

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **Opinion Number:** _____

3 **Filing Date:** May 11, 2017

4 **NO. S-1-SC-36175**

5 **IN THE MATTER OF**

6 **D. CHIPMAN VENIE**

7 **An Attorney Disbarred from**
8 **the Practice of Law Before the Courts**
9 **of the State of New Mexico**

10 Jane Gagne
11 Albuquerque, NM

12 for Disciplinary Board

13 D. Chipman Venie
14 Albuquerque, NM

15 Respondent

1 **OPINION**

2 **CHÁVEZ, Justice.**

3 {1} Attorney D. Chipman Venie was permanently disbarred from the practice of
4 law on January 18, 2017 for actions arising from his representation of three clients.
5 *In re Venie*, No. S-1-SC-36175, amended order at 2 (N.M. Sup. Ct. Jan. 18, 2017)
6 (non-precedential). Venie counseled the first client, L.A., to bribe witnesses and
7 offered to deliver the bribery payment to the witnesses. Venie also unnecessarily
8 revealed confidential communications from L.A. in a fee dispute case between them,
9 and made material misrepresentations to tribunals and the Disciplinary Board. In
10 representing the second client, R.C., Venie converted money for his own use that was
11 provided to him by R.C.'s parents for the sole purpose of posting a bond for R.C.
12 With respect to the third client, A.C., Venie filed a lien against the property of A.C.'s
13 mother to secure a fee owed to him by A.C.

14 {2} The disciplinary charges against Venie were addressed in two consolidated
15 cases. The first is Disciplinary Board Case No. 04-2015-720 (Case 720) involving
16 L.A. The second is Disciplinary Board Case No. 01-2016-737 (Case 737) involving
17 both R.C.'s and A.C.'s cases. Each Disciplinary Board hearing committee entered
18 findings of fact and conclusions of law, and recommended that Venie be disbarred.
19 The cases were consolidated, and the Disciplinary Board panel adopted each hearing

1 committee's findings of fact and concurred with their recommendation that Venie be
2 disbarred.

3 {3} We review the factual findings for substantial evidence and the Disciplinary
4 Board's legal conclusions and recommendations for discipline under a de novo
5 standard of review. *See In re Bristol*, 2006-NMSC-041, ¶¶ 18, 26, 28, 140 N.M. 317,
6 142 P.3d 905 (per curiam). We hold that the findings of fact are supported by
7 substantial evidence and that the recommendation of permanent disbarment is
8 appropriate in this case. We have chosen to write an opinion in this case primarily
9 to address Venie's defenses rather than to catalogue his myriad violations.

10 **I. DISCUSSION**

11 **A. Case 720**

12 {4} In Case 720, Venie raises two defenses that merit discussion. First, he asserts
13 that the charge regarding counseling L.A. to bribe witnesses is barred by the four-year
14 limitations period under Rule 17-303 NMRA (1994) because his alleged violations
15 occurred on May 22, 2011 and the charges were not filed until September 9, 2015.
16 Second, he contends that his disclosure of earlier confidential communications with
17 L.A. in a fee dispute case was permissible to attack L.A.'s credibility and to illustrate
18 the difficult issues he faced when representing him. We address these arguments in

1 turn.

2 {5} The procedural history of Case 720 is relevant to our disposition of the
3 limitations period issue. On April 20, 2015, the Disciplinary Board opened Case 720
4 and alleged that Venie had disclosed L.A.'s confidences in a public pleading filed in
5 response to a lawsuit by L.A. L.A.'s lawsuit primarily related to a dispute about
6 accounting of fees and property L.A. had provided as payment to Venie throughout
7 Venie's representation of L.A. The original disciplinary complaint also alleged in the
8 alternative that Venie had filed frivolous pleadings and made misrepresentations to
9 both the district court and the Disciplinary Board.

10 {6} On September 9, 2015, disciplinary counsel amended the complaint to include
11 a count asserting that Venie had counseled L.A. to bribe witnesses. The new charges
12 were based on a May 22, 2011 recording between Venie and L.A., which disciplinary
13 counsel obtained from Venie during discovery.

14 {7} Venie contends that the amended complaint is barred by the limitations period.
15 Venie relies on the 1994 version of the limitations period under Rule 17-303, which
16 stated:

17 Except in cases involving theft or misappropriation, conviction of a
18 crime, or a knowing act of concealment, no complaint against a person
19 subject to these rules shall be considered by the board unless a written
20 complaint is filed with or initiated by chief disciplinary counsel in

1 accordance with these rules within four (4) years from the time the
2 complainant knew or should have known the facts upon which the
3 complaint is filed.

4 Venie argues that the limitations period ran on or about May 22, 2015, which was
5 four years after May 22, 2011, when the conversation between him and L.A.
6 occurred. Venie contends that the 2013 amendment to Rule 17-303, which eliminated
7 the limitations period defense, does not apply retroactively to acts that occurred
8 before the current rule's effective date of December 31, 2013.

