

bar counsel report

SUPREME COURT OF NEVADA

In re: John S. Rogers
Bar No.: 4730
Docket No.: 55280
Filed: March 1, 2011

ORDER REINSTATING ATTORNEY TO ACTIVE STATUS

Attorney reinstated from disability inactive status. [Excerpted order]

This is a review of a recommendation by a hearing panel of the Southern Nevada Disciplinary Board regarding the capacity of attorney John S. Rogers to practice law. We previously transferred Rogers to disability inactive status pending such a determination of capacity. (*In re Disability of John S. Rogers*), Docket No. 533399 (Order of Transfer to Disability Inactive Status and Referral for Examination by Qualified Medical Expert, September 2, 2009). The panel held a hearing and subsequently issued its findings of fact, conclusions of law, and recommendation.

The panel examined reports by two of Rogers' physicians. The panel concluded that Rogers demonstrated by clear and convincing evidence that he is currently not disabled, and is currently competent to practice law.

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings and conclusions. We therefore determine that Rogers is not incapacitated from practicing law and hereby reinstate him to active status, with direction that he continue the treatment measures as described in the reports. SCR 117(3). We direct that any disciplinary proceedings against Rogers may resume.

In re: Andras F. Babero
Bar No.: 1658
Docket No.: 55729
Filed: March 23, 2011

ORDER OF REINSTATEMENT

Attorney reinstated from disability inactive status.

This is a petition for reinstatement from disability inactive status by attorney Andras Babero. In May 2005, this court transferred Babero to disability inactive status. (*See In re: Disability of Babero*), Docket No. 45051 (Order of Transfer to Disability Status, May 31, 2005). A hearing regarding reinstatement was held before a panel of the Southern Nevada Disciplinary Board. The record of the hearing panel's proceedings has been filed with this court.

The hearing panel found that Babero demonstrated by clear and convincing evidence that his disability has been

removed and that he is fit to resume the practice of law. See SCR 117(4), (5). The hearing panel has recommended that Babero be reinstated to the practice of law. The state bar has recommended, and the hearing panel agreed, that all pending disciplinary matters against Babero, temporarily suspended by this court's May 2005 order, not be prosecuted.

We conclude that clear and convincing evidence supports the panel's finding that Babero's disability has been removed, and that he is fit to resume the practice of law. SCR 117(4). We further approve of the recommendation that the pending disciplinary matters against Babero not be prosecuted. Accordingly, we grant the petition for reinstatement and reinstate Babero to the practice of law.¹

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Thomas C. Cook
Bar No.: 5266
File No.: 10-001-2201
Filed: March 18, 2011

Public Reprimand imposed for failure to communicate with client, lack of diligence in expediting a civil matter, failure to promptly refund retainer agreement and failure to respond to the state bar. Respondent has until May 24, 2011, to refund the retainer to the client.

Thomas C. Cook was retained by Don Maddalon (Maddalon), President of Integrity Stock Transfer and the grievant herein, to pursue a contract action against Sushi Trend Co. Maddalon paid Cook a retainer fee in the amount of \$5,000.

On February 29, 2008, Cook filed a Complaint in a case entitled *Stock Transfer v. Sushi Trend Co.*, Eighth Judicial District Court, Case No. 08A55812.

Maddalon contacted Cook on at least 15 occasions between February and September 2008, both verbally and in writing, requesting information regarding the status of the litigation. He, on each occasion, assured Maddalon that he was communicating with opposing counsel and that a court date would be scheduled. Since September 2008, he has failed to communicate with Maddalon regarding the status of the litigation.

The District Court docket indicates that the matter is still active. A complaint dated February 29, 2008 is the only pleading on record. There has been no information presented by Cook that the complaint was ever properly served on Sushi Trend Co. or that any other steps were taken to prosecute this action.

On September 2, 2009, the state bar sent correspondence to Cook forwarding a copy of the grievance and requesting a written response to the specific issues raised by Maddalon. He failed to respond to the state bar resulting in another letter

being sent via certified mail, return receipt requested, on September 24, 2009, advising that should he fail to respond the state bar would open a file. The return receipt card was signed by "P. Linden."

Cook responded to the state bar on October 8, 2009 stating that if Maddalon "...feels I have mishandled this case, I am more than willing to discuss the return of his retainer to him." Cook did not provide any explanation or documents to refute Maddalon's allegations concerning his handling of the case.

His response was sent to Maddalon on October 16, 2009. Maddalon subsequently provided the state bar with a copy of a letter he sent to Cook dated October 29, 2009, wherein he requested that Cook return the \$5,000 retainer and all documentation regarding *Sushi Trend* and another case that occurred in California. These items were to be ready by October 30, 2009.

Maddalon retrieved documents from Cook on October 30, 2009, but neither the *Sushi Trend* file nor \$5,000 retainer refund check were included in the documentation provided by him to Maddalon.

On November 13, 2009, the state bar sent another letter to Cook requesting that he provide the state bar with an update regarding the return of the \$5,000 retainer. He did not respond to the state bar and on December 3, 2009, another letter was sent via certified mail, return receipt requested. The return receipt card was signed by "P. Linden."

Cook did not respond to the state bar's letter of December 3, 2009. The state bar then sent another letter on January 5, 2010, return receipt requested, notifying him that a file had been opened. The return receipt card was signed by "P. Linden."

The state bar did not receive a response from Cook and on February 12, 2010, another letter was sent via certified mail, return receipt requested, advising him that this was your last chance to respond before this matter was presented to a Screening Panel. The return receipt card was signed by "Yolanda Hill."

In light of the foregoing, Cook violated Rule of Professional Conduct (RPC) 1.3 (Diligence), RPC 1.4 (Communication), 1.15 (Safekeeping Property) and RPC 8.1 (Bar Admission and Disciplinary Matters) and is hereby **PUBLICLY REPRIMANDED**. ■

1. This petition for reinstatement from disability inactive status was marked confidential upon its filing. Since we grant the petition, the matter is now public, and we direct the clerk to remove the confidential designation. See SCR 121(8).

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.

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