

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF (PRIVATE) REPRIMAND¹

File Nos. 07-155-1302, 08-015-1302,
08-025-1302

Letter of reprimand appropriate when attorney engaged in the unlicensed practice of law by representing clients while suspended for failing to pay bar dues and failing to comply with continuing legal education requirements. Fine of \$1,000 was imposed on each grievance, for a total of \$3,000.

1. Preface

On or about June 27, 2007, Attorney was suspended from the practice of law by the Board of Governors for failure to pay 2007 bar dues, which were due by March 1, 2007. On or about December 4, 2007, Attorney's license was further suspended for failure to comply with Nevada's Continuing Legal Education (CLE) requirements. Attorney resolved the fee suspension on or about December 17, 2007. Attorney remained CLE suspended until on or about March 5, 2008, when he was reinstated to active status.

2. Grievance File No. 07-155-1302

The State Bar of Nevada was contacted on or about August 15, 2007 regarding a Motion for Summary Judgment that Attorney filed on August 2, 2007, in an Eighth Judicial District Court matter. As noted above, Attorney was suspended from the practice of law at the time for failure to pay bar dues.

After the state bar was provided with the Motion for Summary Judgment, Attorney was sent a copy and asked to explain why Attorney filed pleadings while fee suspended. Although the initial correspondence was sent in August 2007, the address Attorney maintained with the state bar at that time was not valid. In or about November 2007, Attorney apparently met with the state bar's member services personnel and updated the address, although Attorney did not resolve the administrative suspension at that time.

Thereafter, on November 19, 2007, Attorney was again asked to respond to the state bar

regarding the Motion for Summary Judgment. The letter was sent via regular and certified mail, return receipt requested. Attorney did not respond to the letter.

A second letter was sent on January 7, 2008, again via regular and certified mail, return receipt requested. Attorney did not respond. On February 28, 2008, the state bar retained a process server, who served Attorney personally with a letter dated February 28, 2008, informing Attorney that if he did not respond within 10 days, a screening panel would be asked to consider Attorney's failure to cooperate a violation of Rule of Professional Conduct ("RPC") 8.1(b) (Bar Admission and Disciplinary Matters).

No response was received from Attorney until April 7, 2008. In Attorney's undated response, Attorney claimed that one of the notices regarding non-payment of bar dues was supposedly signed by a receptionist at Attorney's office building but not delivered to him. Attorney also claimed that certain late fees were waived as a result, but provided no documentation or other evidence to support the allegation.

The panel noted that despite Attorney's assertion that late fees were waived no other reinstatement requirements were waived, such as the filing of affidavits pursuant to Supreme Court Rule ("SCR") 115 (Notice of change in license status; winding down of practice). The panel further noted that Attorney, as an attorney for 15 years, should have known that bar dues are payable by March 1 of each year and, as such, despite claim to the contrary, Attorney was aware, or should have been aware, that he had failed to timely pay the bar dues.

3. Grievance File No. 08-015-1302

On January 24, 2008, the State Bar of Nevada received a grievance from Client A, who is the client of the underlying court matter discussed above. In short, Client A complained of Attorney's performance in his case, along with the fact that Attorney was suspended from the practice of law when Attorney filed pleadings in his case. Client A sought the return of his \$7,100 retainer, noting that he had to retain new counsel to fix the mess Attorney created in his case which, according to him, cost him \$80,000.

On February 6, 2008, the state bar asked Attorney to respond to Client A's grievance.

However, Attorney failed to do so. On February 28, 2008, the state bar retained a process server, who personally served Attorney with a February 28, 2008, letter reminding Attorney that Attorney had failed to respond to the grievance. Attorney failed to respond to this second letter.

On March 20, 2008, Attorney was sent a third reminder letter, via regular and certified mail, return receipt requested. This letter informed Attorney that if Attorney did not respond, the screening panel would be asked to consider his failure to cooperate a violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters).

No response was received from Attorney until April 7, 2008. His undated response, which was the same undated response referred to in the prior grievance file, claimed that while suspended from the practice of law, Attorney drafted documents for Client A to file in proper person. In addition, Attorney noted that while Attorney remained suspended, Attorney coached Client A in preparation for a hearing in his matter, which he attended in proper person and apparently was decided in the opposing party's favor. Attorney claimed that Client A was satisfied with Attorney's performance until the court ruled against him. Attorney's response also alleged that Client A's bar complaint was submitted for personal reasons rather than Attorney's performance in his matter.