9 {8} Contrary to Venie's assertions, none of the disciplinary charges against him are
10 barred. Before the amendment, Rule 17-303 provided a limitations period, which is
11 not strictly a statute of limitations, but even if we were to treat it as a rigid statute of
12 limitations, the 2013 amendment to Rule 17-303 eliminating the limitations period
13 nevertheless applies to Venie's conduct because Venie does not have a vested right
14 in the application of the former limitations period. *See State v. Morales*,
15 2010-NMSC-026, ¶ 1, 148 N.M. 305, 236 P.3d 24 (noting that the abolishment or
16 extension of a limitations period "cannot revive a previously time-barred
17 prosecution," but "it can extend an unexpired limitation period because such
18 extension does not impair vested rights acquired under prior law, require new
19 obligations, impose new duties, or affix new disabilities to past transactions"). For

1 Venie to have a vested right in the 1994 limitations period, the facts giving rise to the
2 disciplinary complaint would have had to occur at least four years before the 2013
3 amendment. *Grygorwicz v. Trujillo*, 2006-NMCA-089, ¶¶ 20-21, 140 N.M. 129, 140
4 P.3d 550 (holding that an amendment providing an extension of the statute of
5 limitations applied to conduct that occurred before the amendment was enacted
6 because the cause of action was not time-barred by the preexisting law, and therefore
7 the defendant had no vested right in a statute of limitations defense). Venie’s conduct
8 occurred on May 22, 2011, nineteen months before the effective date of the 2013
9 amendment to the limitations period. Accordingly, Venie had no vested right in a
10 limitations period defense under the 1994 version of Rule 17-303, and therefore the
11 amendment permissibly extended an unexpired limitation period. *Morales*, 2010-
12 NMSC-026, ¶ 1; *Grygorwicz*, 2006-NMCA-089, ¶ 20. We conclude that the
13 amendment abolishing the limitations period applies to Venie’s conduct, and that the
14 charges against Venie are not time-barred and can be properly reviewed by this Court.
15 We now turn to the merits of Case 720.

16 **1. Counseling his client to bribe witnesses**

17 {9} Venie represented L.A. on felony charges which alleged that L.A. engaged in
18 incest, criminal sexual contact, and criminal sexual penetration of his granddaughter

1 (Granddaughter). Venie recorded a conversation he had with L.A. on May 22, 2011
2 during which they discussed confrontations L.A. had with his son (Son), who is
3 Granddaughter's father, and Granddaughter, despite a court order prohibiting L.A.
4 from having contact with Granddaughter and Son.

5 {10} The following excerpts from the transcript of the recorded May 22, 2011
6 conversation (emphasis added) provide sufficient evidence to support the allegations
7 that Venie counseled L.A. to bribe witnesses and offered to assist him with delivering
8 the bribe.

9 Venie: But [Son] and myself are bending over backwards to try and
10 save you

11 Page 2, lines 21-22

12 Venie: If you don't lay off [Son], you're going to end up in prison,
13 dying there, okay, and you're going to end up probably getting raped to
14 death in prison, all right?

15 Page 2, line 25 to page 3, line 3

16 Venie: [Son], right now, is in Arizona or on his way to Arizona, and in
17 his hand is paperwork that could get me disbarred, okay? And he could
18 get in serious trouble, as well. And—and [another witness who had told
19 the police L.A. was having a sexual relationship with Granddaughter]
20 could get in serious trouble, as well. All three of us have decided to put
21 our lives at risk to save you, okay?

22 Page 3, lines 6-10

1 Venie: If [Son] turns sideways on us, you're going to die in prison. If
2 [Granddaughter] turns sideways on us, you're going to die in prison.

3 Page 3, lines 12-14

4 Venie: *Maybe you should think—maybe you should think about paying*
5 *them [Son and Granddaughter] both off, okay? Now, even me suggesting*
6 *(inaudible) gets me disbarred. But you see how far I'm willing to go—*

7 L.A.: I am paying them off.

8 Page 12, lines 2-6

9 Venie: *Do you see how far I'm willing to go to help you? I'm willing*
10 *to put my own livelihood, everything you see around here, on the line to*
11 *help you.*

12 Page 12, lines 8-10

13 Venie: [A]ll I know is if you don't kiss these people's ass and make
14 them happy over the next year and a half or two while this case is
15 pending, they're going to fucking fry you for it. Okay?

16 Page 15, lines 10-13

17 Venie: You know, all these people, every one of them could sink your
18 ass, and you're still antagonizing them. Please, stop doing that.

19 Page 16, lines 7-9

20 Venie: *And what I'm—and what I'm telling you is—and I can't believe*
21 *I'm saying this, but you might want to just pay [Son and Granddaughter]*
22 *off, and that's it. I mean, you might want to start thinking about*
23 *(inaudible).*

24 Page 39, lines 12-16

1 Venie: *And (inaudible)—and if it's something you want to do, I can*
2 *make that happen for you and you would never have to give it directly*
3 *to them. I would do it, and then that would be that.*

4 Page 39, lines 19-22

5 {11} The above exchanges between Venie and L.A. support the conclusion that
6 Venie violated Rule 16-102(D) NMRA, which states: “A lawyer shall not counsel
7 a client to engage, or assist a client, in conduct that the lawyer knows is criminal or
8 fraudulent or misleads the tribunal.” Venie’s advice to L.A. that he should consider
9 paying off his accusers and the State’s primary witnesses against L.A. unequivocally
10 demonstrated Venie’s intent to convince his client to bribe witnesses. Not only did
11 Venie repeat his advice to L.A., he offered to help carry out the bribery. Venie
12 presciently told L.A. that by simply counseling L.A. to bribe witnesses he could be
13 disbarred. This conduct alone justifies disbaring Venie from the practice of law.

