

2011

Jonathan W. Grimes v. : Brief of Petitioner

Utah Court of Appeals

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IN THE SUPREME COURT OF UTAH

**In the Matter of the
Discipline of:**

Jonathan W. Grimes, #10462

Respondent.

)
) **BRIEF OF THE PETITIONER/
APPELLANT**
)

)
) **Supreme Court No. 20110171**
)
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Appeal from the Third District Court, Salt Lake County

Judge L. A. Dever

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UTAH APPELLATE COURTS

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JURISDICTIONAL STATEMENT

The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Constitution article VIII, section 4, which provides that "The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law."

STATEMENT OF ISSUES AND STANDARD OF APPELLATE REVIEW

I. Whether the district court erred when it imposed a three-year suspension upon the Respondent, Jonathan W. Grimes, but then stayed all but 181 days, when the court found that the attorney had knowledge that a client's funds were not properly safeguarded and used for the lawyer's own purposes before they were earned. The standard of review for sanctions imposed for professional misconduct in attorney discipline actions is a correctness standard, but the Utah Supreme Court may make an independent judgment regarding the appropriate level of discipline if the evidence warrants it. See *In re Babilis*, 951 P.2d 207 (Utah 1997). This issue was preserved through closing argument and through the Sanctions Hearing Brief submitted to the district court. [R. 351 at 109, R. 278-297]

DETERMINATIVE LAW

The following rules are fully set forth in the Addendum to Brief of Petitioner, submitted herewith:

Rule 1.2 (Scope of Representation), Rules of Professional Conduct

Rule 1.3 (Diligence), Rules of Professional Conduct

Rule 1.4 (Communication), Rules of Professional Conduct

Rule 1.5 (Fees), Rules of Professional Conduct

Rule 8.4 (Misconduct), Rules of Professional Conduct

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Sanctions.

STATEMENT OF THE CASE

Nature of the Case: This is an attorney discipline case. The district court suspended the Respondent, Jonathan W. Grimes ("Grimes"), under circumstances in which he should have been disbarred. The Utah State Bar's Office of Professional Conduct ("OPC") appeals the district court's decision, and urges the Court to reverse it, and instead to enter an order of disbarment against Grimes.

The Course of Proceedings: The OPC filed a Complaint against Grimes on June 20, 2008 [R. 1-10] On June 2, 2010, the district court presided over a trial to determine whether Grimes violated the Rules of Professional Conduct ("Rules"). [R. 350] The district court found that Grimes violated Rule 1.2(a) (Scope of Representation); 1.3 (Diligence); Rule 1.4(a) (Communication); Rule 1.5(a) (Fees); Rules 8.4 (a), (c), and (d) (Misconduct), and issued Findings of Fact and Conclusion of Law. [R. 211] The matter then proceeded to a sanctions hearing on November 8, 2010. [R. 351]

Disposition in the Trial Court: Following the sanctions hearing, the district court entered an Order of Sanction against Grimes and suspended him from the practice of law for a period of three years, with all but 181 days stayed. [R. 331-344]

STATEMENT OF RELEVANT FACTS

1. Mr. Bill Riordan ("Riordan") hired Grimes in June 2005 to represent him in a discrimination case. [R. 350 at 48]

2. Riordan paid a \$10,000 retainer. [Id. at 49] At the time, Grimes worked for attorney J. Kent Holland. [Id. at 16] The retainer was placed in Holland's attorney trust account. [Id.]

3. Grimes left the Holland firm sometime in 2006 and took Riordan's file and case with him.

4. On June 9, 2006, Holland's secretary gave a check in the amount of \$7,070 to Grimes, representing that it was the remainder of Riordan's retainer. [R. 350 at 89]

5. Grimes failed to communicate with Mr. Riordan from approximately January 2007 to December 2007. [R. 202]

6. In March 2007, Riordan left numerous messages for Grimes, and eventually talked to his secretary about the case. [Id.]

7. On June 25, 2007, Riordan mailed Grimes a letter requesting information about his case. Grimes did not respond. [Id.]

8. On July 21, 2007, Riordan sent Grimes a certified letter. [Id.] That letter was returned to Riordan in August 2007. [Id. at 203]

9. Riordan continued trying to communicate with Grimes via telephone

and fax, but was unsuccessful in getting a response. [Id.]