4. Grievance File No. 08-025-1302

On February 25, 2008, opposing counsel submitted a grievance to the State Bar of Nevada alleging that Attorney was engaging in the unauthorized practice of law in mid-February 2008 when Attorney sent demand letters directly to opposing counsel's client. In addition, opposing counsel complained that Attorney's conduct violated RPC 4.2 (Communication With Person Represented by Counsel). Opposing counsel's grievance also noted that Attorney's e-mail address was apparently invalid. In addition, Attorney's faxes to opposing counsel did not indicate a fax number for Attorney's office. Rather, the faxes were apparently sent from Attorney's client's fax machine. Therefore, opposing counsel believed he was prohibited from responding in kind without implicating RPC 4.2.

On February 28, 2008, the state bar retained a process server, who personally served Attorney with a February 28, 2008, letter asking Attorney

to respond to the grievance. Attorney failed to respond to this letter.

On March 20, 2008, Attorney was sent a reminder letter, via regular and certified mail, return receipt requested. This letter informed Attorney that if Attorney did not respond within seven days, the screening panel would be asked to consider his failure to cooperate a violation of RPC 8.1(b) (Bar Admission and Disciplinary Matters).

No response was received by Attorney until April 7, 2008, although the letter itself was apparently dated March 19, 2008. His response acknowledged that Attorney sent the grieved-about letters, but did not discuss opposing counsel's allegations that Attorney violated RPC 4.2. Attorney claimed that Attorney had fulfilled his CLE requirements.

5. Findings of Professional Misconduct

In regard to Grievance File 07-155-1302, Attorney was **REPRIMANDED** for violating RPC 5.5 (Unauthorized Practice of Law) and RPC 8.1(b) (Bar Admission and Disciplinary Matters). The panel also assessed a **FINE** in the amount of \$1,000 in regard to this grievance file pursuant to SCR 102(7) (Types of Discipline).

In regard to Grievance File 08-015-1302, Attorney was **REPRIMANDED** for violating RPC 1.5 (Fees), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.1(b) (Bar Admission and Disciplinary Matters). The panel also assessed a **FINE** in the amount of \$1,000 in regard to this grievance file pursuant to SCR 102(7) (Types of Discipline).

In regard to Grievance File 08-025-1302, Attorney was **REPRIMANDED** for violating RPC 4.2 (Communication With Person Represented by Counsel), RPC 5.5 (Unauthorized Practice of Law) and RPC 8.1(b) (Bar Admission and Disciplinary Matters). The panel also assessed a **FINE** in the amount of \$1,000 in regard to this grievance file pursuant to SCR 102(7) (Types of Discipline).

In regard to the above reprimands, please note that the fines are cumulative, not concurrent, resulting in a total fine amount of \$3,000. Likewise, the findings of misconduct are also cumulative. Accordingly, in regard to the three grievance files, the panel found that Attorney committed one violation of RPC 1.5, one violation of RPC 4.2,

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three violations of RPC 5.5, and three violations of RPC 8.1.

File No. 08-076-0978

Attorney received a letter of reprimand for failure to safekeep money in trust account and failure to respond to the State Bar of Nevada. Fine of \$1,000 and costs in the amount of \$940 was also ordered and paid by the Attorney.

On July 24, 2007, Bank of Nevada notified the State Bar of Nevada that check No. 5184, written from the trust account of a Law Firm, was returned. This check was issued to a third party in the amount of \$2,325 for restitution on behalf of the Law Firm's client.

During the course of investigating the overdraft with respect to the Law Firm, the state bar received a letter from Attorney dated April 29, 2008. This letter explained Attorney's role in failing to keep the funds belonging to the third party safe in the trust account. Attorney stated that, "I am willing to accept any disciplinary action you believe is appropriate, and there is no need to proceed any farther with these claims." Attorney stated that she takes full responsibility for the lack of timeliness in the responses from her partner, another Nevada attorney.

Due to Attorney's response to the state bar, a grievance file was opened and a letter was sent to Attorney on May 2, 2008. This letter informed Attorney that the matter would be presented to a screening panel and should Attorney wish to respond she should do so by May 16, 2008. The letter was sent via certified mail, return receipt requested. The return receipt card was returned signed.

In addition, the state bar wanted to ensure that Attorney received the letter advising Attorney that a file was opened concerning her actions. The letter was given to a private investigator for personal service.

The process server went to Attorney's residence on May 6, 2008, and was informed that Attorney was out of town until May 12, 2008. Attorney was served with the documents on May 14, 2008.

On May 28, 2008, the state bar received a letter from Attorney requesting that Attorney's prior responses be incorporated into Attorney's file. Attorney once again apologized for the error that resulted in the bounced check and accepted full responsibility for the error. Attorney stated that changes have been made to the banking and only one person would be handling all banking in the future.