14 **2. Making misrepresentations to a tribunal**

15 {12} Venie made material misrepresentations to tribunals during his representation
16 of L.A. and at his disciplinary proceedings. Prior to the May 22, 2011 conversation,
17 Venie prepared affidavits for Granddaughter, Son, and another witness based on their
18 statements to Venie, in which they all claimed that L.A. was innocent of the crimes
19 for which he was charged. During their May 22, 2011 conversation, Venie repeatedly

1 acknowledged that L.A. had committed incest and L.A. confirmed his guilt.

2 {13} The following excerpts from Venie and L.A.'s May 22, 2011 conversation
3 (emphasis added) provide insight into Venie's knowledge of L.A.'s crimes.

4 Venie: *I know what you did, okay, and everybody knows what you did.*
5 *And everybody's been acting like you didn't do it. And everyone's been*
6 *lying and saying you didn't do it.*

7 Page 2, lines 14-17

8 Venie: [Son]—this just kills me—[Son] can't even take his daughter to
9 get counseling to try and deal with this because if that happens, that's
10 going to hurt the legal case, all right? So [Son] is actually not giving
11 [Granddaughter] the help she needs in order to help you, all right?

12 Page 3, lines 15-20

13 Venie: *And, dude, [Son]'s lied, [L.A.'s wife (Wife)] lied,*
14 *[Granddaughter]'s lied. [Another witness]'s getting a lie [sic].*
15 *Everyone's doing what you want them to do.*

16 Page 4, lines 12-14

17 Venie: And I don't give a fuck how much money [Son] owes you, what
18 he's done for you is priceless. Okay? *He got his own daughter to lie to*
19 *cover up your crime. He's lying to cover up your crime. He's in*
20 *Arizona right now, fucking twisting [another witness]'s arm to cover up*
21 *your crimes.*

22 Page 5, lines 2-6

23 Venie: If you—if it was my father, *I would not have done what [Son]*
24 *had done. I would have probably shot your ass. Okay?*

1 Page 6, lines 12-14

2 Venie: And [Son] has not only done that, he's really standing up for
3 you. Right now, as we sit here, he's on his way to Arizona—

4 L.A.: I know.

5 Venie: —to tie down the last part of the case.

6 Page 6, lines 16-21

7 L.A.: And I'm taking the full brunt of it over the head. *He tells me,*
8 *"Well, you raped her." Well, no, it's far from the truth.*

9 Page 7, line 24 to page 8, line 1

10 L.A.: *She came to me naked.*

11 Page 8, line 3

12 Venie: —you understand that's wrong, right?

13 L.A.: *It's wrong. I was—I fucked up big time.*

14 Venie: So I don't care if she—that's not a defense. All right?

15 Page 8, lines 6-11

16 Venie: In fact, it's kind of disgusting to me. All right? So—but
17 we're—that—that horse has already left the barn. We're talking about
18 what everyone's doing now. *Okay? You did what you did. All right?*
19 *I'm just trying to save you from dying in prison. Okay?*

20 Page 8, lines 13-18

21 Venie: I drafted up a statement for [other witness], and—in detail,

1 killing the shit out of that case—and said, “Two copies, take it to
2 Arizona, signed, notarized, fingerprinted, bring it back.” That’s what
3 [Son] did.

4 Page 9, lines 14-17

5 Venie: But he’s told me he’s going to call me today when it’s all signed.

6 Page 10, lines 4-5

7 L.A.: See, I begged him to—

8 Page 10, line 7

9 L.A.: —get it done about a month ago

10 Page 10, lines 9-10

11 Venie: I mean, they’re investigating you back 40 years. You know that?

12 Page 10, lines 15-16

13 L.A.: None of this shit has never [sic] come up before, never happened
14 before. This deal was a fluke. I take 100 percent of the blame for it. I
15 should have known better.

16 Page 11, lines 7-10

17 L.A.: I can’t say nothing to her because I can’t afford to make her mad.
18 She’s milking it to the hilt to get what she wants, and I know it. And
19 that’s fine, but I can’t give myself no defense because if I say anything,
20 I piss her off. I say anything, I piss him off.