10. Because Grimes failed to pursue Riordan's case, the case was dismissed. [Id.]

11. Grimes did not inform Riordan that the case had been dismissed. [Id.]

12. Grimes failed to return the unearned portion of the retainer, even though Riordan asked repeatedly for the money to be returned. [Id.]

13. On December 22, 2008, Riordan sent a letter to Grimes asking for an accounting of his retainer and requesting the unused portion be sent to his new attorney. [Id.]

14. The district court concluded that the above described conduct violated the following Rules of Professional Conduct: Rule 1.2(a) (Scope of Representation); 1.3 (Diligence); Rule 1.4(a) (Communication); Rule 1.5(a) (Fees); and, Rules 8.4 (a), (c), and (d) (Misconduct). [R. 211]

15. Following a sanctions hearing, the district court concluded that the presumptive sanction for Grimes' misconduct, under Rule 14-605 Standards for Imposing Lawyer Sanctions, was disbarment. [R. 341]

16. Based upon the evidence presented at the sanctions hearing, the district court found the following mitigating factors: 1) the absence of a record of prior discipline; 2) inexperience in the practice of law; 3) personal and emotional problems; 4) good character or reputation; 5) interim reform; and 6) remorse. [Id at 339-341]

17. The district court also found the following aggravating factors: 1)

selfish or dishonest motive and 2) refusal to acknowledge the wrongful nature of the misconduct either to the client or to the disciplinary authority. [Id. at 337-338]

18. Though the district court found that the presumptive sanction for Grimes' misconduct was disbarment, it ruled that justice would be better served in this case with a lesser sanction, and suspended Grimes from the practice of law for three-years, with all but 181 days of the suspension stayed. [R. 341-342]

SUMMARY OF THE ARGUMENT

The district court's decision to suspend Grimes, rather than disbar him, is contrary to established law: Grimes should have been disbarred for his misappropriation of a client's money. Based upon the evidence presented to the district court, the presumptive sanction for Grimes' misconduct, according to the Standards for Imposing Lawyer Sanctions and Utah case law, was disbarment. The court correctly reached that conclusion, but then reduced the presumptive sanction to a three-year suspension. The facts presented to the district court in this case did not warrant the departure from the presumptive sanction, and the OPC asks this Court to review the matter and enter an order of disbarment against Grimes.

ARGUMENT

I. The District Court's Decision to Reduce the Presumptive Sanction of Disbarment to a Lesser Sanction was Contrary to Established Law Concerning Discipline in Misappropriation Cases

The correct presumptive sanction for Grimes' actions under the Standards for Imposing Lawyer Sanctions ("Standards") is disbarment. Though a district court is allowed flexibility in crafting attorney sanctions, when a case involves the

misappropriation of client funds, only truly compelling mitigation can reduce the sanction from disbarment. Grimes failed to offer truly compelling mitigation, and the district court erred by reducing the disbarment to a three-year suspension.

A. Based Upon the Facts Established in the Adjudication Hearing, Grimes' Misconduct Constitutes a Presumptive Disbarment Case Under the Standards

The presumptive sanction in this case is disbarment. This is dictated by the Standards for Imposing Lawyer Sanctions ("Standards") and by case law in this jurisdiction and most, if not all, other jurisdictions.

The Standards set forth presumptive sanctions for broad categories of misconduct, absent the existence of aggravating or mitigating circumstances.

Pursuant to the Standards disbarment is the presumptive sanction if the attorney:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding;

(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; . . .

(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

See Rule 14-605, Standards for Imposing Lawyer Sanctions.

Grimes' misconduct, according to this Court's decisions in similar cases, falls within the language of Rule 14-605(a)(1) and 14-605(a)(3). In *In re Johnson*, this Court found that disbarment was the appropriate presumptive sanction under both Rule 14-605(a)(1) and Rule 14-605(a)(c). *In re Johnson*, 48 P.3d 881 (Utah

2001) This Court found that Johnson knowingly violated the Rules, with the intent to benefit himself, and that his conduct caused serious or potentially serious injury to the party, public or legal system. This Court made those findings based upon Johnson's violations of Rules 1.15(a), 1.15(b) and 1.15(c) for his failure to return funds to his client and his comingling of the funds, stating that "[t]he trial court's finding that Johnson knowingly violated rule 1.15 of the Rules of Professional Conduct for his own benefit was sufficient to support disbarment." *In re Johnson*, 48 P.3d at 886. Violations of Rule 1.15 are not present in this case. That, however, does not mean that the underlying misconduct is different than the misbehavior this Court addressed in the *Johnson* case.

