

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case

Complainant,

No. SC-

v.

The Florida Bar File
No. 2015-00,718(2B)

MARC JOHN RANDAZZA,

Respondent.

FORMAL COMPLAINT FOR RECIPROCAL DISCIPLINE

The Florida Bar, complainant, files this Complaint against Marc John Randazza, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on March 25, 2003, and is subject to the jurisdiction of the Supreme Court of Florida.
2. In addition to membership in The Florida Bar, respondent was a member of the State Bar of Nevada, subject to the jurisdiction of the Supreme Court of the State of Nevada.
3. This is a reciprocal discipline action, based on the Findings of Fact, Conclusions of Law and Recommendation of the Southern Nevada Disciplinary Board of the State Bar of Nevada dated July 10, 2018, and the Order Approving

Conditional Guilty Plea Agreement of the Supreme Court of the State of Nevada, dated October 10, 2018, which imposed a 12 month suspension, stayed for 18 months subject to conditions. Copies of the Findings of Fact and the Order are attached hereto as **Exhibits A and B**, respectively.

4. The suspension was based on the following conduct:

A. In or about June 2009, respondent drafted and signed an agreement ("Legal Services Agreement") with Excelsior Media Corp. ("Excelsior") which provided, among other things, that respondent would become in-house general corporate counsel for Excelsior.

B. At the time of the signing of the Legal Services Agreement, Excelsior was located in California.

C. The Legal Services Agreement did not prohibit respondent from also maintaining a private legal practice to provide legal services to clients other than Excelsior.

D. Excelsior had a subsidiary or affiliate called Liberty Media Holdings, LLC ("Liberty"). Liberty is engaged in the business of production and distribution of pornography.

E. After entering into the Legal Services Agreement, respondent provided legal services to Excelsior and Liberty, although no separate agreement was entered into between Liberty and respondent.

F. In or about February 2011, Excelsior relocated its corporate headquarters to Las Vegas, Nevada.

G. In or about June 2011, respondent relocated to Las Vegas, Nevada and continued working as general corporate counsel for Excelsior.

H. Until his admission to the Nevada Bar in January 2012, respondent was not engaged in the practice of law in the State of Nevada, except in his capacity as a member of the bar of the U.S. District Court for the District of Nevada.

I. At the direction of Excelsior, respondent pursued violations of Liberty's intellectual property rights by third parties through his separate law firm.

J. On or about June 20, 2012, respondent, on behalf of Liberty, filed a lawsuit in U.S. District Court, District of Nevada against FF Magnat Limited d/b/a Oron.com ("Oron") for alleged violations of Liberty's intellectual property.

K. On or about June 21, 2012, respondent obtained an injunction in the Oron litigation freezing certain accounts and funds belonging to Oron.

L. On July 1, 2012, respondent and attorneys for Oron signed a letter memorializing settlement terms in regard to the Oron litigation and a similar case between the two parties in Hong Kong (hereinafter "Settlement

Letter").

M. An essential part of the Settlement Letter was that Oron would pay Liberty the sum of \$550,000.00 with said sum payable to respondent's Attorney Trust Account.

N. A dispute arose after the Settlement Letter was signed.

O. On behalf of Liberty, respondent filed a Motion to Enforce Settlement.

P. By Order dated August 7, 2012, the United States District Court found that the Settlement Letter constituted an enforceable contract as there was a "meeting of the minds as to all material terms on July 5, 2012." A Judgment was entered in favor of Liberty as judgment creditor and against Oron as Judgment Debtor for \$550,000.00.

Q. By Order dated August 21, 2012, the United States District Court ordered Pay Pal, Inc., to transfer funds belonging to Oron to satisfy the Judgment by paying \$550,000.00 to the trust account of Randazza Legal Group.

R. In mid to late August 2012, a settlement payment in relation to the Oron litigation of approximately \$550,000.00 was sent to respondent's out-of-state trust account. A full and proper accounting of those funds has occurred with Liberty receiving its appropriate share.

SIDE AGREEMENT

S. During post-judgment discussions, Oron informed respondent that it wanted to enter into an agreement to retain respondent for bona fide legal services, which would have the practical effect of conflicting off respondent from ever representing a client in litigation against Oron in the future.

