

bar counsel report

SUPREME COURT OF NEVADA

In re: Randolph Anderson
Bar No: 7584
Docket No: 54396
Filed: April 9, 2010

ORDER OF SUSPENSION

Suspension and additional conditions warranted where attorney co-mingled client trust funds with earned fees and failed to promptly pay a third-party lien.

This is an automatic review, pursuant to SCR 105(3)(b), of the Southern Nevada Disciplinary Board hearing panel's findings that attorney Randolph Anderson violated three rules of professional conduct and its recommendation that he be suspended from the practice of law for six months and one day, subject to conditions, with three months and one day of the suspension stayed. Having reviewed the evidence submitted and the transcript from the disciplinary hearing, we approve the panel's findings and recommendation.¹

Anderson refused to honor a workers' compensation insurance company's lien asserted against proceeds from a personal injury action he instituted on behalf of a client who was injured at work by a third party. He endorsed the settlement check on behalf of the insurance company without its authorization and did not pay the company's lien in full until after the insurance company filed a grievance with the state bar. In addition, at the disciplinary hearing, Anderson testified that he failed to keep proper records and that he commingled client trust funds with earned fees, keeping them together in his trust account. The panel found that Anderson violated RPC 1.2 (diligence), RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct).

While the findings and recommendations of a disciplinary board hearing panel are persuasive, our automatic review of a panel decision recommending a suspension is conducted de novo, requiring the exercise of independent judgment by this court. SCR 105(3)(b); *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We conclude that clear and convincing evidence supports the panel's findings and that Anderson violated RPC 1.3 (diligence), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct). SCR 105(2)(e).

The panel further recommended that Anderson be suspended from the practice of law for a period of six months and one day, that three months and one day of the suspension be stayed such that Anderson may apply for reinstatement after three months, and that Anderson be subject to the following:

- As conditions prior to petitioning for reinstatement, Anderson shall:
 - o Complete 10 hours of continuing legal education in the areas of law practice management, trust accounting and ethics;
 - o Arrange for and designate an attorney who agrees to act as mentor for Anderson during the probationary period following his reinstatement.

- As conditions following reinstatement, Anderson shall:
 - o For a period of two years, enter into a mentoring agreement with the designated mentor and the state bar, during which time the mentor shall submit written quarterly reports to the office of bar counsel regarding Anderson's practice;
 - o During the probationary period, be prohibited from handling client funds and other trust monies without supervision from the mentor or another attorney;
 - o Pay all costs of the disciplinary proceedings within 30 days of receipt of the state bar's bill of costs.

Taking into account all of the circumstances, including Anderson's prior disciplinary history, as well as the evidence of mitigation, we conclude that the recommended discipline is appropriately tailored to the circumstances and we therefore approve it.

Accordingly, Anderson is hereby suspended from the practice of law for a period of six months and one day. Three months and one day of the suspension is stayed, such that Anderson may petition for reinstatement pursuant SCR 116 after three months. Anderson must comply with all of the conditions stated above. In addition, Anderson and the state bar shall comply with all the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.²

In re: Paul Alan Schelly
Docket No: 54185
Filed: April 22, 2010

ORDER

Temporary suspension from practicing law in Nevada issued to a California-licensed attorney.

This is an automatic review, pursuant to SCR 105(3)(b), of the Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Paul Alan Schelly be suspended from practicing law in Nevada or appearing as counsel before any court in Nevada for a period of six months and one day,³ that Schelly be assessed the costs of the disciplinary proceeding, and that the state bar use its best efforts to report this court's final order to the National Discipline Data Bank and the State Bar of California.⁴ The panel's recommendation was based upon its conclusion that Schelly violated RPC 3.4(c) (fairness to opposing party and counsel – knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists) and RPC 8.1(b) (bar admission and disciplinary matters).⁵

Upon review of the record, we have determined that briefs regarding an appropriate remedy would be helpful to our disposition of this matter. Specifically, the parties shall file briefs addressing whether the recommended suspension from the practice of law or appearing before any court in Nevada, and the resulting requirement to petition for reinstatement, is appropriate under the instant circumstances where Schelly is not, and was not, a member of the Nevada bar, and if a suspension is not

appropriate, what, if any, alternate form of discipline is proper. The parties shall have 20 days from the date of this order to file and serve their respective briefs.

