

# bar counsel report

## SOUTHERN NEVADA DISCIPLINARY BOARD

### LETTERS OF REPRIMAND

**File Nos.: 08-234-0044 & 09-014-0044**

*Letter of reprimand warranted where attorney failed to adequately respond to court orders.*

The Supreme Court of Nevada (Supreme Court) entered an order on December 12, 2008 in a pending appeal. The order referred the matter to the State Bar of Nevada for possible disciplinary action.

Attorney represented Client #1, the appellant in a matter that was appealed to the Supreme Court and included four counts of attempted murder with the use of a deadly weapon, three counts of battery with the use of deadly weapon resulting in substantial bodily harm, one count of assault with a deadly weapon, and one count of discharging a firearm at or into a structure, vehicle, aircraft or watercraft. This appeal was docketed on March 3, 2008. On the same date, the Supreme Court sent Attorney a notice to file the case appeal statement and the rough draft transcript request within 10 days. The notice also stated that the fast track statement was to be filed no later than April 14, 2008.

Attorney did not file the requested documents within the given time-frame. On June 3, 2008, the Supreme Court ordered Attorney to file the case appeal statement and two file-stamped copies of the rough draft transcript request form within five days and to file the fast track statement and appendix within 30 days. Again, Attorney did not file the requested documents in the allotted time.

On June 26, 2008, the Supreme Court entered another order directing Attorney to file the requested documents on July 3, 2008. Attorney filed the case appeal statement and the rough draft transcript request form on July 3, 2008.

By September 9, 2008, Attorney had not filed the fast track statement and appendix. The Supreme Court filed an order conditionally imposing a \$500 sanction against Attorney which would be vacated if Attorney filed the statement by September 17, 2008. Attorney filed a motion for extension of time to file the statement, which was granted. Attorney filed the fast track statement on October 20, 2008. Attorney then filed a motion to strike the statement on November 13, 2008.

The Supreme Court found that although Attorney had more than seven months to prepare the fast track statement, the statement was inadequate. An appendix was not filed with the statement and there were no cites to the appendix as required by NRAP 3C(e)(2) ("every assertion in the fast track statement regarding matters in an appendix shall cite to the page of the appendix that supports the assertion.") The Supreme Court also found the statement to be lacking in its statements of fact and legal arguments. Therefore, the Supreme Court granted the motion to strike the fast track statement filed October 20, 2008.

Finally, the Supreme Court's Order of December 12, 2008 found that Attorney's dilatory actions warranted removal as counsel of record. The order also directed that Attorney pay \$500 in sanctions and referred Respondent to the State Bar of Nevada for investigation and appropriate disciplinary action.

In a response dated February 4, 2008 to the state bar, Attorney acknowledged that while the fast track statement was prepared in good faith it did lack an appendix. Attorney stated that the fast track statement was prepared in accordance to the directions. In response to the court's assertion that the statement of facts "was essentially non-existent," Attorney stated that he prepared the answer in accordance to the directions which indicate the following: "Briefly set forth the facts material to the issue on appeal." Attorney addressed the Supreme Court's concern that he did not provide a "cogent argument on appeal" by stating that he raised four appellant issues. Attorney also stated that item 23 of the fast track statement asked for legal arguments plus citations. Attorney included his legal argument at the end of the previous question and did not neglect to include it all together. Lastly, Attorney showed proof that he paid the \$500 sanction on December 31, 2008.

In regard to Client #2, the Supreme Court entered an order on January 8, 2009 in another pending appeal. The order referred the matter to the State Bar of Nevada for possible disciplinary action.

Attorney represented Client #2 in a breach of contract/unjust enrichment matter that was appealed. On April 14, 2008, the Supreme Court entered an order that directed Attorney to pay the \$250 filing fee and file a case appeal statement by April 24, 2008. Attorney failed to do either.

On July 2, 2008, the Supreme Court entered an order conditionally imposing sanctions on Attorney. Attorney was directed to pay \$500 to the Supreme Court Law Library and provide proof of payment by July 17, 2008. The order also directed Attorney to file the docketing statement by July 17, 2008. Attorney failed to do any of the directed actions.