T. Subject to the agreement of Liberty, and Liberty's execution of a written agreement, respondent negotiated a separate agreement with Oron, whereby \$75,000.00 of Oron's frozen funds would be released to Oron's counsel with the understanding, but no guarantee, that such funds would be used to retain respondent as counsel for Oron. This would have the practical effect of potentially conflicting respondent off any future litigation against Oron.

U. On or about August 13, 2012, respondent informed Liberty of the proposed post-judgment agreement by presenting a copy to Liberty's CEO, Jason Gibson, for his review, approval and signature. The Post-judgment agreement encompassed the payment of the \$550,000.00 Settlement Amount and Judgment by Oron to Liberty as well as the release of \$75,000.00 of Oron's frozen funds to Oron's counsel.

V. On or about August 13, 2012, respondent and Jason Gibson

discussed the proposed unfreezing of \$75,000.00 of Oron's funds. Jason Gibson expressed concerns to respondent about the disposition of that \$75,000.00 and did not consent to such unfreezing.

W. As a result of the August 13, 2012 discussion between Jason Gibson and respondent, the post-judgment agreement was not executed. Oron's frozen funds were not released, respondent did not receive a \$75,000.00 payment, and did not become counsel for Oron.

\$25,000 LOAN

X. In August 2012, the respondent loaned approximately \$25,000.00 to Liberty, to cover part of overseas legal fees that would be incurred in potential further litigation in the Oron case.

Y. On or about August 21, 2012, on the advice of respondent, Mr. Gibson signed a promissory note on Liberty's behalf noting the terms of repayment of the \$25,000.00 loan.

Z. Respondent failed to advise Liberty of its right to seek the advice of independent counsel with regard to this promissory note, nor did he obtain Liberty's informed written consent to the terms of the transaction, or to his role as a lender in the transaction.

AA. On or about August 29, 2012, respondent's employment with Excelsior ceased. Respondent and Excelsior dispute whether respondent

resigned or was terminated by Excelsior.

BB. By reason of the foregoing, respondent was found to have violated the following Nevada Rules of Professional Conduct: 1.8 Conflict of Interest: Current Clients: Specific Rules. (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction; (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules; and 5.6 Restrictions on Right to Practice: a lawyer shall not participate in offering or making: (a) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of

the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

5. By operation of Rule 3-4.6, Rules Regulating The Florida Bar, the Findings of Fact, Conclusions of Law and Recommendation of the Southern Nevada Disciplinary Board of the State Bar of Nevada and the Order Approving Conditional Guilty Plea Agreement of the Supreme Court of the State of Nevada shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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Adria E. Quintela

ADRIA E. QUINTELA
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Florida Bar No. 897000
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CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Respondent at mjr@randazza.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 0190 0000 0892 4866, return receipt requested to respondent at 2764 Lake Sahara Drive, Suite 109, Las Vegas, Nevada 89117-3400 and via email to James Keith Fisher, Bar Counsel, jfisher@flabar.org, on this 6th day of January, 2019.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is James Keith Fisher, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street

Tallahassee, Florida 32399-2300, (850) 561-5845 and jfisher@flabar.org; and respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.



FILED

JUL 10 2018

STATE BAR OF NEVADA

BY: S. Durk.
OFFICE OF BAR COUNSEL

1 Case No.: OBC15-0747

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**STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD**

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STATE BAR OF NEVADA,)

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Complainant,)

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vs.)

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MARC J. RANDAZZA, Esq.,)

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Nevada Bar No. 12265,)

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Respondent.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

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This matter came before a designated Formal hearing Panel of the Southern Nevada Disciplinary Board ("Panel") on June 13, 2018. The presiding Panel consisted of Oliver Pancheri, Esq., Chair, Ira David, Esq., and Lay Member Dee Newell. The State Bar of Nevada ("State Bar") was represented by Assistant Bar Counsel Matthew R. Carlyon and Acting Bar Counsel Janeen V. Isaacson. Respondent was present and represented by Mark Dzarnoski, Esq. and Dominic Gentile, Esq.

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The State Bar submitted Exhibits 1 and 2 into evidence, without objection. Both the State Bar and Respondent, through counsel, responded to questions from the Panel. No witnesses were called.