Further, Schelly shall be temporarily suspended from the practice of law or appearing before any court in Nevada pending the resolution of this matter.⁶ *Young v. District Court*, 107 Nev. 642, 646-47, 818 P.2d 844, 846-47 (1991) (citing SCR 39 and 99(2)).

In re: Anthony R. Lopez, Jr.
Bar No: 5053
Docket No: 53493
Filed: April 9, 2010

ORDER IMPOSING PUBLIC REPRIMAND

Public reprimand issued for advertising violations.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Anthony R. Lopez, Jr., receive a public reprimand for violations of RPC 7.1 and 7.2A. We conclude that the recommended discipline is appropriate and that a public reprimand is warranted in this case.

FACTS

The facts in this case are undisputed. Around January 7, 2008, Lopez ran a 10-second Spanish-language radio advertisement, prepared by his office manager Gelly Valero, on two radio stations in Las Vegas and one in Reno. Valero modeled the advertisement after a similar advertisement he heard aired in California, although he could not remember the name of the California law firm that ran the advertisement. According to Lopez, the advertisement ran several times a day from early January to late April 2008. The advertisement cost approximately \$19,500. The English translation of this advertisement stated, "[i]f you have had an auto accident, by law you have the right to receive at least 15 thousand dollars for your case. Call the offices of Tony the Tiger Lopez at 366-1966." Lopez reviewed the Spanish advertisement before it was disseminated, but did not review the English translation, and indicated that he had "some understanding of Spanish" but was not "fluent like a native."

On January 22, 2008, attorney Liborius Agwara complained to the State Bar of Nevada that Lopez was running a Spanish-language radio advertisement that stated that "if you get involved in an accident, by law you are entitled to receive 15 thousand dollars." Agwara complained that his former clients were contacting him and inquiring as to why they had not received the \$15,000 guaranteed to them under the law. Lopez received a copy of Agwara's letter and copied the state bar on a letter he sent in response to Agwara on January 30, 2008. In the letter, Lopez denied that the advertisement promised a \$15,000 recovery and contended that the purpose of the advertisement was to "inform potential clients that Nevada law gives automobile accident victims the right to receive a minimum of 15 thousand dollars for their injuries. This figure is based upon the minimum automobile insurance liability policy in Nevada."

Along with the letter, Lopez included a copy of the advertisement but failed to include either a mandatory filing form or a translation of the advertisement as required pursuant to RPC 7.2A. On January 31, 2008, the state bar sent Lopez a letter reminding him of his obligation to file advertisements within 15 days of dissemination, and requesting that he provide copies of both the filing form and an English translation of the advertisement pursuant to RPC 7.2A within two weeks of the date of the letter. On February 20, 2008, the state bar again notified Lopez that his submission of the advertisement failed to meet the requirements of RPC 7.2A because he failed to complete the mandatory advertising filing form and provide an English translation of the advertisement. The state bar gave Lopez 15 days from the date of the letter to submit the required information and notified Lopez that his failure to file the advertisement pursuant to RPC 7.2A was grounds for disciplinary action. Lopez filed the mandatory advertising filing form and an English translation of the advertisement on March 4, 2008.

On March 27, 2008, attorney Eric Palacios telephoned the state bar and complained that his former clients were calling and complaining because they did not receive the \$15,000 promised in Lopez's advertisement.

On April 18, 2008, the state bar informed Lopez that a grievance file had been opened regarding his radio advertisement and Lopez informed the state bar that the advertisement would be pulled by April 30, 2008.

At the panel's hearing on the grievance, Lopez admitted that the advertisement contained "an incomplete wording of the law" and "an incomplete wording of the minimum insurance requirements of Nevada." Lopez expressed his apologies to anyone confused by the advertisement. Lopez contended, however, that "derecho," the Spanish word for "right," "has various meanings depending on the country and that, in some places, it can be interpreted as, basically, just a right to pursue something as opposed to a guarantee." Lopez further rejected the notion that the advertisement could cause people to file frivolous lawsuits or maintain frivolous claims.

