

bar counsel report

SUPREME COURT OF NEVADA

In re: Phyllis Joann Bryan
 Bar No.: 7290
 Docket No.: 56648
 Filed: October 6, 2010

ORDER IMPOSING RECIPROCAL DISCIPLINE AND DISBARRING ATTORNEY

Reciprocal discipline imposed following discipline from the California State Bar.

This is a petition under SCR 114 to reciprocally discipline attorney Phyllis Joann Bryan, based on discipline imposed upon her in California. Bryan did not file a response to the petition.

Bryan's underlying California disciplinary matter consisted of failure to comply with the conditions of a previous suspension order. Bryan defaulted in the California disciplinary proceedings and was found to have committed misconduct for willfully failing to comply with California Rule of Court 9.20 as previously ordered by the California Supreme Court.¹

Thereafter, the California Supreme Court ordered Bryan disbarred from the practice of law. She was also ordered to comply with California Court Rule 9.20 and to pay costs of the proceedings.

Bryan failed to inform bar counsel of the discipline as required by SCR 114(1).

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, that one of four exceptions applies. None of the exceptions is present in this case.

Accordingly, we grant the petition for reciprocal discipline. Attorney Phyllis Joann Bryan is hereby disbarred from the practice of law in this state.² Bryan and the state bar shall comply with SCR 115 and SCR 121.1.

RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 98(5)(A) STATES:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following member resigned pursuant to this Rule:

Roy L. Farrow
 Bar No. 4015
 Case No. 57042
 Filed 11/2/10

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTER OF REPRIMAND

File No.: 09-223-2070

Letter of Reprimand imposed for failure to communicate and supervise non-lawyer assistants.

Client purchased a cabin on Mt. Charleston, Nevada. Upon moving into the cabin he discovered that the cabin was partially built on the neighbor's lot. On July 13, 2006, Client retained Attorney to assist with obtaining approval for an easement on his cabin on Mt. Charleston. He paid Attorney a retainer fee and was billed each month thereafter for his services.

On November 2, 2006, Attorney was successful in getting the easement recorded. Thereafter, Client requested that Attorney prepare and send a demand letter to the seller prior to the filing of a civil action to recover damages, which Attorney's office did in May 2007. After gathering additional documentation and receiving no response to the letter, a draft complaint for Client's case was prepared in or around January 2008.

Although Attorney believed that a complaint had been filed, in fact the file sat in an associate's office for many months. In the early part of 2009, Attorney mistakenly informed Client that the complaint had been filed, there had been no response, and that Attorney was waiting for a default judgment to be entered.

Client began his own research on the Internet via Blackstone to keep apprised of the pending status on his matter. His research revealed no civil suit had been filed in Clark County and that Attorney's statements to him about the suit were false. While Attorney believed Attorney's staff had filed and served the complaint, Attorney failed to personally review the file or confirm the status of the lawsuit during the time it lay dormant. Apparently when Attorney asked his staff for updates on the Client case they believed Attorney was referring to another case for which they had been awaiting a default judgment for many months.

Attorney ultimately filed the civil suit on Client's behalf on October 22, 2009. Defendants filed their answer on March 10, 2010. The matter is ongoing and Client is presently satisfied with Attorney's handling and communication in this matter.

The Panel considered in aggravation the 16-month delay in filing the lawsuit, the incorrect information Attorney provided to Attorney's client, and Attorney's longevity of 18 years of practice. In mitigation, the Panel found that Attorney lacked any selfish motive, that Attorney was candid and cooperative in the discipline process, and that Attorney rectified the situation with the client, who is satisfied with Attorney's representation.

Attorney is hereby REPRIMANDED for violations of Rules of Professional Conduct ("RPC") 1.4 (Communication) and RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants).

LETTER OF REPRIMAND

File No.: 07-146-NA177

Letter of Reprimand imposed on California-licensed lawyer for engaging in the unauthorized practice of law in Nevada.

Attorney is an attorney licensed only in the State of California. At no time was Attorney licensed to practice law in the State of Nevada or authorized to practice or appear in any court pursuant to Nevada Supreme Court Rules.

Attorney's license to practice law was fee-suspended in California in September 2003, and later suspended, as well, in September 2005, for failing to complete required continuing legal education credits. Attorney brought his California license current and active in October 2006.

Prior to bringing his license current, Attorney sent a letter to the Nevada State Contractors Board (NSCB) as a representative of a Contractor, requesting the licensing renewal extension be placed on an upcoming agenda. The letter stated, in part, "If approval is not granted [Contractor] will seek all available remedies to reinstate this license and any damages in District Court." The letter was signed by Attorney, "for [Contractor]."

The next week, the NSCB held its regular monthly public meeting. In the normal course of business, all persons wanting to address the Board must sign in and when the item comes up on the agenda, the person is called before the Board. Attorney entered his name on the sign in sheet for Contractor, designating his title as "Atty."

NAC 624.7279(1) states "Any person who appears at a hearing may represent himself or may be represented by an attorney licensed to practice law in the State."

Attorney came before the Board and initially identified himself to the Board as the in-house counsel for Contractor. Upon questioning by the Board members and its counsel, Attorney subsequently identified himself as a California attorney who was not currently licensed to practice law in the State of Nevada. Attorney stated that Attorney was "an employee as far as being in-house counsel" and was "in the process of negotiating with the State of Nevada" regarding his licensure here.

In another action, Attorney sent a letter in September 2006, to the National Labor Relations Board (NLRB) Region 28 office on Contractor letterhead. The letter took issue with an attempt by the NLRB to join Contractor in an action and also complained about lack of proper service and notice. The signature block indicated Attorney's name, "Attorney at Law."

In October 2006, Attorney sent a letter to the Carpenters' Union on Contractor letterhead demanding a check for almost \$350,000 plus 18 percent interest. In the letter Attorney stated that if the check was not received that business day, the company "will take whatever legal action it deems necessary." The letter was signed as Attorney for Contractor.

Attorney is hereby REPRIMANDED for violations of RPC 5.5 (Unauthorized Practice of Law) and RPC 7.1 (Communications Concerning a Lawyer's Services). ■

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.

1. The equivalent Nevada rule which corresponds to Bryan's misconduct is SCR 115.
2. In light of this order, further proceedings in Bryan's prior reciprocal discipline matter are rendered moot. See *In re: Discipline of Phyllis Bryan*, Docket No. 53457 (Order of Referral to Disciplinary Board, November 18, 2009).