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At the hearing, the Panel heard evidence from Respondent and the State Bar in support of a tentative Conditional Guilty Plea in Exchange for Stated Form of Discipline

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1 ("Plea.") The Panel, after hearing evidence from the parties, deliberated and
2 recommended, unanimously to accept the Plea.

3 A file-stamped copy of the Plea is attached as Exhibit 1 to these Findings and
4 contains the approval of Respondent and the State Bar.

5
6 Based upon the pleadings filed, the testimony adduced at the hearing, the
7 documents admitted into evidence, and the arguments presented, the Panel submits the
8 following Findings of Fact, Conclusions of Law, and Recommendation.

9 **FINDINGS OF FACT**

10 1. Respondent is now and at all times pertinent herein, was a licensed attorney
11 in the state of Nevada. Respondent was first admitted to the State of Nevada on January
12 6, 2012.

13
14 2. The State Bar filed a formal Complaint (the "Complaint") in this matter
15 dated January 25, 2016.

16 3. Respondent entered into the proposed Plea knowingly and voluntarily and
17 was not subject to any duress or coercion in doing so.

18 4. Respondent's stipulation to the violations and aggravating/mitigating
19 factors set forth in the Amended Plea is hereby adopted.
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21 **CONCLUSIONS OF LAW**

22 1. The Southern Nevada Disciplinary Board has jurisdiction of Respondent
23 and the subject matter of these proceedings pursuant to SCR 99.
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1 1. Respondent shall be suspended for a term of twelve (12) months, with the
2 suspension stayed; said suspension to begin on the date of the Nevada Supreme Court's
3 Order approving the Plea;

4 2. Respondent will be placed on an eighteen (18) month term of probation,
5 said probation to begin on the date of the Nevada Supreme Court's Order approving the
6 Plea in this matter;

7 3. Respondent will "stay out of trouble" during his term of probation, meaning
8 that he will have no new grievance arising out of conduct post-dating the date of the Plea
9 which results in the imposition of actual discipline (a Letter of Reprimand or above –
10 SCR 102) against him during his term of probation;

11 4. Respondent will successfully complete twenty (20) hours of Continuing
12 Legal Education ("CLE") in addition to his normal CLE requirements during his term of
13 probation. The twenty CLE hours will all be ethics credits, cannot be used as credit
14 against any other CLE requirements, and will be reported to the State Bar of Nevada;

15 5. Respondent will seek the advice and approval of an independent and
16 unaffiliated ethics attorney in the relevant jurisdiction before obtaining any conflicts of
17 interest waivers during the probationary period;

18 6. Respondent will pay SCR 120(1) fees in the amount of \$2,500.00, as well
19 as the actual costs of the disciplinary proceeding. That amount is to be paid in full within
20 thirty (30) days of receipt of a billing from the State Bar;

1 **CERTIFICATE OF SERVICE**


2 The undersigned hereby certifies a true and correct copy of the foregoing **FINDINGS OF**
3 **FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** was deposited via electronic mail
4 to:

- 5 1. Oliver Pancheri, Esq. (Panel Chair): opancheri@santoronevada.com ; Rachel Jenkins
6 rjenkins@santoronevada.com (COURTESY COPY)
7 2. Dominic Gentile, Esq., Mark Dzarnoski, Esq. (Counsel for Respondent Marc Randazza):
8 dgentile@gcmaaslaw.com ; mdzarnoski@gcmaaslaw.com
9 3. Janeen V. Isaacson, Esq., Matthew R. Carlyon, Esq. (Assistant Bar Counsels):
10 janeeni@nvbar.org ; mcarlyon@nvbar.org

11 AND a copy of the foregoing was placed in an envelope with prepaid postage affixed thereto,
12 sealed and deposited with the United States Postal Service for certified mail for delivery to:

13 Marc J. Randazza, Esq.
14 c/o Dominic Gentile, Esq.
15 Gentile Cristalli Miller Armeni Savarese
16 410 S. Rampart Blvd., Suite 420
17 Las Vegas, NV 89145
18 **CERTIFIED MAIL NO.: 7016 1970 0000 9930 9302**

19 DATED this 11th day of July, 2018.

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By: 
Jana L. Chaffee, an employee of
the State Bar of Nevada.