In *Johnson*, in addition to finding that disbarment was appropriate under Rule 14-605(a)(1), this Court also found that disbarment was appropriate under Rule 14-605(a)(3) because the Court held that misappropriation is intentional conduct involving dishonesty that seriously reflects on the lawyer's fitness to practice law. *Id.* at 881, 885. In other words, this Court found that misappropriation was per se "intentional conduct involving dishonesty."

Johnson and the present case both present situations where an attorney has misappropriated client funds. Johnson settled a case for his client. While he initially put the money in trust, he then took the money out, and by the time the client asked for the money had converted it for his own use. Johnson did not return the money to his client and offered no satisfactory explanation for why he kept the money. Grimes' case is similar. Grimes was provided \$7,070.00 in unearned retained fees for his client, Riordan, when he stopped working with

Holland. He knew that money was for Riordan's case, and he knew it wasn't earned, but he took the money and used it for his own purposes.

Johnson asserted as a defense that there was a question of fact about whether the client was entitled to the funds. *Id.* This Court found that even if it accepted the fact that there was a dispute as to amount owed to the client, Johnson had misappropriated the funds because he knew that he had not been gifted the entire amount. In this case, Grimes committed misappropriation because he knew that the funds he accepted belonged to Riordan, yet he failed to keep them in trust or return them to his client upon request.

Other cases in Utah and in other jurisdictions hold that disbarment is the appropriate sanction for misappropriation of client funds. In *In re Babilis*, an attorney was disbarred for charging substantial fees for little work, misappropriating the funds from his client's estate, and making misrepresentations to the client and the probate court. *In re Babilis*, 951 P.2d 207 (Utah 1997). In another Utah case, an attorney was disbarred for misappropriation with the Court stating that misappropriation of client funds, alone, is enough to trigger disbarment without the cumulative effect of other misconduct. *In re Ennenga*, 37 P.3d 1150 (Utah 2001). In Colorado, "when a lawyer knowingly converts client funds, disbarment is 'virtually automatic,' at least in the absence of significant factors in mitigation." *People v. Young*, 864 P.2d 563 (Colo. 1993). In another Colorado case an attorney was disbarred for two counts of abandonment of clients and conversion of client funds. *People v. Righter*, 35 P.3d 159 (Colo. 1999).

This Court has consistently found that misappropriation of client funds is the most serious of all attorney misconduct, and is grounds for disbarment absent substantial compelling mitigating factors. Before a court considers the mitigating factors, however, it is appropriate to presume that the case warrants disbarment. The district court correctly reached this conclusion, but then undercut the seriousness of the misconduct and reduced the disbarment to a three-year suspension, with all but 181 days stayed. The OPC's contention on appeal is that the district court did not have the discretion to reduce the sanction in this case.

B. Taken in the Light Most Favorable to Grimes, the Evidence Presented to the District Court was Insufficient to Justify a Departure From Disbarment

1. The Mitigation Presented Was Not Truly Compelling

The district court heard evidence regarding factors of mitigation and aggravation in order to reach the ultimate sanction. Grimes conduct was intentional misappropriation, requiring disbarment absent truly compelling mitigation. There was no evidence presented at that Sanctions Hearing that this Court would consider truly compelling mitigation.

This Court has articulated that in attorney discipline cases involving misappropriation, the sanction of disbarment is triggered even without the cumulative effect of other Rule violations¹. *In re Ennenga*, 2001 UT 111, P10.

¹ Grimes violated several of the Rules of Professional Conduct, but, as this Court has opined in similar cases, the Rule violations involving misappropriation are sufficient to presume disbarment without considering other Rules the attorney may have violated.

Once that sanction is triggered, in order to overcome the "presumption of disbarment, 'the aggravating and mitigating factors must be significant.' In fact, they must be 'truly compelling.'" *Id.*, quoting *In re Ince*, 957 P.2d 1233, at 1237 and *In re Babilis*, 951 P.2d at 217, respectively. In this case Grimes failed to present any evidence that could properly be classified as compelling mitigation for his actions.

Grimes offered evidence to support several factors of mitigation under Rule 14-607(b) of the Standards. The district court concluded that the following factors applied to this case: 1) the absence of a record of prior discipline; 2) inexperience in the practice of law; 3) personal and emotional problems; 4) good character or reputation; 5) interim reform; and 6) remorse.² R. 339-341. These factors do not constitute truly compelling mitigation.

