

bar counsel report

SUPREME COURT OF NEVADA

In re: Charmaine L. Clark
Bar No.: 5915
Docket No.: 54932
Filed: December 22, 2010

ORDER OF DISBARMENT

Disbarment warranted following Respondent's abandonment of law practice in Nevada and failure to participate in disciplinary proceeding.

This is an automatic review of a decision of a hearing panel of the Southern Nevada Disciplinary Board, recommending that attorney Charmaine Clark be disbarred from the practice of law in Nevada. See SCR 105(3)(b).

The events leading up to this recommendation began in late 2007. Clark's mother, who lived in Washington State, became ill. Clark, who has been licensed to practice law in Nevada since 1996, moved to Washington to care for her mother. Upon moving to Washington, Clark abandoned her clients in Nevada, effectively ceasing communication with them and leaving their cases languishing in various Nevada courts.

The state bar filed three formal complaints against Clark, alleging a total of 13 counts of misconduct. Despite receiving ample notice of the proceedings against her, Clark failed to file an answer or otherwise defend herself against the charges.

The panel found two violations of RPC 1.1 (competence), 11 violations of RPC 1.3 (diligence), eight violations of RPC 1.4 (communication), one violation of RPC 1.5 (fees), one violation of RPC 1.15 (safekeeping property), 11 violations of RPC 1.16 (declining or terminating representation), one violation of RPC 3.1 (meritorious claims and contentions), five violations of RPC 3.2 (expediting litigation), five violations of RPC 3.4 (fairness to opposing party and counsel), and 13 violations of RPC 8.1(b) (bar admission and disciplinary matters). The panel also found the following aggravating factors, pursuant to SCR 102.5: prior disciplinary offenses, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders, refusal to acknowledge the wrongful nature of her conduct, substantial experience in the practice of law and indifference to making restitution. The fact that Clark was experiencing personal or emotional problems was the only factor found in mitigation. The panel found that the aggravating factors outweighed the mitigating factors. Based on these findings, the panel recommended that Clark be disbarred from the practice of law in Nevada, and that she be required to pay the costs of the disciplinary proceeding.

A decision of a panel of the Southern Nevada Disciplinary Board recommending disbarment is subject to automatic review by this court. SCR 105(3)(b). Although persuasive, the panel's findings and recommendations are not binding on this court. *Matter of Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007), "This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted." *Id.* At 168, 160 P.3d at 884-85 (quoting in re *Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992)). The panel's findings of misconduct must be supported by clear and convincing evidence. In re *Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

SCR 105(2) provides that if an attorney failed to plead in response to the complaint, the charges shall be deemed admitted. We conclude that the allegations in the complaints are deemed admitted. We further conclude that clear and convinc-

ing evidence supports the panel's findings. Finally, we conclude that the recommended discipline is appropriate in light of the nature of Clark's misconduct.

Accordingly, we disbar Clark from the practice of law in this state. Such disbarment is irrevocable. See SCR 102(1). Further, Clark shall pay the costs of the disciplinary proceedings within 30 days of receipt of the State Bar of Nevada's bill of costs. SCR 120.

In re: Elliott D. Yug
Bar No.: 5172
Docket No.: 54980
Filed: December 8, 2010

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Stayed suspension with conditions is appropriate where an attorney failed to adequately communicate with his clients and failed to initially respond to the State Bar of Nevada.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve attorney Elliott D. Yug's conditional guilty plea in exchange for a stated form of discipline pursuant to SCR 113. Under the plea agreement, Yug admits to multiple violations of Rule of Professional Conduct (RPC) 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.1(b) (bar admission and disciplinary matters, failure to respond to the state bar). These violations stem from his misconduct involving five different clients and his subsequent initial failure to respond to the state bar after matters were referred for investigation.

The recommended discipline provides that Yug will be suspended from the practice of law for six months and one day, to be stayed for two years, subject to the following conditions:

- (1) Yug shall provide the Office of Bar Counsel with a complete inventory of all his clients' files within 10 days of August 27, 2009.
- (2) Yug shall deliver all of his client files to the Office of Bar Counsel for the purposes of returning the files to the clients.
- (3) Yug shall not engage in any solo practice as an attorney. However, Yug may associate counsel on any cases that he chose to operate or handle.
- (4) Yug will notify all his clients within 14 days that he has associated counsel and received their consent, or has turned their files over to the State Bar of Nevada.
- (5) For a period of 24 months, Yug shall provide quarterly reports to the Office of Bar Counsel wherein he details his current employment status. These reports shall be due by the 15th day of the month of each quarterly period beginning August 27, 2009.
- (6) Should Yug fail to follow any of these conditions, Bar Counsel shall immediately seek to have the stayed suspension imposed.
- (7) Should the Office of Bar Counsel receive any future grievances, Yug will provide a response in writing within the time period allotted to him. If Yug does not respond to the State Bar within the allotted time, he agrees that Bar Counsel will file in the Supreme Court the appropriate pleadings requesting that the Supreme Court immediately impose the stayed six months and a day suspension from the practice of law. Yug further agrees that under these circumstances, the Supreme Court should impose the stayed suspension.

- (8) Yug shall return all funds to Emily Gardener within 120 days from the date of the disciplinary hearing.
- (9) Yug shall pay the actual costs of the disciplinary proceeding within 120 days of receipt of billing from the state bar.

Having reviewed the record, we conclude that the hearing panel's recommendations should be approved. See SCR 113(1). Accordingly, attorney Elliott D. Yug is hereby Suspended from the practice of law for six months and one day. The suspension is stayed for two years, subject to the probationary conditions of the panel's recommendations as set forth above.

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTER OF REPRIMAND

File No.: 08-177-0066

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

Former Employee grieved to the state bar with concern surrounding Attorney knowingly allowing his paralegal to practice law in an unauthorized manner, and knowingly paying the paralegal a percentage of the attorney fees on personal injury claims. Former Employee further stated that the paralegal represented himself as an attorney to clients and adjusters on numerous personal injury claims. On one specific occasion, the Former Employee had to personally calm down an adjuster after the adjuster found out the paralegal was not an attorney. Former Employee provided a copy of the firm's settlement spreadsheet to the Office of Bar Counsel and explained the breakdown of the attorney's fees which the paralegal received.

In his response, Attorney stated the following, "The paralegal has been successful in bringing referrals to the office. In those instances, the paralegal will meet with the client to obtain preliminary information and discuss facts giving rise to the accident. The policy of the office is for an attorney to then meet with the client, explain the retainer agreement, and answer any additional questions."

"The paralegal is salary-based; he does receive bonuses, at my discretion. Bonuses are subjective, items considered for a bonus include, but are not limited to: hours worked, cases settled, demands prepared and sent, etc. Additionally, the PI client status sheet shows cases which came to the firm as a result of referrals attributed to the paralegal and cases settled. The paralegal's name appears under the 'settling attorney' designation only because my office manager did not have enough room on the form to designate another category. Finally, please note the re-cap sheet does not show the paralegal received any monies from the cases settled."

Upon review of Attorney's response, the Screening Panel found it alarming that Attorney would contemplate allowing the paralegal to negotiate settlements with Attorney's approval. That very statement as written in the response to Bar Counsel alluded to the appearance of the paralegal preparing and sending demand letters to Insurance Carriers in order for him to receive a greater percentage of the settlement funds and/or attorneys fees.

Accordingly, Attorney was REPRIMANDED for violating Rule of Professional Conduct (RPC) 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer), RPC 5.5 (Unauthorized Practice of Law) 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.