bar counsel report

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No. SG11-1666

Letter of Reprimand issued when attorney failed to meet professional standards in conducting himself before the U.S. Bankruptcy Court.

A federal judge in the U.S. Bankruptcy Court referred this matter to the State Bar of Nevada in a bankruptcy matter.

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) changed the requirements for filing bankruptcy petitions, effective Monday October 17, 2005. Toward the effective date, Attorney attempted to file more than 30 petitions under the old rules. However, 25 petitions were not filed by the deadline, and were dismissed by the court for failing to comply with BAPCPA.

The court issued an Order to Show Cause to determine why Attorney failed to properly or timely file the cases. Attorney blamed his untimely filings on an undetermined system-wide problem with the court's Case Management/Electronic Case Filing (ECF) system. However, the court's technical staff testified that the only time that ECF was not functioning was for seven minutes, sometime between 2 a.m. and 3 a.m. on Sunday, October 16, 2005. Attorney's paralegal also testified that she was unable to log into ECF to make the deadline; so, she attempted to file the petitions with the clerk, in person, on Monday October 17, 2005. However, as the petitions did not have the manual signature of each client, they could not be filed. The petitions were filed around October 21, 2005. The court also discovered that, as Attorney had not kept his ECF account current, the account had locked him out.

At a hearing held on February 2, 2006, the court ordered Attorney to "disgorge all compensation received" for the 25 cases. Attorney complied with the court's order and the court considered the matter concluded. On October 13, 2010, Attorney filed a "Motion to Re-Open Case, to Consolidate Case(s), and/or to Reconsider and Motion to Vacate Judgement *[sic]*" wherein Attorney asked the court to vacate its order of dismissal, acknowledge the existence of a computer virus that affected his ability to timely file the bankruptcy petitions in 2005, compensate him for the resulting harm to him and his law practice and to issue an apology in the *Nevada Lawyer.*

Attorney's motion was based on a press release that he alleged had been disseminated. The press release purportedly alluded to a computer virus known to the Bankruptcy Courts as 2HC-AFJ, and said that, as a result of the virus, President Bush had passed a law allowing the chief bankruptcy judge in each district to pick two hours in a random day during which bankruptcy filings could be made under the old rules. However, Attorney did not thoroughly research the validity of the press release before filing his motion; nor did he cite to any law or code that would verify the enactment of the law discussed in the release.

At a hearing held in December 2010, the court advised Attorney of its concerns regarding the authenticity of the press release, and requested additional time to research the matter. Attorney was placed on notice that if he was unable to authenticate the press release, the court would initiate proceedings to determine if he had violated Rule 9011 of the Bankruptcy Code, which requires evidentiary support and a basis in law for any factual allegations contained in motions. Before the next hearing date, Attorney unsuccessfully attempted to withdraw the motion, but still maintained in his withdrawal that a computer glitch had prevented his filing the petitions in 2005. Attorney made an oral motion to withdraw at the next hearing, and the court granted the motion. However, the court retained jurisdiction to determine whether or not Attorney had violated Rule 9011.

At a hearing on March 2011, Attorney alleged that he had experienced "considerable frustration" in trying to authenticate the press release, and had tried to do so for two years before filing the motion. Attorney claimed to have contacted the Bankruptcy Court in Hawaii and Dow Jones News Service; Attorney also retained the National Legal Research Group when he could not find any evidence of the law. Attorney also alleged that he was unable to independently verify the accuracy of the press release because he did not subscribe to either Westlaw or Lexis.

Although being unsure that the law cited in the press release was accurate, Attorney proceeded to file the motion because he was concerned that the statute of limitations would soon expire and bar him from receiving the relief to which he felt entitled. However, he failed to identify the specific statute of limitations that had caused concern.

The court took the matter under submission and, in preparing for its disposition, ordered the transcripts of the 2005-2006 and 2010-2011 hearings, filing the transcripts on May 19, 2011. On June 8, 2011, Attorney filed a "Request and Motion for Redaction."

The motion, however, did not specify which transcript, or which portions of the transcript Attorney sought to redact. The motion was also devoid of any legal argument. Rather, the one-page motion contained a number of inflammatory comments directed at the court, including statements to the effect that the contents of the transcript were "unforgiving, unfair, and unkind," and that "[p]osting it for public view seemed calculated to harm, injure and embarrass unnecessarily."

On June 17, 2011, the court denied the motion to redact without a hearing, and ordered Attorney to show cause why his motion was not another violation of Rule 9011. Attorney received notice of the order via ECF. However, on June 20, 2011, Attorney filed a declaration in support of the already denied motion. In explanation, Attorney stated that he relied on his staff to draft and upload documents, and that is why his declaration was not filed with the motion. Attorney claimed that he did not have the court's denial order in hand when the declaration was filed. Attorney's response stated, "I hope that the court is not on a campaign to outmaneuver my office in this instance," and "I feel it borders on abuse and do not believe I can receive a fair hearing on July 14, 2011, before Your Honor."

Attorney was **REPRIMANDED** for violations of RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 3.1 (Meritorious Claims and Contentions), RPC 3.3 (Candor Toward the Tribunal), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 8.4 (Misconduct).

File No. SG11-1694

Letter of Reprimand imposed when attorney failed to correct a disclaimer on an advertisement after being advised by bar counsel that the advertisement did not comply with rules.