Serious misconduct is not easily mitigated. See e.g. *In re Brewster*, 587 A.2d 1067 (Del 1991) (mitigating factors including sincere, deep regret and attempt to rectify consequences did not overcome attorney's failure to maintain personal integrity by engaging in serious criminal conduct resulting in conviction for bank fraud). The Supreme Court of Iowa has noted that although its sympathy is frequently aroused by attorneys' personal problems, "protection of the public interest prevents us from being swayed by them." See *Iowa Supreme*

² Though the district court found that remorse was a factor in mitigation, the court tempered that finding by stating: "It is clear from the evidence that remorse and restitution have not been at the forefront of Mr. Grimes' actions. He has yet to make any for of repayment to Mr. Riordan. He has admitted that he believes he owes Mr. Riordan \$7,070 plus interest." R. 340-341. With that said, remorse certainly could not have been a truly compelling factor of mitigation.

Court Bd. of Prof. Ethics and Conduct v. Sunleaf, 588 N.W.2d 126, 127 (Iowa 1999). Further,

Nearly every lawyer involved in these cases could cite personal problems as the cause of the professional downfall. But life in general is a series of problems and it is the fundamental purpose of our profession to face and solve them. Our profession certainly cannot excuse misconduct on the basis of personal problems.

Id. (quoting *Committee on Professional Ethics & Conduct v. Cook*, 409 N.W.2d 469, 470 (Iowa 1987)).

The factors of mitigation Grimes presented to the district court do not establish the kind of truly compelling mitigation that this Court has stated are necessary to reduce a presumptive disbarment in a misappropriation case down to a lesser sanction. Grimes' misappropriated \$7,070.00 from his client. It is true that he was new to the practice of law, and that he did not have a previous record of discipline. For matters dealing with client funds, those factors of mitigation are not significant. It does not take substantial experience in the practice of law to know that you are not entitled to take a client's money. That type of knowing, dishonest misconduct is not something an attorney learns to avoid through practice and experience. Further, that an attorney hasn't engaged in misconduct previously does not mean that the first instance of misappropriation should be looked at in a more favorable light. Misappropriation is the most serious of all attorney discipline matters, and the absence of a prior record of discipline should not rise to the level of compelling, or even significant, mitigation.

On the issue of Grimes' emotion problems, the district court found: "Mr. Grimes, family members and others testified as to the emotional problems Mr.

Grimes was facing during the initial period of this incident, including his own depression coupled with the hospitalization of his infant child." R. at 340. Again, this finding of mitigation does not rise to the level of truly compelling. In the *Ennenga* case, the Court was presented with an attorney who also offered emotional problems as a factor of mitigation. *In re Ennenga*, 2001 UT 111 at ¶ 14. Ennenga had asserted that his personal and emotional problems, stemming from his inability to meet his own financial obligations, had led him to take client money. *Id.* This Court stated that:

Although we understand that the pressure of not being able to meet one's financial obligations can be great, we cannot condone the taking of a client's money to resolve that problem, even with the intent to return their funds. Personal financial pressures cannot mitigate the offense of misappropriation. See *In re Blumenstyk*, 152 N.J. 158, 704 A.2d 1, 4 (N.J. 1997) ("Family financial pressures cannot excuse an attorney's ethical dereliction.")

Id.

The emotional problems Grimes presented are unfortunate, but do not constitute truly compelling mitigation. They cannot be considered an important factor that would reduce the proper sanction of disbarment in this case.

The remaining two factors, that Grimes displayed interim reform and a good reputation, also do not rise to the level of truly compelling mitigation. Like the absence of a prior record and inexperience in the practice of law, a good reputation and interim reform can mitigate less serious misconduct such as diligence, or a lack of adequate communication with a client. They are not factors which rise to the level of truly compelling mitigation, and should not be used to depart from disbarment in a misappropriation case.

The mitigation Grimes' offered is not truly compelling. Because that is the requirement for a district court when a presumptive disbarment is reduced in a misappropriation case, the OPC wanted to address the mitigation that was presented to the district court. The district court detailed that mitigation, but it did not necessarily use any of it as the reason it lessened Grimes' sanction. Instead, the district court relied upon this Court's decision in *In re Discipline of Crawley*, 2007 UT 44 (2007) to reduce the presumptive disbarment. The OPC disagrees that the *Crawley* decision allows a district court such flexibility in cases of misappropriation.