FILED

JUN 05 2018

1 Case No.: OBC15-0747

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3 STATE BAR OF NEVADA

STATE BAR OF NEVADA
BY: Samuel R.
OFFICE OF BAR COUNSEL

4 SOUTHERN NEVADA DISCIPLINARY BOARD

5)
6 STATE BAR OF NEVADA,)

7 Complainant,)

8 vs.)

9 MARC J. RANDAZZA, ESQ.,)

10 Nevada Bar No. 012265,)
11 Respondent.)

CONDITIONAL GUILTY PLEA
IN EXCHANGE FOR A STATED
FORM OF DISCIPLINE

12 Marc J. Randazza ("Respondent"), Bar No. 012265 hereby tenders to Assistant Bar
13 Counsel for the State Bar of Nevada a Conditional Guilty Plea ("Plea") pursuant to Supreme Court
14 Rule ("SCR") 113(1) and agrees to the imposition of the following Stated Form of Discipline in
15 the above-captioned cases.

16 I.
CONDITIONAL GUILTY PLEA

17 Through the instant Plea, Respondent agrees and admits as follows:

18 1. Respondent is now and at all times since January 6, 2012 was a licensed attorney in
19 the State of Nevada.

20 2. The State Bar filed a Formal Complaint on the above referenced case on January
21 25, 2016. Thereafter, the State Bar filed an Amended Complaint on December 16, 2016.
22 Respondent filed various Motions to Dismiss the Amended Complaint and then ultimately filed a
23 Verified Response to the Amended Complaint on October 23, 2017.

24 3. In accordance with the Stipulation of Facts herein, Respondent pleads guilty and
25 admits that he violated Rules of Professional Conduct ("RPC") as follows:

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II.
STIPULATION OF FACTS

The facts stipulated to and agreed upon between Respondent and the State Bar of Nevada in support of this conditional plea are as follows:

1. Respondent is now a licensed attorney in the states of Nevada, California, Florida, Arizona, and Massachusetts. Respondent became licensed in the State of Nevada on or about January 6, 2012 and has been assigned Bar No. 12265.

2. In or about June 2009, Respondent entered into an agreement with Excelsior Media Corp ("Excelsior") which provided, among other things, that Respondent would become in-house general corporate counsel for Excelsior ("Legal Services Agreement"). The Legal Services Agreement did not prohibit Respondent from also maintaining a private legal practice to provide legal services to clients other than Excelsior.

3. At the time the Legal Services Agreement was entered into, Excelsior was headquartered in California and Respondent was licensed to practice law in the State of Florida. For a period of time following execution of the Legal Services Agreement, Respondent relocated to California, obtained admission to the State Bar of California, and maintained his primary office to perform legal work for Excelsior in California.

4. At the time the Legal Services Agreement was entered into, Excelsior had a subsidiary or affiliate called Liberty Media Holdings, LLC ("Liberty"). Liberty was engaged in the business of production and distribution of pornography. After entering into the Legal Services Agreement, Respondent provided legal services to both Excelsior and Liberty, although no separate agreement was entered into by and between Liberty and Respondent.

5. In or about February 2011, Excelsior relocated its corporate headquarters to Las Vegas, Nevada. In or about June 2011, Respondent relocated to Las Vegas, Nevada and continued working as general corporate counsel for Excelsior. Prior to June 2011, Respondent was not

1 engaged in the practice of law in the State of Nevada in any capacity, except to the extent such
2 was in his capacity as a member of the bar of the U.S. District Court for the District of Nevada.

3 6. At the direction of Excelsior, Respondent pursued violations of Liberty's
4 intellectual property rights by third parties through his separate law firm.

5 7. On or about June 20, 2012, Respondent, on behalf of Liberty, filed a lawsuit in US
6 District Court, District of Nevada against FF Magnat Limited d/b/a Oron.com ("Oron") for alleged
7 violations of Liberty's intellectual property. See Case No. 2:12-cv-01057-GMN-RJJ (hereinafter
8 "Oron Litigation").

9 8. On or about June 21, 2012, Respondent obtained an injunction in the Oron
10 Litigation freezing certain accounts and funds belonging to Oron.

11 9. On July 1, 2012, Respondent and attorneys for Oron signed a letter memorializing
12 settlement terms in regards to the Oron Litigation and a similar case between the two parties in
13 Hong Kong (hereinafter "Settlement Letter"). An essential part of the Settlement Letter was that
14 Oron would pay Liberty the sum of \$550,000 with said sum payable to Respondent's Attorney-
15 Client Trust Account.

