

bar counsel report

SUPREME COURT OF NEVADA

In re: C. Andrew Wariner
Bar No.: 1197
Docket No.: 64531
Filed: May 9, 2014

ORDER OF DISBARMENT

Attorney irrevocably disbarred and ordered to pay restitution in the amount of \$119,420.72 after mishandling 18 files and failing to participate in disciplinary proceedings.

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney C. Andrew Wariner violated multiple Rules of Professional Conduct, and its recommendation that he be disbarred and ordered to pay restitution in the amount of \$119,420.72.

Wariner is the subject of 18 grievance files.¹ Seventeen of the 18 files involve mishandled bankruptcy proceedings, and one is a personal injury matter. The alleged misconduct includes failure to diligently pursue clients' cases, failure to communicate with clients and the state bar, mishandling of client funds and failure to supervise nonlawyer assistants. Wariner did not participate in the disciplinary proceedings against him. He did not file any response to the state bar's complaint, did not appear at the formal hearing and filed no briefs on appeal.

The hearing panel, proceeding on a default basis, determined that Wariner had committed all 114 alleged violations of the Rules of Professional Conduct, specifically: 18 violations of RPC 1.3 (diligence) and RPC 1.4 (communication), 16 violations of RPC 1.5 (fees), 17 violations of RPC 1.15 (safekeeping property), 5 violations of RPC 5.3 (responsibilities regarding nonlawyer assistants) and RPC 5.5 (unauthorized practice of law), 18 violations of RPC 8.1 (bar admission and disciplinary matters), and 17 violations of RPC 8.4 (misconduct). The panel found several aggravating circumstances: Wariner's prior discipline, dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary process by his intentional failure to comply with the rules, refusal to acknowledge the wrongful nature of his conduct, the vulnerability of his victims, his substantial experience in the practice of law and his indifference to making restitution. The panel found no mitigating circumstances and recommended that Wariner be disbarred and ordered to pay restitution.

Having reviewed the record of the disciplinary proceedings in this matter, we conclude that clear and convincing evidence supports the panel's findings that Wariner committed the offenses charged. See SCR 105(2)(f). We further conclude that the panel's recommended discipline is appropriately tailored to Wariner's misconduct. Despite Wariner's failure to participate in the disciplinary proceedings, clear and convincing evidence supports a finding that Wariner was properly put on notice of the charges and proceedings against him. Wariner was aware of the charges and chose not to defend them. We therefore approve the panel's recommendation that Wariner be disbarred.

Accordingly, C. Andrew Wariner is hereby irrevocably disbarred from the practice of law in Nevada. SCR 102(1). Wariner is also ordered to pay restitution in the amount of \$119,420.72² and to pay the costs of the disciplinary proceedings. SCR 120. Wariner shall comply with SCR 115. The state bar shall comply with SCR 121. It is so ORDERED.

In re: William H. Bullis
Bar No.: 1635
Docket No.: 65162
Filed: May 9, 2014

ORDER IMPOSING RECIPROCAL DISCIPLINE

Reciprocal disbarment imposed on attorney after the California Supreme Court entered a disbarment order for abandoning his bankruptcy practice, failing to respond to status inquiries of his clients, failure to provide an accounting, and failure to return files and unearned fees to clients.

This is a petition under SCR 114 for reciprocal discipline of attorney William H. Bullis, based on discipline imposed on him in California. Bullis did not self-report his California discipline as required by SCR 114(1), and he has not responded to the petition. See SCR 114(3). The California Supreme Court entered an order disbaring Bullis from the practice of law in California on October 29, 2013.³

Bullis was disciplined in California for abandoning a bankruptcy client and failing to pursue the client's case, failing to respond to a client's status inquiries, failing to provide an accounting to his client, failing to return files to his client upon termination of his employment, failing to refund unearned fees to his client and failing to disgorge any part of the fees he had received from his client as ordered by the bankruptcy court. In doing so, Bullis was found to have violated California Rule of Professional Conduct (RPC) 3-110(A), equivalent to Nevada RPC 1.1 (competence), RPC 3-700(D)(1), equivalent to Nevada

RPC 1.16(d) (declining or terminating representation), RPC 3-700(D)(2), equivalent to Nevada RPC 1.15 (safekeeping property), RPC 3-700(A)(2), equivalent to Nevada RPC 1.16 (declining or terminating representation), and RPC 4-100(B)(3), equivalent to Nevada RPC 1.15 (safekeeping property). Bullis also violated the California Business and Professions Code, section 6068(m), equivalent to Nevada RPC 1.4 (communication), and section 6103, equivalent to Nevada RPC 3.3 (candor toward the tribunal), and RPC 8.4 (misconduct). No aggravating or mitigating circumstances were found.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that at least one of four factors is present:

1. The procedure in the other jurisdiction denied the attorney due process;
2. There as such an infirmity of proof of the misconduct in the other jurisdiction that this court cannot accept the other court's decision;
3. Substantially different discipline is warranted in this state; or
4. The established misconduct does not constitute misconduct under the rules of this state.