21 Page 11, lines 17-22

22 Venie: —*his daughter got banged by his father*—

1 L.A.: *Yeah.*

2 Venie: —and he’s still standing up for his father.

3 L.A.: *Yeah.*

4 Venie: So that’s pretty unusual, to say the least. Okay?

5 L.A.: *Yeah.*

6 Page 29, line 19 to page 30, line 2

7 L.A.: I promise you, there won’t be—me and him ain’t gonna have
8 another bump. It’s like I told [Wife], I said—you know, he told [Wife],
9 he says, well, *I forced her. I says, “That’s a lie. She came to me*
10 *naked.” I fucked up. But I did not go to her. She came to me. I can’t*
11 *say that. I can’t tell [Wife] that—*

12 Page 40, line 23 to page 41, line 3

13 L.A.: And it’s like—and it’s like I told [Wife], I said, “You know, I’m
14 in a—I’m against a rock.” And all I can say is, “*I’m sorry. I wish it*
15 *hadn’t have happened. But what do you want me to do?”*

16 Page 41, lines 9-12

17 {14} After the May 22, 2011 conversation, Venie prepared another affidavit for
18 Granddaughter on August 15, 2011, where she again claimed that she and L.A. had
19 not had any sexual encounters. At L.A.’s criminal trial in October 2012,
20 Granddaughter testified that L.A. had sexual contact with her, contrary to her
21 affidavits. Venie then used the affidavits he had prepared for Granddaughter to

1 impeach her at trial.

2 {15} Criminal defense attorneys are permitted to put the State to its burden of proof
3 and do not share in the State's duty to present the truth in a criminal proceeding.
4 *United States v. Wade*, 388 U.S. 218, 256-58 (1967) (White, J., dissenting in part and
5 concurring in part). Because a criminal defense attorney has a duty to represent his
6 or her client whether or not the client is guilty, the attorney need not present any
7 knowledge that he or she may have about the truth. *Id.* at 257. A defense attorney
8 has the right to "cross-examine a prosecution witness, and impeach him if he can,
9 even if he thinks the witness is telling the truth, just as he will attempt to destroy a
10 witness who he thinks is lying." *Id.* at 258. However, although attorneys should be
11 encouraged to be zealous advocates, their duty to provide diligent representation to
12 their clients "does not require the use of offensive tactics or preclude the treating of
13 all persons involved in the legal process with courtesy and respect." Rule 16-103
14 NMRA, Comm. cmt. 1.

15 {16} What is particularly disconcerting is that Venie could have impeached
16 Granddaughter with her initial statement to the police when she denied that she had
17 ever had sexual relations with L.A. Instead, he sought to corroborate
18 Granddaughter's initial statement to the police with an affidavit that Venie drafted for

1 her which he knew was perjured. Venie was permitted to hold the State to its burden
2 of proving L.A.'s guilt beyond a reasonable doubt, but Venie's advocacy was flawed
3 and "falls outside [the] protected behavior" of vigorously representing his client.
4 *United States v. Thoreen*, 653 F.2d 1332, 1338-39 (9th Cir. 1981).

5 {17} Venie's pattern of introducing false statements to tribunals continued when he
6 represented L.A. during related civil litigation. On January 7, 2014, L.A. was
7 acquitted of incest, criminal sexual contact, and criminal sexual penetration. On
8 March 28, 2014, Venie sued Granddaughter, Son, two other named individuals, and
9 Does 1-10 (unnamed detectives and/or other employees) of the Bernalillo County
10 Sheriff's Department on L.A.'s behalf, alleging wrongful arrest and prosecution.
11 L.A. was served with interrogatories from Bernalillo County in which he was asked
12 to disclose any times he had been "accused of rape, sexual assault and/or battery or
13 sexual misconduct of any kind during [his] lifetime." Venie counseled L.A. to
14 dismiss the case because truthful responses to the discovery requests would be
15 detrimental to the merits of the case. L.A. agreed to dismiss the county defendants
16 but refused to dismiss the lawsuit against Granddaughter, Son, and one other
17 defendant.

18 {18} Venie's relationship with L.A. ultimately deteriorated. L.A. and Wife hired

1 another attorney to obtain an accounting of fees incurred and paid to Venie. L.A. and
2 Wife also filed an application for a temporary restraining order and motion for
3 preliminary injunction alleging that Venie was threatening them after the lawsuit was
4 filed, and that Venie could potentially improperly dispose of funds and assets
5 belonging to them. Venie failed to respond to the merits of the L.A. litigation, and
6 instead focused on L.A.'s guilt, which Venie alleged he did not discover until after
7 he had filed the civil lawsuit against L.A.'s accusers. Venie claimed that throughout
8 his representation of L.A. in the criminal cases, L.A. had maintained his innocence.¹

9 {19} Because the May 22, 2011 recording undeniably demonstrates Venie's
10 knowledge of L.A.'s guilt, we conclude there is substantial evidence proving that
11 Venie introduced multiple misrepresentations to a tribunal, and therefore Venie
12 violated Rules 16-303(A)(1), (A)(3), and 16-301 NMRA. During the May 22, 2011
13 conversation, Venie stated that he knew what L.A. did; L.A. also acknowledged
14 Venie's statement, referring to Son, that "his daughter got banged by his father."
15 Nevertheless, Venie knowingly filed a false affidavit denying any knowledge of
16 L.A.'s guilt, stating under oath that "[t]hroughout the pendency of the criminal cases,

17 ¹Although Venie claims that throughout his representation of L.A. he only
18 knew about L.A.'s guilt of incest and not of criminal sexual penetration, the hearing
19 committee and the Disciplinary Board panel permissibly rejected Venie's assertion,
20 particularly since none of the pleadings in the civil case made this distinction.