Attorney was **REPRIMANDED** for violating RPC 1.15 (Safekeeping Property) and RPC 8.1 (Bar

Admission and Disciplinary Matters). In addition, Attorney was **FINED** in the amount of **\$1,000** and assessed **COSTS** in the amount of **\$940**.

File No. 08-044-1810

Letter of reprimand and fine of \$1,000 warranted where Attorney failed to respond to the State Bar of Nevada. Attorney paid the fine.

A grievance was submitted to the State Bar of Nevada alleging that Attorney did not honor a subrogation lien on behalf of an insurance company.

Attorney represented a client in a personal injury matter. The insurance company paid client's medical bills and had a subrogation lien in the amount of \$143,234. The insurance company attempted to contact Attorney on numerous occasions about the lien but Attorney failed to communicate.

The insurance company provided copies of letters that were sent to Attorney dated October 3, 2007, September 10, August 9, July 17, June 29, 2007, May 14, April 18, April 3, and March 19, 2007. In a letter of March 19, 2007, Attorney was informed that proof of payment of the medical bills was forwarded to the client's former counsel on October 15, 2006.

Attorney responded to the insurance company on July 13, 2007 via e-mail, wherein he stated that his office has no attorney-client relationship with the insurance company. Attorney requested that the company set forth in substantive format with supporting documentation of his assertion that there was a valid lien.

The insurance company responded to that e-mail on July 17, 2007, wherein he enclosed a copy of the insurance policy. The insurance company did not receive any further communication from Attorney after the e-mail and submitted the grievance to the state bar.

In Attorney's reply dated April 14, 2008, Attorney stated that he did respond to the insurance company via e-mail on March 22, 2007, and requested verification or documentation to support their allegation. No proof was ever provided in response to Attorney's request and Attorney believed that there was no duty placed on him to the insurance company.

This correspondence was sent to the insurance company for a reply on April 21, 2008. On May 16, 2008, the state bar received a letter stating that the insurance company never received Attorney's correspondence of March 22, 2007, but they did send the policy on July 17, 2007, as requested in Attorney's July 2007, e-mail. The insurance company further stated that an attorney who knows about the existence of a subrogation claim has an affirmative duty to protect it.

On August 20, 2008, the state bar sent Attorney a request for information. Specifically, the distribution sheet, checks, and liens were requested to be provided to the state bar by September 2, 2008. The state bar also sent a letter to the insurance company requesting that they provide copies of the letter and policy that were sent to Attorney.

The insurance company responded on September 2, 2008, and provided copies of letters they sent to prior counsel and a copy of the policy. The policy states in subsection (h): "We may at Our expense and in Your name, pursue any actions available to claim recovery." According to the policy, any subrogation is also subject to South African law.

In Attorney's response dated September 15, 2008, he stated that the state bar's request expanded the scope of the investigation. The state bar responded on September 18, 2008, stating that the request was within the scope of the investigation as it pertained to the notice of subrogation, the distribution of settlement proceeds and potential safekeeping of property. Attorney was instructed to respond to the request.

No response was received. On November 7, 2008, the state bar sent another letter to Attorney with a deadline of November 21, 2008, to respond. Attorney responded on December 19, 2008, by stating that the South African policy does not contain any language regarding third party recovery.

Attorney further explained that he received a settlement from the driver of the boat in June 2006. Attorney did not provide any details surrounding the settlement, such as a distribution sheet. Attorney stated that the settlement was obtained prior to contact from the insurance company, which occurred on March 19, 2007. However, Attorney did not provide an explanation as why this information was not relayed to the insurance company when they first contacted Attorney.

The state bar noticed that this statement differed from the documents provided by Attorney in that the settlement occurred in November 2006 and not in June 2006. In any event, the insurance company did not contact Attorney until March 2007, when they inquired about the matter pending against the other at-fault party.

Attorney assumed the file from prior counsel, who was placed on notice by the insurance company that they had an interest in the settlement and they wanted to know if prior counsel would protect their interest or whether they needed to obtain local counsel to do so. Attorney did acknowledge that there was a lien from University Medical Center and prior counsel for attorney's fees.

Attorney never provided the state bar with a copy of the distribution sheet or any checks as requested.

The panel agreed that the Southern Nevada Disciplinary Board was not the proper forum to determine whether there was a valid subrogation claim. However, the panel was concerned that Attorney did not respond to the state bar's request for information even after being instructed to do so on numerous occasions.

Accordingly, Attorney was **REPRIMANDED AND FINED \$1,000** for violating RPC 8.1(b) (Bar Admission and Disciplinary Matters: knowingly fail to respond to a lawful demand for information).

1. See SCR 121 (Confidentiality) as amended eff. March 1, 2007.

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):

<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 PRIVATE REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION/INACTIVE STATUS – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or placed on CLE inactive status 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.