2. Crawley is Not Applicable to Misappropriation Cases

The district court cited this Court's decision in *Crawley* in its Order of Sanction. R. 341. The district court quoted *Crawley*, and stated that the guidance provided by this Court regarding a "triangle of justice, protection and rehabilitation" was appropriate to use in this case. *Id.*, referring to *Crawley* 2007 UT 44, ¶ 22, 23. *Crawley* was not a misappropriation case, and the Court's guidance in that matter is not correctly applicable to misappropriation cases.

Steven Crawley ("Crawley") violated Rules 1.1 (Competence); 1.2(a) (Scope of Representation); 1.3 (Diligence); 1.4(a) (Communication); and, 8.4 (a) and (c) (Misconduct) and was suspended by the district court. The district court stayed the suspension and placed him on probation, and the OPC appealed to this Court concerning the district court's use of probation. *Crawley*, 2007 UT 44, ¶ 7. Crawley's misconduct did not relate to client funds or misappropriation. Essentially, he failed to communicate with his firm and his client about his failures

to diligently pursue his client's cases, and, ultimately misrepresented to them the true nature of the underlying actions. *Id.* at ¶ 3-5. The OPC appealed the district court's decision to stay the suspension he received, as we did not believe probation was appropriate given the dishonest elements of his misconduct. This Court disagreed and affirmed the district court's use of probation. *Id.* at ¶ 25.

This Court's analysis and guidance in the *Crawley* case is applicable to attorney discipline cases which do not involve presumptive disbarments for misappropriation. It was not correctly used by the district court to reduce Grimes' presumptive disbarment. The "truly compelling mitigation" standard is the only standard that this Court has recognized in cases of misappropriation. See *In re Ennenga*, 2001 UT 111 (2001); *In re Ince*, 957 P.2d 1233 (Utah 1998); and, *In re Babilis*, 951 P.2d 207 (Utah 1997).

The district court cited the following section of *Crawley* in its Order of Sanction: "... we note that the imposition of probation with the right conditions may in some cases be more protective of the public than a period of suspension." R. 341, *quoting Crawley* 2007 UT 44, ¶ 23. The basis for this Court's statement was that in some cases a district court may craft a probationary period with attorney-specific terms that allows the attorney to change their ways, and protects the public from the attorney's future misconduct. *Id.* When the district court presented its ruling to the OPC and Grimes on February 4, 2011, the court stated: "Mr. Grimes, I spent a lot of time thinking about this case. I'm giving you an unbelievable chance to redeem yourself." R. 352 at pg. 9. The court's apparent sympathy for Grimes' does not, however, mean that it was proper to go outside

this Court's case law and guidance regarding disbarments for misappropriation cases. The district court did not find that there was truly compelling mitigation, and incorrectly applied the *Crawley* case to much more serious attorney misconduct to reduce a presumptive disbarment to suspension and probation. The OPC urges this Court to reverse that decision and enter an Order of disbarment against Grimes.

CONCLUSION

Grimes misappropriated client funds. This Court has been clear that the sanction for that misconduct is disbarment, absent truly compelling mitigation. Grimes did not present such mitigation, but the district court still reduced the sanction to a suspension. The *Crawley* decision does not change this Court's guidance in misappropriation cases, and the district court erred in using it as a basis for the sanction reduction. The OPC asks this Court to reverse the district court and enter an Order of disbarment against Grimes for his serious misconduct.

DATED: June 2nd, 2011.

OFFICE OF PROFESSIONAL CONDUCT



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ADDENDUM

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Rules of Central Importance Cited in the Brief

Rule 1.2 (Scope of Representation), Rules of Professional Conduct

Rule 1.3 (Diligence), Rules of Professional Conduct

Rule 1.4 (Communication), Rules of Professional Conduct

Rule 1.5 (Fees), Rules of Professional Conduct

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Rules of Central Importance Cited in the Brief

Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer)

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.3 (Diligence)

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 (Communication)

(a) A lawyer shall 1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; 2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; 3) keep the client reasonably informed about the status of the matter; 4) promptly comply with reasonable requests for information; and 5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law."

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.5 (Fees)

(a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following 1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge or collect: 1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or 2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if: 1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; 2) the

client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and 3) the total fee is reasonable.

Rule 8.4 (Misconduct)

(a) It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

(c) It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(d) "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

(e) It is professional misconduct for a lawyer to state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

(f) It is professional misconduct for a lawyer to knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 14-603. Sanctions, Standards for Imposing Lawyer Sanctions.