1 [L.A.] always told me he was innocent and that he did not [do] the things of which
2 he was accused.” Venie continued to deny knowledge of L.A.’s guilt during an
3 underlying disciplinary proceeding, contrary to Rule 16-801(A) NMRA, which
4 requires a lawyer in connection with a disciplinary matter to refrain from “knowingly
5 mak[ing] a false statement of material fact.”

6 {20} Under Rule 16-303, lawyers are expected to exhibit candor toward tribunals.
7 Subsection (A)(1) provides: “[a] lawyer shall not knowingly . . . make a false
8 statement of fact or law to a tribunal or fail to correct a false statement of material fact
9 or law previously made to the tribunal by the lawyer.” In the same vein, Subsection
10 (A)(3) states that “[a] lawyer shall not knowingly . . . offer evidence that the lawyer
11 knows to be false.”

12 {21} Despite knowing that L.A. had committed incest, Venie filed a frivolous
13 lawsuit on L.A.’s behalf alleging that L.A. had been falsely accused and prosecuted.
14 Rule 16-301 states: “[a] lawyer shall not bring or defend a proceeding, or assert or
15 controvert an issue therein, unless there is a basis in law and fact for doing so that is
16 not frivolous” Venie did not have a good faith basis for bringing the lawsuit
17 knowing that L.A. had admitted his incestuous conduct with Granddaughter.

18 {22} Venie’s conduct also violated Rule 16-804(C) and (D) NMRA, which define

1 professional misconduct, inter alia, as engaging in “conduct involving dishonesty,
2 fraud, deceit or misrepresentation” and “conduct that is prejudicial to the
3 administration of justice.” See *In re Neal*, 2003-NMSC-032, ¶¶ 7, 9, 134 N.M. 594,
4 81 P.3d 47 (per curiam) (finding a violation of Rule 16-804(C) and (D) for making
5 false statements of material fact to a tribunal when a suspended lawyer
6 misrepresented his ability to represent a client in court). Venie had a duty to refrain
7 from introducing any misrepresentations to a tribunal. As an officer of the court,
8 Venie was obligated to be truthful to courts of law. *In re Stein*, 2008-NMSC-013, ¶
9 35, 143 N.M. 462, 177 P.3d 513 (per curiam). “Candor and honesty are a lawyer’s
10 stock and trade. Truth is not a matter of convenience.” *Id.* (internal quotation marks
11 and citations omitted). Here, Venie failed to follow one of the most basic ethical
12 requirements imposed upon attorneys. See *Thoreen*, 653 F.2d at 1339 (noting that
13 scrupulous candor and truthfulness in representations of any matter before a court is
14 a basic ethical requirement for attorneys).

15 **3. Revealing client confidences**

16 {23} In his response to L.A. and Wife’s petition for an accounting, application for
17 a temporary restraining order, and motion for a preliminary injunction, Venie stated
18 that L.A. “is a child molester and fraud [who] enjoyed having sex with under-aged

1 female relatives in his family (and other under-aged people), until he was finally
2 caught and charged with multiple counts of incest.” He also stated that L.A. “choked
3 [Wife] and tried to kill a witness to cover up his multiple molestations, including one
4 of the witnesses who directly saw him having sex with his granddaughter.” Venie
5 revealed that L.A. had told him he had engaged in “sexual intercourse with his grand-
6 daughter, both by force and consensually.” Venie also revealed that L.A. had told
7 him “he had been having sex with multiple under-aged girls since at least 1966” and
8 “he had sex with other under-aged female family members as well.” Venie concluded
9 his response by stating that L.A. and Wife “should not be able to obtain equitable
10 relief in this court when they have behaved as child molesting frauds for fifty years
11”

12 {24} Rule 16-106(A) NMRA provides that “[a] lawyer shall not reveal information
13 relating to the representation of a client unless the client gives informed consent, the
14 disclosure is impliedly authorized in order to carry out the representation or the
15 disclosure is permitted” under Rule 16-106(B), but even then a lawyer may only
16 disclose such confidences “to the extent the lawyer reasonably believes necessary.”
17 We conclude that there is sufficient support to prove that Venie violated Rule
18 16-106(A).

1 {25} Venie contends that he was justified in revealing his client’s confidences under
2 Rule 16-106(B)(2), (3) and (5). We disagree. Subsection (B)(2) provides that an
3 attorney can reveal client confidences to the extent necessary “to prevent the client
4 from committing a crime or fraud that is reasonably certain to result in substantial
5 injury to the financial interests or property of another and in furtherance of which the
6 client has used or is using the lawyer’s services.” Subsection (B)(3) provides that a
7 lawyer may reveal confidences “to prevent, mitigate or rectify substantial injury to the
8 financial interests or property of another that is reasonably certain to result or has
9 resulted from the client’s commission of a crime or fraud in furtherance of which the
10 client has used the lawyer’s services.” In reviewing the context of the client’s
11 pleadings and Venie’s perplexing response to them, it is evident that Venie disclosed
12 the sensitive information for an improper purpose. Venie’s response was not
13 necessary to prevent L.A. from committing a crime or fraud that would result in injury
14 to the financial interests or property of another.