A majority of the panel found that Lopez violated RPC 7.1 and 7.2A. The panel concluded that the advertisement contained false information and was misleading and determined that these misrepresentations harmed the public by "fostering unnecessary and unwarranted litigation by people who were not necessarily entitled to any recovery." The panel rejected Lopez's contention that the advertisement was intended to inform the public regarding the minimum liability insurance requirements. The panel further concluded that Lopez's misconduct here was aggravated by Lopez's instances of prior discipline⁷ and by his failure to pull the advertisement after he received both Agwara's complaint and the Letter of Investigation from the state bar. As to the recommended discipline, the panel recommended that Lopez: (1) be issued a public reprimand for violating RPC 7.1 and 7.2A; (2) be required for two years to pre-submit any and all advertisements prior to dissemination pursuant to RPC 7.2B and pay any costs associated with seeking pre-approval; (3) be required to run a Spanish-language public service announcement campaign, equal to the \$19,500 Lopez spent in promoting the misleading advertisement, informing the public that drivers have

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responsibility under Nevada law to maintain liability insurance with minimum limits of \$15,000; (4) seek pre-approval for the public service advertisement and may spend less than \$19,500 so long as the duration and length of the campaign are pre-approved by Bar Counsel; and (5) be required to pay all the costs of the proceedings. This automatic review followed. Both Lopez and the State Bar of Nevada filed briefs in the matters.

DISCUSSION

Lopez concedes that he violated RPC 7.1 and 7.2A but contends that the panel erred when it (1) found the misrepresentations in the advertisement harmed the public by fostering unnecessary and unwarranted litigation by people who were not necessarily entitled to any recovery and (2) recommended a public reprimand. We disagree with both contentions.

This court automatically reviews a decision recommending public reprimand. SCR 105(3)(b); *In re Lerner*, 124 Nev. ____, ____, 197 P.3d 1067, 1069 (2008). In *In re Stuhff*, this court recognized that while the disciplinary panel's findings and recommendations are not binding, they are persuasive. 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). To support the imposition of discipline, the panel's findings must be supported by clear and convincing evidence. SCR 105(2)(e); *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

Lopez first complains that the panel erred when it found the misrepresentations in the advertisement harmed the public by fostering unnecessary and unwarranted litigation by people who were not necessarily entitled to any recovery. Lopez argues that there is no evidence in the record to support this finding and that the panel erroneously based its finding upon the following exchange between himself and the chair of the panel:

Q: You realize, of course, that the damage that you could cause with an ad like this, you could cause people, for instance, to want to file frivolous lawsuits and pursue frivolous claims?

A: Well, I don't believe that that's the case.

Q: Really? There are people out there right now who stage car accidents. Have you seen any of those?

A: I have heard of those.

Q: It happens pretty frequently. Especially there are gangs of people that stage car accidents. When you make an ad that says, You're entitled to \$15,000, that only encourages that kind of misconduct, don't you think?

A: I don't think so.

Q: You don't think it causes any disrepute on the bar itself when that information gets out?

A: I understand confusion was created by the ad and that could possibly cause disrepute to the bar, yes.

We disagree with Lopez's argument. Lopez stipulated to the fact that both Agwara and Palacios received telephone calls from former clients complaining that they had not received the \$15,000 the advertisement stated was guaranteed to them by law and that

Palacios's current clients were demanding \$15,000 as a minimum settlement. We conclude that this is clear and convincing evidence that the advertisement fostered unnecessary and unwarranted litigation by discouraging any settlements below \$15,000.

Next, Lopez argues that a public reprimand is inappropriate. Lopez argues that the conditions imposed by the panel are not negligible and may therefore be considered a mitigating circumstance pursuant to SCR 102.5(2)(1). Lopez asks this court to consider the following in mitigation: (1) he accepted responsibility for his violations of RPC 7.1 and RPC 7.2A, demonstrating remorse; (2) he agreed to the stipulated admission of certain facts, demonstrating cooperation with the state bar and resulting in an abbreviated formal hearing; (3) he has no prior discipline for violating advertising rules; (4) he did not conceive the advertisement himself but modeled it on an advertisement his office manager saw on television in California; (5) the advertisement only ran for just over three months; (6) this matter marks the first time a panel held a formal hearing concerning RPC 7.2A, a Nevada-specific rule, and there is no precedent discussing appropriate discipline in such matters; and (7) he submitted the advertisement to the state bar without receiving any request for it, albeit in the wrong format, on January 30, 2008, and then again on March 4, 2008, with the proper paperwork and English translation attached as requested by the state bar.