The Supreme Court entered an order on August 5, 2008, directing Attorney to pay the \$500 sanction and the \$250 filing fee, and file the case appeal statement, docketing statement, and proof that Attorney paid the \$500 sanction to the Supreme Court Law Library. Attorney paid the \$500 sanction by check on August 22, 2008. That payment was returned for insufficient funds.

On November 17, 2008, the settlement judge filed a report stating that Attorney failed to submit a settlement statement and failed to attend settlement conferences. The settlement judge recommended sanctions against Attorney in accordance with NRAP 16(g) (the failure of a party, or the party's counsel, to comply with the procedural requirements of the settlement conference program or to attend scheduled conferences may be grounds for sanctions).

Finally, the Supreme Court's Order of January 8, 2009 directed that Attorney pay the \$500 sanction and reimburse respondent Perini Building Company (Perini) \$695.83 for costs incurred for having a representative at the scheduled mediation

# bar counsel report

MAY 2010

session. Attorney was given 30 days from the date of the order to provide proof of both payments to the Supreme Court. Attorney was also given 15 days to file and serve a transcript request form and 90 days to file and serve the opening brief and appendix.

In his response dated February 4, 2008, to the State Bar of Nevada, Attorney acknowledged that he had not paid the filing fee or filed the case appeal statement because he was attempting to resolve the matter in a settlement conference. Attorney paid the filing fee, sanction and filed proof thereof on August 22, 2008. Attorney also filed the case appeal statement and docketing statement on this date. Attorney claimed he was unaware that his check for \$500 was returned for insufficient funds. Attorney paid the sanction on February 5, 2009 with a cashier's check. Attorney did not provide proof that he filed the transcript request form as directed by the Supreme Court's January 8, 2009 order.

The panel found in mitigation, pursuant to SCR 102.5(e) (Aggravation and Mitigation), that three mitigating factors existed, which were: 1) the death of Attorney's son and the extreme grief he experienced as a result, 2) Attorney's cooperation with the state bar's investigation, and 3) the fact that Attorney had obtained co-counsel on his remaining and pending appeals.

A conditional guilty plea in exchange for a stated form of discipline was submitted to the panel and called for a public reprimand. The panel rejected that proposed discipline as too harsh in light of the mitigating factors and instead imposed a letter of reprimand.

Attorney also agreed to retain co-counsel for all future matters in which he is counsel of record in the Nevada Supreme Court. Co-counsel will have the responsibility for all issues regarding procedural aspects of the appellate matters including, but not limited to: filing the notice of appeal, filing the docketing statement, making transcript requests, filing the appropriate briefs and motions, and filing the appendix to the briefs.

Based upon the foregoing, Attorney was **REPRIMANDED** for violation of pursuant to RPC 3.2 (Expediting Litigation), and RPC 3.4(c) (Knowingly disobey an obligation under the rules of a tribunal).

---

**File No.:** 09-211-1100  
**Issued:** February 3, 2010

*Letter of reprimand warranted for failure to respond to the State Bar of Nevada.*

On July 21, 2009, Client complained to the State Bar of Nevada that Attorney had improperly filed three liens against a homeowner. Client, the manager for a general contractor company, was informed of these liens by the owner of a house the company was building. Client stated that the homeowner did not know the individuals and entities named in the liens and had not entered a contract with them. Client also claimed that the homeowner did not receive any pre-lien notification as

required by NRS Chapter 108 (Statutory Liens). Client alleged that the improper liens were affecting the homeowner's ability to close on a home loan.

On July 24, 2009, the state bar sent Attorney a letter of investigation and asked him to respond within two weeks. Attorney failed to respond to the state bar's letter dated July 24, 2009.

As a result, on August 10, 2009, the Office of Bar Counsel sent Attorney a reminder letter via certified mail/return receipt requested. The letter informed Attorney that, should he fail to respond, his failure to cooperate in the investigation would be considered a violation of Rule of Professional Conduct (RPC) 8.1 (Bar Admission and Disciplinary Matters). The certified letter was delivered to and signed by Attorney's office on August 11, 2009. However, Attorney again failed to respond.