Discipline elsewhere is res judicata, as SCR 114(5) provides that "[i]n all other respects, a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purpose of a disciplinary proceeding in this state."

None of the four exceptions applies here.

Accordingly, we grant the petition for reciprocal discipline. William Bullis is hereby irrevocably disbarred from the practice of law in Nevada. SCR 102(1). Bullis shall comply with SCR 115. The state bar shall comply with SCR 121.1.

It is so ORDERED.

In re: Jeffrey Dickerson
Bar No.: 2690
Docket No.: 62093
Filed: May 9, 2014

ORDER OF SUSPENSION

Attorney suspended for eighteen months, with conditions, after \$1 million sanction in federal court, failure to properly disburse a settlement and failure to timely file an appeal.

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board

hearing panel's findings that attorney Jeffrey Dickerson violated multiple Rules of Professional Conduct and its recommendation that he be suspended for 18 months with conditions.

The state bar brought three counts against Dickerson. The first count concerns Dickerson's conduct in federal district court that led to Dickerson being sanctioned over \$1 million. Dickerson filed 15 actions related to the same litigation and engaged in inappropriate litigation practices. The second count concerns Dickerson's failure to properly disburse a settlement and his failure to address a conflict between his clients regarding the distribution of the settlement proceeds. In the final count, Dickerson failed to timely file a client's appeal with the Ninth Circuit Court of Appeals and did not promptly communicate the status of the appeal and the reason for the appeal's failure to the client.

After a two-day disciplinary hearing, the hearing panel found that Dickerson violated RPC 1.1 (competence) (two violations), RPC 1.4 (communication), RPC 1.7 (conflict of interest: current clients), RPC 1.8 (conflict of interest: current clients: specific rules), RPC 1.15 (safekeeping property), RPC 3.1 (meritorious claims and contentions), RPC 3.2 (expediting litigation) (two violations), RPC 3.4 (fairness to opposing party and counsel), and RPC 8.4 (misconduct) (three violations). The panel recommended that Dickerson be suspended for 18 months, and as a condition precedent to applying for reinstatement, that he pass the Professional Responsibility and Attorney Ethics portion of the State Bar Exam.

Having reviewed the record of the disciplinary proceedings and the briefs filed on appeal in this matter, we conclude that clear and convincing evidence supports the panel's findings that Dickerson committed the offenses charged. See SCR 105(2)(f). We further conclude that the panel's recommended discipline is appropriately tailored to Dickerson's misconduct. Accordingly, we approve the panel's recommendation that Dickerson be suspended for 18 months with conditions.

Accordingly, Jeffrey Dickerson is hereby suspended from the practice of law for 18 months. Dickerson must pass the Professional Responsibility and Attorney Ethics portion of the State Bar Exam as a condition precedent to applying for reinstatement. Upon petitioning for reinstatement, Dickerson shall comply with SCR 116. Dickerson shall comply with SCR 115. The state bar shall comply with SCR 121.1.

It is so ORDERED.

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SAITTA, J., dissenting:

I respectfully dissent from the majority's decision because I feel a one-year suspension with additional conditions is more appropriately tailored to Dickerson's misconduct. In addition to the one-year suspension and as a condition precedent to reinstatement, I would order that Dickerson pay or otherwise resolve the outstanding sanctions imposed by the federal court. I would also require that Dickerson be supervised by an approved mentor attorney, and I would require that the supervising attorney submit bimonthly reports to the state bar detailing Dickerson's progress. Finally, I would order that Dickerson successfully complete an ethics or professionalism course approved by the state bar.

The purpose of attorney discipline is to protect the public. Because I feel that purpose would be best achieved by a one-year suspension and the conditions listed above, I dissent from the decision.

In re: Noel A. Gage
Bar No.: 6305
Docket Nos.: 58640, 64988
Filed: May 28, 2014

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney suspended for four years (retroactively to July 30, 2010), following criminal conviction. Attorney also publicly reprimanded for engaging in violation of RPC 5.4 (professional independence of a lawyer) and \$25,000 fine to State Bar of Nevada's Clients' Security Fund.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that we approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Noel Gage. Under the agreement, Gage admitted to one violation of RPC 5.4 (professional independence of a lawyer), one violation of RPC 8.4(b) (misconduct: commit a criminal act that reflects adversely on the lawyer's fitness to practice), and one violation of RPC 8.4(d) (misconduct: engage in conduct prejudicial to the administration of justice).