In *Lerner*, this court stated that in determining the proper disciplinary sanction it will consider the following: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's conduct; and (4) the existence of aggravating or mitigating factors. *Id.* At ____, ____, 197 P.3d at 1077. Applying these factors to the instant case, we conclude that a public reprimand is appropriate here. Lopez violated a duty to the public and to the profession by disseminating an advertisement which contained "a material misrepresentation of fact or law." RPC 7.1(a). While Lopez admitted that the advertisement was confusing, he vehemently denied that he intended to mislead the public, insisting instead that he meant to inform the public regarding the minimum insurance liability coverage and their right to pursue litigation if involved in a car accident. Considering the content of the advertisement, we conclude that this contention is meritless and that it evidences Lopez's refusal to take full responsibility for an advertisement that grossly misstated the law. Further, the record demonstrates that the advertisement misled the public into believing that they had a right to \$15,000 if they were involved in a car accident, regardless of the merits of their case. Moreover, as the state bar argues, Lopez's prior instances of misconduct evidence his disregard for the rules of professional conduct.

Further, we reject Lopez's contention that his modeling the advertisement after a similar advertisement aired in California excuses or mitigates his misconduct here. To the contrary, Lopez's assertion that his conduct should be excused because he did not conceive of the advertisement himself demonstrates his reluctance to accept responsibility. Moreover, the fact that RPC 7.2A is a Nevada-specific rule does not support the conclusion that Lopez should receive a private reprimand. Finally, Lopez's initial insufficient submission of copies of the advertisement to the state bar without request does not mitigate his misconduct here because after the state bar requested that he provide copies of both the mandatory filing form and an English translation of the advertisement pursuant to RPC 7.2A within two weeks of January 31, 2008, Lopez failed to meet the requests of the state bar until March 4, 2008.

Accordingly we hereby reprimand attorney Anthony R. Lopez, Jr., for violations of RPC 7.1 and 7.2A. Lopez shall comply with all of the other conditions recommended by the disciplinary panel.

UNAUTHORIZED PRACTICE OF LAW

CEASE AND DESIST LETTERS

Under NRS 7.285(3), the state bar may seek a civil injunction against a person or entity engaged in the unauthorized practice of law (UPL). The state bar also issues Cease and Desist letters to aid in UPL enforcement. While such letters are not court orders and attach no penalty, they put the recipient on notice of activity which constitutes UPL and allows the recipient to amend business practices to conform to Nevada law. The state bar uses Cease and Desist notices in subsequent litigation.

The State Bar of Nevada issued the following cease and desist letters on the dates listed:

Richard Lemon:

February 19, 2010

Stanley A. Antlocer:

February 22, 2010 ■

1. Neither Anderson nor the state bar submitted a brief challenging the panel's findings and recommendation.
2. This suspension is separate from and in addition to Anderson's suspension ordered by the state bar for nonpayment of dues. It is also separate from and in addition to his suspension by this court for failure to comply with the rules regarding continuing legal education. In re: Continuing Legal Education, Docket No. 54333 (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys, October 21, 2009).
3. A suspension of this length would require Schelly to, upon the expiration of his period of suspension, file a petition for reinstatement. SCR 116.
4. Schelly was, at all times pertinent to this matter, licensed to practice law in California. At no time pertinent to this matter was Schelly a licensed attorney in Nevada.
5. A charge of violating RPC 5.5 (unauthorized practice of law) was dismissed by the state bar for insufficient evidence.
6. This court has jurisdiction to impose discipline upon Schelly despite the fact he is not a member of the State Bar of Nevada. See SCR 99(1); Waters v. Barr, 103 Nev. 694, 697-98, 747 bP.2d 900, 902 (1987); Matter of Discipline of Droz, 123 Nev. 163, 167-68, 160 P.3d 881, 884 (2007).
7. Lopez received a public reprimand on October 27, 2003, as reciprocal discipline for violating Arizona's equivalents of former SCR 165 (safekeeping property) and former SCR 200(2) (bar admission and disciplinary matters-failing to respond to disciplinary authority). In re Discipline of Anthony R. Lopez, Docket No. 41356 (Order Imposing Reciprocal Discipline, October 27, 2003). Lopez also received a private reprimand on August 30, 2007, for violating former SCR 158 (conflict of interest: prohibited transactions).

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 6 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.