16 10. A dispute arose after the Settlement Letter was signed. On behalf of Liberty,
17 Respondent filed a Motion to Enforce Settlement.

18 11. By Order dated August 7, 2012, the United States District Court found that the
19 Settlement Letter constituted an enforceable contract as there was a "meeting of the minds as to all
20 material terms on July 5, 2012." A Judgment was entered in the docket of the above-entitled
21 Court in favor of Liberty as Judgment Creditor and against Oron as Judgment Debtor for
22 \$550,000.00.

23 12. By Order dated August 21, 2012, the United States District Court ordered PayPal,
24 Inc., to transfer funds belonging to Oron to satisfy the Judgment by paying \$550,000.00 to the
25 trust account of Randazza Legal Group.

1 13. Between August 7, 2012 and August 13, 2012, Respondent and Oron continued
2 discussions regarding reducing the terms of the Settlement Letter and the Judgment into a more
3 definitive written agreement although the District Court had already enforced the settlement and
4 reduced the \$550,000.00 settlement amount ("Settlement Amount") to judgment ("Post-Judgment
5 Discussions").

6 14. During the Post-Judgment Discussions, Oron informed Respondent that it wanted
7 to enter into an agreement to retain Respondent for bona fide legal services, which would have the
8 practical effect of potentially conflicting off Respondent from ever representing a client in
9 litigation against Oron in the future.

10 15. Subject to the agreement of Liberty and Liberty's execution of a written agreement,
11 Respondent negotiated a separate agreement with Oron whereby \$75,000 of Oron's frozen funds
12 would be released to Oron's counsel with the understanding, but no guarantee, that such funds
13 would be used to retain Respondent as counsel for Oron for the payment of \$75,000, which would
14 have the practical effect of potentially conflicting Respondent off any future litigation against
15 Oron ("Post-Judgment Agreement").

16 16. On or about August 13, 2012, Respondent informed Liberty of the proposed Post-
17 Judgment Agreement by presenting a copy thereof to Liberty's CEO Jason Gibson for his review,
18 approval and signature. The Post-Judgment Agreement encompassed the payment of the
19 \$550,000 Settlement Amount and Judgment by Oron to Liberty as well as the release of \$75,000
20 of Oron's frozen funds to Oron's counsel.

21 17. On or about August 13, 2012, Respondent and Jason Gibson discussed the
22 proposed unfreezing of \$75,000 of Oron's funds. Jason Gibson expressed concerns to Respondent
23 about the disposition of that \$75,000 and did not consent to such unfreezing.

24 18. As a result of the August 13, 2012 discussion between Jason Gibson and
25 Respondent, the Post-Judgment Agreement was not executed. Oron's frozen funds were not

1 released, Respondent did not receive a \$75,000 payment, and Respondent did not become counsel
2 for Oron which might have conflicted him off from opposing Oron in future litigation.

3 19. In response to the District Court's Order dated August 21, 2012, PayPal transferred
4 \$550,000 of Oron's funds to pay the \$550,000 Settlement Amount and Judgment in favor of
5 Liberty. A full and proper accounting of those funds has occurred with Liberty receiving its
6 appropriate share.

7 20. During August of 2012, Respondent and Jason Gibson also discussed pursuing
8 further litigation on behalf of Liberty against Oron and/or its affiliates or related parties in
9 overseas jurisdictions. Respondent estimated additional litigation costs and expenses (not to
10 include attorney's fees) in an amount approximating \$50,000. Mr. Gibson informed Respondent
11 that Liberty was prepared to advance \$25,000 for additional costs and expenses if Respondent
12 would advance the other half. Respondent informed Mr. Gibson that he would personally advance
13 the additional required \$25,000. To memorialize the \$25,000 as an advancement of costs and
14 expenses, Respondent requested Liberty execute a promissory note to that effect.

15 21. On or about August 21, 2012, pursuant to Respondent's advancement to Liberty of
16 the \$25,000, Mr. Gibson signed a promissory note on Liberty's behalf noting the terms of
17 repayment.

18 22. Respondent did not advise Liberty, in writing, of its right to seek the advice of
19 independent counsel with regards to the promissory note.