(a) Scope. A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement that the lawyer has engaged in professional misconduct.

(b) Disbarment. Disbarment terminates the individual's status as a lawyer. A lawyer who has been disbarred may be readmitted as provided in Rule 14-525.

(c) Suspension. Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. Generally, suspension should be imposed for a specific period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years.

(c)(1) A lawyer who has been suspended for six months or less may be reinstated as set forth in Rule 14-524.

(c)(2) A lawyer who has been suspended for more than six months may be reinstated as set forth in Rule 14-525.

(d) Interim suspension. Interim suspension is the temporary suspension of a lawyer from the practice of law. Interim suspension may be imposed as set forth in Rules 14-518 and 14-519.

(e) Reprimand. Reprimand is public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(f) Admonition. Admonition is nonpublic discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(g) Probation. Probation is a sanction that allows a lawyer to practice law under specified conditions. Probation can be public or nonpublic, can be imposed alone or in conjunction with other sanctions, and can be imposed as a condition of readmission or reinstatement.

(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline which allows a respondent to resign from the practice of law while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 14-521.

(i) Other sanctions and remedies. Other sanctions and remedies which may be imposed include:

(i)(1) restitution;

(i)(2) assessment of costs;

(i)(3) limitation upon practice;

(i)(4) appointment of a receiver;

(i)(5) a requirement that the lawyer take the Bar Examination or professional responsibility examination; and

(i)(6) a requirement that the lawyer attend continuing education courses.

(j) Reciprocal discipline. Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

Rule 14-604. Factors to be Considered in Imposing Sanctions, Standards for Imposing Lawyer Sanctions.

The following factors should be considered in imposing a sanction after a finding of lawyer misconduct:

(a) the duty violated;

(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

Rule 14-605. Imposition of Sanctions, Standards for Imposing Lawyer Sanctions.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604, the following sanctions are generally appropriate.

(a) Disbarment. Disbarment is generally appropriate when a lawyer:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or

(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

(b) Suspension. Suspension is generally appropriate when a lawyer:

(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding; or

(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice law.

(c) Reprimand. Reprimand is generally appropriate when a lawyer:

(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding; or

(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(d) Admonition. Admonition is generally appropriate when a lawyer:

(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes little

or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or

(d)(2) engages in any professional misconduct not otherwise identified in this rule that adversely reflects on the lawyer's fitness to practice law.

Rule 14-607. Aggravation and Mitigation, Standards for Imposing Lawyer Sanctions.

After misconduct has been established, aggravating and mitigating circumstances may be considered and weighed in deciding what sanction to impose.

(a) Aggravating circumstances. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances may include:

- (a)(1) prior record of discipline;
- (a)(2) dishonest or selfish motive;
- (a)(3) a pattern of misconduct;
- (a)(4) multiple offenses;
- (a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;
- (a)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;
- (a)(8) vulnerability of victim;
- (a)(9) substantial experience in the practice of law;
- (a)(10) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and
- (a)(11) illegal conduct, including the use of controlled substances.

(b) Mitigating circumstances. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

- (b)(1) absence of a prior record of discipline;
- (b)(2) absence of a dishonest or selfish motive;
- (b)(3) personal or emotional problems;
- (b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;

(b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;

(b)(6) inexperience in the practice of law;

(b)(7) good character or reputation;

(b)(8) physical disability;

(b)(9) mental disability or impairment, including substance abuse when:

(b)(9)(A) the respondent is affected by a substance abuse or mental disability; and

(b)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and

(b)(9)(C) the respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(b)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;

(b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;

(b)(11) interim reform in circumstances not involving mental disability or impairment;

(b)(12) imposition of other penalties or sanctions;

(b)(13) remorse; and

(b)(14) remoteness of prior offenses.

(c) Other circumstances. The following circumstances should not be considered as either aggravating or mitigating:

(c)(1) forced or compelled restitution;

(c)(2) withdrawal of complaint against the lawyer;

(c)(3) resignation prior to completion of disciplinary proceedings;

(c)(4) complainant's recommendation as to sanction; and

(c)(5) failure of injured client to complain.

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of June, 2011, I caused to be mailed via United States first-class mail, postage pre-paid, two true and correct copies of the foregoing Brief of Appellant to: Jonathan W. Grimes, Respondent, at 455 East 400 South, Suite 100, Salt Lake City, Utah 84111.

A handwritten signature in black ink, appearing to be "A. C. B.", is written over a horizontal line.