On December 9, 2007, Bar Counsel sent Attorney a letter advising that a certain yellow page advertisement that Attorney had filed on behalf of the law firm did not comply with RPC 7.2(e), which requires that every advertisement indicating that a fee is contingent must include the following disclaimer: "You may have to pay the opposing party's attorney fees and costs in the event of a loss."

In a letter dated December 29, 2007, Attorney stated that, while his firm did not necessarily agree that the statement in the advertisement that, "There is no cost to you until we recover for you," indicated a contingency fee, Attorney would either remove the language or add the disclaimer at the next advertising cycle.

To monitor compliance with the advertising rules, the State Bar Advertising Administrator reviews yellow page directories state-wide to ensure that advertisements are filed in accordance with the rules.

On or about October 7, 2011, upon review of the July 2011 Century Link Yellow Page directory, the administrator noticed that the law firm was still running an advertisement that stated: "No cost to you until we recover for you," without the disclaimer required by RPC 7.2(e), and referred the matter to the attention of Bar Counsel.

Bar Counsel sent Attorney a letter asking Attorney to explain why the firm's advertisement still did not comply with RPC 7.2(e).

In Attorney's response, he stated that he had contacted his yellow page account representative and was told the phrase would be removed in the July 2012 directory. Attorney also provided copies of the revised advertisements. However, no explanation was provided as to why the advertisement was not corrected in 2007.

Attorney was **REPRIMANDED** for violations of RPC 7.2(e)(Advertising) and RPC 8.1 (Bar Admission and Disciplinary Matters).

File No. SG10-0568

Letter of Reprimand issued when attorney attempted to influence testimony in exchange for restitution.

Attorney was retained by Client to defend him against charges arising from an incident wherein he allegedly battered, kidnapped and robbed Victim. Subsequent to that representation, Attorney retained the services of Private Investigator to locate and obtain a statement from Victim, as the statement Victim gave to the police differed from Client's version of events. Attorney believed that Victim was a drug addict, and that, because of this, there was a good chance he would make inconsistent statements.

After Private Investigator made contact with Victim, she advised Attorney that Victim's statement was consistent with the one he had given to police, but that he had expressed an interest in recovering property that had been stolen for him. Using Private Investigator as an intermediary, Attorney asked Victim if he would be willing to come to Attorney's office and make a recorded statement if Attorney could return his property to him.

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Thereafter, Victim contacted the District Attorney's office and reported that Attorney and Private Investigator had contacted him in an attempt to influence his testimony in exchange for restitution. Victim was interviewed by an investigator in the District Attorney's office on July 28, 2010; during this interview, Victim stated that Private Investigator initiated contact with him to obtain his statement and ask him if he would be willing to accept cash and work out an agreement to change certain parts of his story. According to Victim, Private Investigator said that they were not asking him to lie, but just to change certain things so that they hadn't appeared to have happened the way he originally said they happened, and that she was specifically focusing on the portion of his statement regarding his having been tied up. Victim alleged that Private Investigator's questioning made him uncomfortable.

During a calendar call hearing on July 21, 2010, Attorney stated on record that, during a phone conversation with Victim, Attorney told him, "'I'm not bribing you and I'm not telling you what to say; you would need to tell me what it was that wasn't true, and I would arrange with the defendant's family to give you restitution for the property you're not going to get back from police.' Now it's important at this point to note that it's not important to me whether or not he actually gets restitution or not. I'm going to pay it if he gives me information that I find useful. If his statement is consistent with the police, then I'm going to say, 'well, that's not very helpful to me, you can submit a request to the state and, you know, if there's a restitution order....'"

In regard to the statement, Attorney acknowledged that he made the statement on July 21, 2010, but claimed that he had intended to say, "It's not like I'm going to pay it if he gives me information that I find useful…" The panel considered this assertion, but found it to be without merit.

Attorney was **REPRIMANDED** for violations of RPC 3.4 (Fairness to Opposing Party and Counsel), RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants) and RPC 8.4 (Misconduct). ■

DISCIPLINE KEY

Resignation with charges pending: SCR 98(5)(b)
Types of possible discipline listed generally: SCR 102
Attorneys convicted of crimes: SCR 111
Conditional guilty plea agreements (discipline by consent): SCR 113
Reciprocal discipline: SCR 114
Disbarred/Suspended attorneys: SCR 115
Reinstatement: SCR 116
Disability Inactive: SCR 117

Supreme Court Rules (SCRs): www.leg.state.nv.us/CourtRules/SCR.html

DISBARMENT – License to practice revoked.

SUSPENSION – License suspended for a time certain, ineligible to practice. More than six months requires petition for reinstatement and court order.

DISABILITY INACTIVE – Ineligible to practice until further order of the court. In the interim, disciplinary proceedings held in abeyance.

INTERIM TEMPORARY SUSPENSION – Interim suspension based on showing of a substantial threat of serious harm to the public, in effect until further court order, usually after hearing.

RESIGNATION WITH CHARGES PENDING – Ineligible to practice. Requires Bar Counsel approval. Resignation is irrevocable, with readmission only possible upon application as a new admittee.

PUBLIC REPRIMAND – Misconduct found and public censure issued, including attorney's name and the underlying facts and charges. Published in *Nevada Lawyer* and made available to the press. Remains eligible to practice law.

LETTER OF REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a $1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or for failure to complete and report the required Continuing Legal Education hours (SCR 212). While these **are not disciplinary suspensions,** the attorney is **ineligible to practice law** until the deficiency is remedied and the procedures to transfer back to active status completed as set forth in the applicable rules.