20 23. Respondent's employment by Excelsior ceased on or about August 29, 2012 after
21 he indicated a likely need to withdraw from representing Liberty. Respondent and Excelsior
22 dispute whether Respondent resigned or was terminated by Excelsior.

23 24. RPC 5.6 reads, in part, that "[a] lawyer shall not participate in offering or making
24 ... [a]n agreement in which a restriction on the lawyer's right to practice is part of the settlement
25 of a client controversy." As part of the negotiations culminating in the drafting of the proposed

1 Post-Judgment Agreement to which Liberty was a proposed party and signatory, Respondent
2 offered to enter into an agreement which would have the likely effect of restricting Respondent's
3 right to practice law.

4 25. RPC 1.8(a) mandates that "a lawyer shall not enter into a business transaction with
5 a client or knowingly acquire an ownership, possessory security or other pecuniary interest
6 adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest
7 are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner
8 that can be reasonably understood by the client, and(b) the client is advised in writing of the
9 desirability of seeking and is given a reasonable opportunity to seek the advice of independent
10 legal counsel on the transaction." Respondent did not advise Liberty, in writing, of the desirability
11 or advisability of seeking the advice of independent legal counsel on the fairness of the \$25,000
12 advance or give Liberty the reasonable opportunity to seek the advice of independent counsel
13 before accepting the advance and signing the promissory note.

14 AGGRAVATION / MITIGATION

15 1. Pursuant to SCR 102.5(1) (Aggravation and mitigation), the Parties considered the
16 following *aggravating* factors in considering the discipline to be imposed:

17 (i) Substantial experience in the practice of law.

18 2. Pursuant to SCR 102.5(2) (Aggravation and mitigation), the Parties considered the
19 following *mitigating* factors in considering the discipline to be imposed:

20 (a) Absence of prior disciplinary record;

21 (e) Full and free disclosure to disciplinary authority or cooperative attitude toward
22 proceeding including Respondent's self-reporting of the results of an arbitration
23 proceeding which reopened this matter after the initial complaint had been closed;
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1 (j) Delay in disciplinary proceedings recognizing that all allegations relate to
2 alleged conduct occurring almost 6 and 7 years prior to this Conditional Guilty Plea
3 with no further complaints filed with the bar subsequent to that time.

4 **III.**
5 **STATED FORM OF DISCIPLINE**

6 Based upon the above and foregoing, the Parties agree to recommend attorney discipline
7 subject to the following conditions:

8 1. The Respondent agrees to accept a term of suspension of 12 months, with the
9 suspension stayed; said suspension is to begin on the date of the Nevada Supreme Court's Order
10 approving the conditional guilty plea in this matter.

11 2. The Respondent will be placed on an eighteen-month term of probation, said
12 probation to begin on the date of the Nevada Supreme Court's order approving the conditional
13 guilty plea in this matter.

14 3. The Respondent will "stay out of trouble" during his term of probation, meaning
15 that he will have no new grievance arising out of conduct post-dating the date of this Conditional
16 Guilty Plea resulting in the imposition of actual discipline (a Letter of Reprimand or above- SCR
17 102) against him during his term of probation.

18 4. The Respondent will successfully complete twenty hours of Continuing Legal
19 Education ("CLE"), in addition to his normal CLE requirements, during his term of
20 probation. The twenty CLE hours will all be ethics credits, cannot be used as credit against any
21 other CLE requirements, and will be reported to the State Bar of Nevada.

22 5. The Respondent will seek the advice and approval of an independent and
23 unaffiliated ethics attorney in the relevant jurisdiction before obtaining any conflicts of interest
24 waivers during the probationary period.
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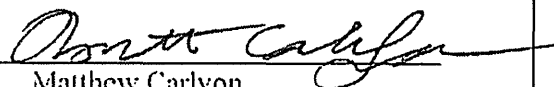
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V.
APPROVAL OF BAR COUNSEL

Having read the Plea tendered by Respondent and being satisfied with the contents therein,
I hereby approve and recommend the Plea for approval by the Formal Hearing Panel.

DATED this 4 day of ~~May~~ June, 2018.

