by Van in this matter, after considering the arguments, the record, and the hearing panel's findings of fact, we conclude the record supports the panel's finding that the State Bar did not demonstrate Van violated RPC 5.3 and RPC 5.5 as to Perez-Nunez by clear and convincing evidence. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007) (noting substantial evidence is that which "a reasonable person may accept as adequate" to support a conclusion).

The RPC 5.4 violation

The hearing panel found one RPC violation, concluding that Van violated RPC 5.4 (professional independence of a lawyer) by allowing Le, who was not licensed to practice law, to exert behind-the-scenes control over Van and her firm. Van argues that the State Bar did not prove this violation by clear and convincing evidence. We disagree

Several former employees of Van's law firm testified that Le made managerial decisions involving the law firm and had to give his approval before the firm dropped clients. Additionally, text messages between Van and a former employee indicate the control Le had over the firm, with Van texting things like "[w]ell then we got to tell Consult he forces me to keep bad clients," "He has a vested interest in us landing cases and keeping them," and "Consult has been here longer than you. And he

refers us a lot of the cases that you are working on. The last person you want to piss off is the hand that feeds you.” Thus, we conclude that substantial evidence supports the hearing panel’s finding that the State Bar proved a violation of RPC 5.4 by clear and convincing evidence.

Having concluded that the panel chair erred in dismissing the charges alleging violations of RPC 1.7 and RPC 7.3, we remand this matter for further proceedings before the Southern Nevada Disciplinary Board with respect to those charges. The hearing panel shall consider and make a recommendation as to the appropriate discipline based on the violation of RPC 5.4 as previously found by the panel and approved in this order and any other violations found by the panel upon remand. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, 454 (Am. Bar Ass’n 2023) (explaining that when there are multiple charges of misconduct, “[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct”).

It is so ORDERED.¹

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

¹This is our final disposition of this matter. Any further proceedings following remand should be docketed as a new matter.

cc: Chair, Southern Nevada Disciplinary Board
Sgro & Roger
Christiansen Trial Lawyers
Bar Counsel, State Bar of Nevada