The agreement provides for a suspension of four years, retroactive to July 30, 2010, the date that Gage was temporarily suspended from the practice of law pursuant to SCR 111; a public reprimand; and a \$25,000 fine to be paid to the State Bar of

Nevada's Client Security Fund by January 14, 2015.

In approving the conditional guilty plea agreement, the hearing panel considered Gage's dishonest or selfish motive, his pattern of misconduct, his refusal to acknowledge the wrongful nature of his misconduct and the vulnerability of his victims in aggravation. In mitigation, the hearing panel considered the absence of a prior disciplinary record and the delay in disciplinary proceedings.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). Gage is suspended from the practice of law for four years, retroactive to July 30, 2010; Gage shall pay a \$25,000 fine to the State Bar of Nevada's Client Security Fund by January 14, 2015; and Gage is publicly reprimanded for his admitted ethical violations. Gage shall comply with SCR 116, if he desires to be reinstated to the practice of law in Nevada. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.⁴

It is so ORDERED.⁵

In re: Alex B. Ghibaudo
Bar No.: 10592
Docket No.: 62670
Filed: May 28, 2014

ORDER OF REINSTATEMENT

Attorney reinstated, with conditions, to the practice of law following three-year suspension.

Attorney Alex Ghibaudo was temporarily suspended in August 2009, and has remained suspended since that time. In December 2013, this court considered a disciplinary board hearing panel's recommendation that we approve Ghibaudo's conditional guilty plea agreement and, because the proposed suspension term had run, that we reinstate Ghibaudo to the practice of law, subject to conditions. We subsequently issued an order in which we approved Ghibaudo's conditional guilty plea and imposed a three-year suspension, retroactive to Ghibaudo's August 2009, temporary suspension date.

In the same order, this court denied Ghibaudo reinstatement to the practice of law because he had not repaid in full the \$13,463 debt he owed to the State Bar of Nevada Client Security Fund. Based on Ghibaudo's failure to pay his debt to the Client Security Fund, we concluded that clear and convincing evidence did not support the panel's finding that Ghibaudo's reinstatement "[would] not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest." SCR 116(2). We stated that we would not consider reinstatement until Ghibaudo had repaid all of the money owed to the Client Security Fund, and we denied reinstatement at that time.

In March 2014, Ghibaudo submitted a petition in which he stated that he had repaid the full amount owed to the Client Security Fund.⁶ Pursuant to this court's order, the state bar provided confirmation that Ghibaudo has repaid the Client Security Fund in full. The three-year suspension imposed by our previous order has expired. Accordingly, we approve the panel's recommendation and Ghibaudo is reinstated to the practice of law, subject to the following conditions: Ghibaudo shall serve a two-year probationary period from the date of this order, during which he shall not practice as a solo practitioner; he shall be mentored by a member of the state bar's TIP mentoring program; he shall comply with all annual CLE requirements; he shall continue his psychological and psychiatric treatment, including taking prescribed medication; and he shall provide Bar Counsel with a relapse-prevention plan approved by a licensed healthcare professional upon the completion of the probationary period.

It is so ORDERED. ■

1. Wariner was previously disciplined by this court for misconduct committed in Utah. See *In re Discipline of Wariner*, Docket No. 51085 (Order Imposing Reciprocal Discipline, April 10, 2008).
2. The restitution shall be paid to the following clients in the indicated amount: Kevin Smith, \$22,840; Jose Monzon, \$7,136; David Langlais, \$7,500; David Baudoin, \$7,500; Amber Sena, \$1,500; Mark Heimlich, \$900; John H. Stout, \$10,000; Carlos Ramos Guizar, \$11,280; Ruben Martinez, \$5,352.69; Daniel Dhondt, \$13,830.50; Peggy Charles, \$10,500; Jean Pierre Giron, \$7,000; Mary Lou Henrie, \$1,800; Patrice & Regina Caillot, \$2,081.53; Domingo Carrasco & Liliana Angulo, \$1,200; Armi Cana, \$500; Minnie F. Bernardino, \$7,500; Chava Peebles, \$1,000.
3. Bullis has been suspended from the practice of law in Nevada since June 2012, for failing to pay his State Bar membership fees. See SCR 98(9)-(12).
4. Based on the court's decision in this matter, the proceedings pending against Gage in Docket No. 58640 are closed.
5. The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter.
6. Ghibaudo's petition also asked this court to recall the remittitur that was issued on February 3, 2014. We recall the remittitur for the limited purpose of issuing the instant order. Ghibaudo's petition for rehearing/reconsideration, received on March 24, 2014, shall be returned unfiled.

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. July also include up to a \$1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys July 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.