15 {26} Furthermore, under Rule 16-106(B)(5), an attorney may reveal client
16 confidences to the extent necessary “to establish a claim or defense on behalf of the
17 lawyer in a controversy between the lawyer and the client” Regarding fee
18 disputes, the only disclosures an attorney is permitted to make are those necessary “to

1 prove the services rendered in an action to collect it.” Rule 16-106, Comm. cmt. 13.
2 In defending himself against L.A. and Wife’s lawsuit, Venie should have responded
3 only with demonstrating the amount of work he had performed to prove that he had
4 earned the fees he charged them. Venie’s disclosure of L.A.’s guilt was neither
5 relevant nor material in “a garden-variety fee dispute,” as he referred to the lawsuit
6 between him and L.A.

7 {27} By revealing client confidences for his own benefit, Venie “violated the
8 sanctity of the confidential relationship existing between attorney and client.” *Dixon*
9 *v. State Bar of Cal.*, 653 P.2d 321, 328 (Cal. 1982) (in bank). The confidences that
10 clients share with their attorneys must be vigorously protected as the attorney-client
11 relationship cultivates the trust imperative to the attorney’s efficient representation
12 of the client. *In re Lichtenberg*, 1994-NMSC-034, ¶ 10, 117 N.M. 325, 871 P.2d 981
13 (per curiam). Venie not only disregarded any precautions he could have taken in
14 disclosing L.A.’s confidences, such as in camera review, he also revealed those
15 confidences in a public court document, which then were printed in the *Albuquerque*
16 *Journal* in an article titled “Lawyer says his ex-client is a child molester.” Venie’s
17 disclosures threaten to undermine the profession if clients believe they cannot trust
18 their attorneys to keep their confidences.

1 **B. Case 737**

2 {28} In Case 737, Venie raises a baseless defense to justify converting third-party
3 funds to pay attorney’s fees he alleged that his clients owed to him. He asserts that
4 he properly withheld third-party money as a retaining lien.

5 **1. Claiming entitlement to third-party property in satisfaction of alleged**
6 **client fees owed**

7 {29} The parents of the second client (Parents) signed a retainer agreement with
8 Venie and paid him a flat fee of \$10,000 to represent R.C. on felony charges. R.C. did
9 not sign this agreement. The retainer agreement that Parents signed, titled “Earned
10 on Receipt True Retainer Agreement for Pre Trial Services,” provided that the flat fee
11 of \$10,000 was earned upon receipt, was “*not dependent upon hours of professional*
12 *services rendered by VENIE, whether the Client’s case [was] prosecuted, whether*
13 *any appearances [were] made, or the outcome of Client’s criminal case,”* and
14 pertained to services up to the setting of a trial date in the case or “*pre-trial*” legal
15 services.² (Emphasis in original.) The retainer agreement also contained the
16 following provision:

17 ²Although this opinion focuses on Venie’s justifications for his misconduct
18 rather than every rule violation, we emphasize that it is a violation of the Rules of
19 Professional Conduct to consider a flat fee for future legal services earned upon
20 receipt and to fail to place such a fee in trust until it is earned. *In re Yalkut*, 2008-
21 NMSC-009, ¶ 26, 143 N.M. 387, 176 P.3d 1119 (per curiam).

1 **REFUNDS.** . . . To the extent that Mr. Venie is relieved, the client or
2 payors is [sic] entitled to a refund of any unearned fees. To the extent
3 that Mr. Venie is relieved before completion of this matter FOR ANY
4 REASON, all parties agree that Mr. Venie is entitled to *quantum meruit*,
5 and that all parties stipulate that \$450.00 an hour is Mr. Venie’s hourly
6 rate. All parties further stipulate and agree that Mr. Venie’s hourly rate
7 of \$450.00 is reasonable. This means that the parties agree that if Mr.
8 Venie is relieved for ANY REASON, he will be entitled to \$450.00 per
9 hour, plus costs as set forth below, for any and all work done, and any
10 and all costs expended or incurred, in defense of the client.

11 There is no showing in the record that Venie explained the refunds provision to
12 Parents or that Parents understood it.

13 {30} R.C.’s mother wired Venie \$100,000 for payment of R.C.’s bond. Venie then
14 deposited the check with the district court and posted R.C.’s bond. R.C.’s mother
15 never authorized Venie to use the money for any purpose other than to post R.C.’s
16 bond.

17 {31} During the course of Venie’s representation of R.C., Venie hand-delivered a
18 letter to R.C. in which he requested a total of \$16,050 for 33.3 additional hours of
19 pretrial services. In his letter, Venie identified work he anticipated performing and
20 stated that “[t]his case has gone way beyond our initial contract and I need to be paid
21 for the additional (and lengthy) work that has arisen since the start of the case.” R.C.,
22 and not Parents, signed an agreement to the hourly charges and paid Venie \$16,050.