Given Attorney's lack of response, on August 27, 2009, the instant grievance file was opened. On the same day, Office of Bar Counsel sent Attorney a letter via certified mail/return receipt requested. The letter informed Attorney that a grievance file had been opened because he had not responded to either the July 24 or the August 10 letters. Attorney was given ten days to respond.

Attorney responded on September 1, 2009. In his response, Attorney claimed that he had been under the impression that his clients had contracted directly with the owner and therefore the pre-lien notices were unnecessary. After contacting his clients, Attorney realized that he was mistaken and that his clients had not contracted directly with the owner. Attorney stated that he had his clients sign and record lien releases for the liens in question.

On September 4, 2009, Attorney was asked to provide copies of the lien releases to the state bar by September 18, 2009. Attorney did not respond to this request, resulting in another reminder letter being sent via certified mail/return receipt requested on September 25, 2009. Attorney subsequently provided the state bar with evidence of the three lien releases being filed.

Based upon the foregoing, Attorney was **REPRIMANDED** in this matter for violating RPC 8.1(b) (Bar Admission and Disciplinary Matters). As the practice of law is a self-regulated profession, it is imperative that attorneys cooperate with disciplinary investigations in a timely manner.

---

**File No. 09-245-0030**

*Letter of reprimand warranted for failure to respond to the State Bar of Nevada.*

On August 14, 2009, Client complained to the State Bar of Nevada that Attorney had failed to diligently pursue a claim against a realtor through the Greater Las Vegas Board of Realtors (GLVAR), which she alleged had a 180-day limitations period.

On August 17, 2009, the state bar sent Attorney a letter of investigation and asked him to respond within two weeks.

**continued on page 42**

# bar counsel report

However, Attorney failed to respond to the state bar's letter.

As a result, on September 4, 2009, Attorney was sent a reminder letter via certified mail/return receipt requested. The letter informed Attorney that failure to respond would be considered a violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters). Attorney's office signed for the letter on September 8, 2009.

Attorney again failed to respond and the instant grievance file was opened on October 9, 2009. That same day, the State Bar sent Attorney a letter informing him that a grievance file had been opened and asked him to respond within two weeks.

Attorney responded to the state bar on November 12, 2009. Attorney's response explained that he had previously represented Client in various matters, including debt collection, lease disputes and traffic tickets. In regard to Client's grievance, she had sought to sue realtors whom she previously considered friends for fraud. The realtors had purportedly convinced Client to overpay \$70,000 to \$80,000 for a residence. Correspondence from Client indicated that the home purchase occurred in or about April 2009.

Attorney suggested seeking relief through GLVAR, which had the authority to monetarily sanction the realtors and then Attorney would file a petition with the Nevada State Board of Realtors. Attorney indicated that a senior attorney, who was a founding member of GLVAR, was assisting him in preparing the appropriate documents to file. However, Client became dissatisfied with Attorney's representation while these documents were

being prepared and apparently terminated him prior to the documents being filed.

Attorney provided billing records to the state bar from April 2008 through May 2009, which encompassed various matters. The final bill indicated that Client owed the firm \$3,280, and had owed in excess of \$2,600 since October 2008. Client apparently made monthly payments of \$100 to \$250, although some bills reflected no payments.

Client's reply to Attorney's response complained that he had failed to return e-mails and phone calls and that she would have to stop by his office unannounced in order to see him. Client maintained Attorney did little work on her case in the four months he represented her in the matter.

The panel, in considering Attorney's failure to timely respond to the State Bar of Nevada, noted that he had previously been issued a public reprimand in March 2007 for failing to comply with deadlines imposed in four orders from the Supreme Court of Nevada in an appellate case in which he was counsel-of-record. The panel also considered the letter of reprimand Attorney received in July 2009 for failing to timely respond to the state bar.

Accordingly, Attorney was **REPRIMANDED AND FINED \$1,000** in this matter for violating RPC 8.1(b) (Bar Admission and Disciplinary Matters). As the practice of law is a self-regulated profession, it is imperative that attorneys cooperate with disciplinary investigations in a timely manner. The Attorney was advised that should similar problems arise in the future, the state bar will seek the imposition of a more severe form of discipline. ■

## 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](http://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.