STATE BAR OF NEVADA
Janean V. Isaacson, Acting Bar Counsel

By: 
Matthew Carlyon
Assistant Bar Counsel
Nevada Bar No. 12712
3100 W. Charleston Blvd., Suite 100
Las Vegas, Nevada, 89102

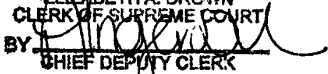
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
MARC J. RANDAZZA, BAR NO. 12265.

No. 76453

FILED

OCT 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
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 Marc J. Randazza. Under the agreement, Randazza admitted to violating RPC 1.8(a) (conflict of interest: current clients: specific rules) and RPC 5.6 (restrictions on right to practice) in exchange for a 12-month suspension, stayed for a period of 18 months subject to conditions.

Randazza has admitted to the facts and the violations alleged in two counts set forth in the amended complaint.¹ The record therefore establishes that Randazza violated the above-listed rules by loaning money to his client without informing the client in writing of the desirability of obtaining independent counsel, and by negotiating with opposing counsel to receive, as part of a settlement, a retainer for future legal services.

As Randazza admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline

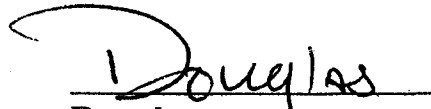
¹In exchange for Randazza's guilty plea, the State Bar agreed to dismiss the remaining seven counts in the amended complaint.

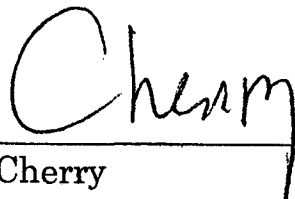
sufficiently protects the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating and mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

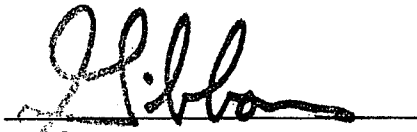
Randazza has admitted to violating duties owed to his client (conflict of interest) and the legal profession (restrictions on right to practice), and the admitted facts reflect that the misconduct was knowing. His conduct may have caused a delay in the disbursement of settlement funds to his client. The baseline sanction for both rule violations, before considering aggravating and mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.32 (Am. Bar Ass’n 2017) (providing that suspension is appropriate when a lawyer “knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client”); *id.* Standard 7.2 (providing that suspension is appropriate when a lawyer “knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system”). The record supports one aggravating circumstance (substantial experience in the practice of law) and three mitigating circumstances (absence of prior disciplinary record, full and free disclosure to disciplinary authority or cooperative attitude toward proceeding, and delay in disciplinary proceedings). Considering all the factors, we conclude that the agreed-upon discipline is appropriate.

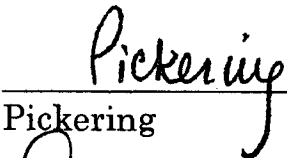
Accordingly, we hereby suspend Marc J. Randazza for 12 months, stayed for 18 months commencing on the date of this order, subject to the following conditions: (1) Randazza shall "stay out of trouble" during the probationary period, "meaning that he will have no new grievance arising out of conduct post-dating the date of the plea which results in the imposition of actual discipline (a Letter of Reprimand or above, SCR 102) against him"; (2) he shall successfully complete 20 hours of CLE in ethics in addition to his normal CLE requirements during the probationary period; (3) he shall seek the advice and approval of an independent and unaffiliated ethics attorney in the relevant jurisdiction before obtaining any conflicts of interest waivers during the probationary period; and (4) he shall pay the actual costs of the disciplinary proceeding, including \$2,500 under SCR 120, within 30 days of this court's order, if he has not done so already. The State Bar shall comply with SCR 121.1

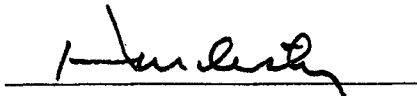
It is so ORDERED.

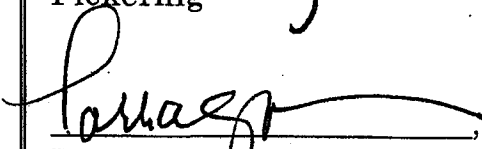

_____, C.J.
Douglas

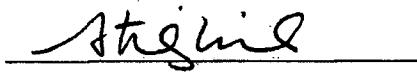

_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Chair, Southern Nevada Disciplinary Panel
Gentile, Cristalli, Miller, Armeni & Savarese, PLLC
Bar Counsel, State Bar of Nevada
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court