23 {32} Ultimately R.C. terminated Venie’s representation. R.C. then obtained new

1 counsel, who intended to file a motion to dismiss the charges against R.C. based on
2 speedy trial grounds. R.C. requested receipts from Venie delineating the amount of
3 money that he and Parents had paid to Venie for his legal services to prove financial
4 loss for the prejudice prong of his speedy trial motion to dismiss. Venie responded
5 to R.C.'s request by stating that R.C. and Parents had paid a total of \$26,750, which
6 included the \$10,000 flat fee plus \$700 in taxes paid by Parents and the \$16,050 paid
7 by R.C. for 33.3 additional hours of work plus taxes, but made no mention of any
8 additional fees owed. In addition, Venie did not provide further substantive legal
9 services after he was terminated.

10 {33} R.C.'s motion to dismiss was granted, and his charges were dismissed with
11 prejudice. R.C.'s mother then called Venie's office to request return of the \$100,000
12 she had wired to Venie to post R.C.'s bond. Venie obtained the check for the
13 \$100,000 in bond money from the district court, which was made out in his name
14 because he had posted the bond. He then mailed Parents a check for \$10,829.30
15 along with a 35-page invoice claiming additional fees owed to him of \$89,170.70
16 based on his reading of the refunds provision from the retainer agreement that had
17 been signed by Parents. Of the \$89,170.70 in additional fees, over \$10,000 were
18 allegedly incurred after Venie's services were terminated. The invoice also included

1 charges for pretrial services that should have been covered by the original \$10,000
2 flat fee. In a letter accompanying the invoice, Venie claimed that he was entitled to
3 additional fees beyond the flat fee paid to him because he had been backing the
4 efforts of R.C.'s new attorney all along.

5 {34} Venie was not entitled to R.C.'s mother's bond money. Based on his reading
6 of the refunds provision of the retainer agreement, Venie unilaterally decided to
7 charge Parents on an hourly basis above the flat fee they had already paid, allegedly
8 according to quantum meruit principles. *See Castillo v. Arrieta*, 2016-NMCA-040,
9 ¶ 17, 368 P.3d 1249 (observing that attorney-client fee agreements are not
10 enforceable unless they are fully known to and understood by the client). However,
11 Venie was entitled to quantum meruit only if he had performed services for which he
12 had yet to be paid at the time his representation was terminated, which was not the
13 case here. *See Guest v. Allstate Ins. Co.*, 2010-NMSC-047, ¶ 49, 149 N.M. 74, 244
14 P.3d 342 (holding that an attorney who is discharged is only entitled to quantum
15 meruit and cannot recover fees for services not rendered). Because R.C. fired Venie
16 during the pretrial stage of his case, Venie did not provide services beyond those
17 which were agreed upon under the retainer agreement.

18 {35} Furthermore, Venie entered into only one contract with Parents that was not

1 signed by R.C., which was the true earned on receipt retainer agreement for pretrial
2 services. Parents satisfied this agreement upon payment of the \$10,000 flat fee.
3 Venie argued that he had established an hourly-based agreement with both Parents
4 and R.C. when he billed R.C. an additional \$16,050 for 33.3 hours of work, and that
5 it was not a unilateral decision to charge R.C.'s mother above the flat fee on an hourly
6 basis. However, the second agreement had been signed only by R.C. and not by
7 Parents; therefore, Venie had no right to charge R.C.'s mother more than the \$10,000
8 flat fee.

9 {36} Venie's actions constituted conversion. Conversion has been defined as "the
10 unlawful exercise of dominion and control over property belonging to another in
11 defiance of the owner's rights, or acts constituting an unauthorized and injurious use
12 of another's property, or a wrongful detention after demand has been made." *In re*
13 *Yalkut*, 2008-NMSC-009, ¶ 25, 143 N.M. 387, 176 P.3d 1119 (per curiam) (internal
14 quotation marks and citation omitted). Venie's actions precisely match the definition
15 of conversion. He wrongfully exercised dominion and control of third-party funds
16 by placing R.C.'s mother's bond money directly into his personal account instead of
17 a trust account, contrary to Rule 16-115(A) and (E) NMRA, due to his failure to hold
18 third-party funds separate from his own, particularly when there were multiple claims

1 to the same funds. He also wrongfully detained the funds after demand was made,
2 contrary to Rule 16-115(D), when he refused to return all of R.C.'s mother's bond
3 money.

4 {37} During his representation of the third client, Venie again alleged entitlement
5 to third-party property to satisfy client fees greater than those that were actually owed
6 to him. Venie entered into a fee agreement with A.C. and his mother to represent
7 A.C. in a criminal matter. The agreement signed by A.C. and his mother included a
8 refunds provision similar to the one in Parents' flat fee agreement in R.C.'s case.
9 According to the agreement, A.C. and his mother paid a flat fee retainer for pretrial
10 services that was capped at \$7,500.

11 {38} A.C. ultimately filed a disciplinary complaint against Venie, and Venie filed
12 a motion to withdraw as his counsel. Thereafter, Venie sent letters to A.C. and his
13 mother demanding an additional payment of \$3,571.60 more than the flat fee which
14 had already been paid to him, and threatened to sue them if he did not receive
15 payment within ten days of the date of the letter. Venie also sent them an invoice
16 which included charges for services that were paid for by the flat fee. Finally, Venie
17 filed a claim of lien for \$4,406.83 against A.C.'s mother's home to fulfill the alleged
18 accrued fees and "for future charges which may accrue and become delinquent."

1 {39} Venie alleges that he rightfully withheld R.C.’s mother’s \$89,170.70 and the
2 \$4,406.83 claim against A.C.’s mother’s home as “retaining liens” and relies on
3 *Prichard v. Fulmer*, 1916-NMSC-046, ¶ 8, 22 N.M. 134, 159 P. 39 for the
4 proposition that an attorney has a right to “retain papers or other property that might
5 come into his possession, or money that he in the course of his professional
6 employment had collected, until all his costs and charges against his client were
7 paid.” In *Prichard*, the discussion on retaining liens is scant because most of the
8 analysis pertained to charging liens, a different type of lien attorneys may use. *See*
9 *id.* ¶¶ 9-14 (analyzing use of charging liens at common law). However, in *Prichard*,
10 *id.* ¶ 8, this Court cited to *Weed Sewing Mach. Co. v. Boutelle*, which further
11 described retaining liens and explained the proposition on which Venie relies. 56 Vt.
12 570, 577-78 (Vt. 1882). A retaining lien gives an attorney the right to retain papers,
13 documents, and money “*against his client, assignments, or attachments*, until the
14 general balance due him for legal services is paid.” *Id.* at 578 (emphasis added);
15 accord *McKnight v. Rice, Hoppner, Brown & Brunner*, 678 P.2d 1330, 1335 (Alaska
16 1984) (“An attorney’s lien can only attach to property of the client.”). Retaining liens
17 can only be used against *client* property or property that was once owned by the client
18 but then assigned to someone else or is now another’s attachment property. Here,

1 Venie assessed liens against the property of third parties to which his clients never
2 claimed ownership. In addition, Venie's actions do not meet the requirements of a
3 charging lien, which only applies to funds recovered by the attorney's aid, such as a
4 judgment or settlement, and not the private funds of a third party. *Id.* at 578.³
5 Accordingly, Venie's contention that he was entitled to assert liens against third-party
6 property to fulfill alleged client fees owed is completely erroneous.

7 **II. CONCLUSION**

8 {40} Venie's misconduct is indefensible and undoubtedly requires the most severe
9 possible sanction.

10 {41} THEREFORE, IT IS ORDERED that effective January 18, 2017, D. Chipman
11 Venie is permanently disbarred from the practice of law in New Mexico pursuant to
12 Rule 17-206(A)(1) NMRA;

13 {42} IT IS FURTHER ORDERED that Venie shall comply with the requirements

14 ³Venie also erroneously relies on *McPherson v. Cox*, 96 U.S. 404 (1877) to
15 justify these liens. In *McPherson*, an attorney rightfully asserted a lien against a bond
16 he held as trustee for the benefit of his client. *Id.* at 420-21. The bond was issued as
17 security for payment of land the client sold to third parties, which the attorney had
18 helped recover in an equity suit for which he was hired. *Id.* at 414-15. The client had
19 agreed to pay the attorney's fees she owed from the funds recovered from the sale of
20 the land. *Id.* at 414. Therefore, in *McPherson*, the attorney was legally in possession
21 of client funds, which the client had specifically agreed to use to pay the attorney's
22 fees.

1 of Rule 17-212 NMRA regarding disbarred attorneys;

2 {43} IT IS FURTHER ORDERED that Venie shall reimburse and pay restitution to
3 R.C.'s mother in the amount of \$89,170.70, plus interest in the amount of fifteen
4 percent (15%) per annum from July 3, 2015 until paid in full;

5 {44} IT IS FURTHER ORDERED that Venie shall be enjoined from suing his
6 former clients R.C., A.C., and A.C.'s mother for fees to which he is not entitled;

7 {45} IT IS FURTHER ORDERED that Venie shall pay costs to the Disciplinary
8 Board in the amount of \$7,998.28 on or before February 18, 2017. Any unpaid
9 balance thereafter shall accrue interest at the statutory rate of eight and three-fourths
10 percent (8 $\frac{3}{4}$ %) per annum until paid in full, and any amount unpaid may be reduced
11 to a transcript of judgment.

12 {46} **IT IS SO ORDERED.**

13

14

EDWARD L. CHÁVEZ, Justice

15 **WE CONCUR:**

16

CHARLES W. DANIELS, Chief Justice

1

2 **PETRA JIMENEZ MAES, Justice**

3

4 **BARBARA J. VIGIL, Justice**

5

6 **JUDITH K. NAKAMURA, Justice**