

bar counsel report

NORTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No.: N06-38-059

Letter of Reprimand imposed when an attorney failed to supervise his non-lawyer assistants.

On November 23, 2009, Attorney submitted a formal objection to the Letter of Reprimand issued by the Screening Panel Chair dated May 11, 2007 contending that the alleged violations of SCR 154, SCR 187 and SCR 189 did not occur. Attorney subsequently requested an informal hearing to dispute the findings of the Screening Hearing Panel.

On May 4, 2011, an Informal Hearing was held before a Panel of the Northern Nevada Disciplinary Board. Attorney was represented by counsel at that hearing and presented evidence, including documents and witnesses to support Attorney's contention that Attorney did not violate the Rules of Professional Conduct.

Based on the testimony and documentary evidence presented during the hearing, the panel unanimously concluded to affirm the decision of the Screening Hearing Panel to issue a Letter of Reprimand.

Client first contacted Attorney's Firm for the purpose of having her current husband adopt her child from a former marriage. Her initial consultation was with a non-lawyer assistant employed by Attorney's firm. Client relayed to non-lawyer assistant the factual information regarding her case, including that her son would be starting school in the fall and she wanted him to be able to register under her current husband's last name. After hearing this information, the non-lawyer assistant advised Client that Attorney's firm would handle her case and that the first step to accomplish the adoption would be to terminate the natural father's parental rights. After hearing and accepting this legal advice, Client paid the non-lawyer assistant \$650 and received a receipt marked "adoption" in the memo line.

After the initial consultation, Client claimed that she heard nothing from Attorney's office, despite repeated requests for an update regarding the status of the case, requests that became more frequent as the school registration deadline approached. She maintained that at no time did she ever speak or meet with Attorney personally. Attorney denied this, stating that Attorney spoke with her on at least one or two occasions. Attorney also testified in the hearing that Attorney believed that Attorney briefly spoke with her in person on one occasion when she arrived at the office without an appointment. However, despite testifying Attorney had direct contact with Client, there was no evidence presented that Attorney ever relayed the legal ramifications of the adoption or how that it could be accomplished.

Based on the testimony of Client, Attorney and the non-lawyer assistant, the panel concluded that there was a clear communication error pertaining to what services Attorney's firm would provide to Client. She believed that she had retained Attorney's firm to handle the adoption start to finish. Additionally, it is clear that the procedures and mechanisms surrounding obtaining a termination of parental rights and a subsequent adoption were not properly explained to Client. Lastly, Client was not adequately notified of the order denying the Petition to Terminate Parental Rights filed by Attorney's firm and the legal implications of that ruling on the adoption.

Accordingly, Attorney was REPRIMANDED for having violated SCR 154 (Communications), SCR 187 (Responsibilities Regarding Non-lawyer Assistants) and SCR 189 (Unauthorized Practice of Law).

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No.: 08-071-NA194

Letter of Reprimand imposed when a California attorney engaged in the unauthorized practice of law in Nevada. Fine was also imposed.

Client retained California Attorney after she saw Company's website advertising attorney services. Attorney was retained to represent Client's husband in a post-conviction appeal to the Nevada Supreme Court.

Client stated she liquidated her retirement savings and paid a retainer fee of \$78,000 to Attorney and Company.

Client stated that Attorney filed the appeal beyond the jurisdictional deadline and therefore the appeal was ultimately dismissed. Client also stated Attorney and Company refused to refund any portion of the retainer fee for services unearned.

Attorney sought to be admitted to Nevada pro hac vice in District Court. Nevada Attorney consented to be Nevada Counsel of Record. Attorney informed Nevada Attorney that another attorney had represented Client's husband at his criminal trial and that Attorney would now be handling the appeal. Attorney emphasized that the Notice of Appeal would be filed by local counsel or by trial counsel.

Accordingly, Nevada Attorney agreed to be local counsel and Attorney drafted a letter dated May 9, 2006, outlining Attorney's working relationship. At that time Attorney also forwarded a copy of the motion to appear pro hac vice in Client's case to Nevada Attorney's office. Nevada Attorney explained in his response letter to the state bar that those forms were prepared incorrectly and could not be filed.

Nevada Attorney's office immediately obtained the correct forms from the state bar and forwarded them to Attorney. Those forms were finally completed by Attorney's office and returned on or about May 30, 2006. Nevada Attorney's office delivered the Verified Application for Association of Counsel to the state bar office on May 30, 2006.

On June 5, 2006, in a letter from the state bar, Attorney's application was returned as incomplete. That same correspondence was sent to Attorney's office on June 6, 2006, via facsimile. The corrected information was forwarded to Nevada Attorney and the application was re-submitted.

On June 16, 2006, the State Bar of Nevada Statement was issued. Thereafter, on June 20, 2006, Nevada Attorney filed the Motion to Associate Counsel in the Eighth Judicial District Court wherein a hearing was set and heard on July 10, 2006. However, at that time, the Motion to Associate Counsel was denied because the District Court no longer had jurisdiction over the matter since the Notice of Appeal had been erroneously filed by Attorney without Nevada's knowledge or involvement. Filing of such Notice prior to being admitted constitutes the unauthorized practice of law. See *Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (Nev. 2000).

Accordingly, based upon the foregoing, Attorney was REPRIMANDED for violating RPC 5.5 (Unauthorized Practice of Law) and RPC 8.4 (Misconduct) and assessed a FINE in the amount of \$1,000 payable to the State Bar of Nevada.

File No.: 09-150-3304

Letter of Reprimand imposed when Attorney was associated with non-lawyers who were engaging in unauthorized practice of law.

Between September 2008 through 2009, two non-lawyers operated a company that was a foreclosure rescue scam. They charged \$2,500 retainers and misled customers into believing that their service would stop ongoing foreclosures on their homes and/or obtain loan modifications for them. In most cases, the two non-lawyers required the victims to pay a monthly charge of \$150 for litigation costs in addition to the original retainers of \$2,500 for the duration of the litigation, despite the fact neither were licensed as attorneys in Nevada. One of the non-lawyers was indicted and charged with 12 felony counts.

The State Bar of Nevada filed a complaint for injunctive relief against the non-lawyer. Bar Counsel testified before a judge in a civil matter. The judge heard the Motion to Dismiss and Order to Show Cause regarding the two non-lawyers. During the hearing, the non-lawyer identified seven attorneys that were employed with the company. The judge requested that the state bar investigate each of the attorneys.

On or about November 11, 2008, Attorney was one of the seven attorneys hired as an independent contractor by the company. Attorney received \$10,000 in compensation, which was paid in weekly installments.

Attorney's scope of work began with the review of Nevada foreclosure and eviction statutes and he spent a significant portion of his time handling a lawsuit that non-lawyer and his company filed against a bank. Attorney also stated he prepared several forms of contracts for the company and, on three occasions, revised the form complaints used by the company. Attorney researched unique issues and prepared pleadings, such as motions to remand or responses to motions to dismiss.

Attorney explained to the State Bar of Nevada that he reviewed complaints for company clients, primarily for typographical accuracy and to ensure that all necessary documents were included with the filing of the lawsuit.

Attorney also met with clients of the company and provided them with information on the foreclosure and eviction process, what the filing of their complaints would entail and their own responsibilities. Attorney explained that, as he became more familiar with the procedures of the company, he prepared memoranda proposing changes in the procedures, such as the hiring of additional processing staff, the organization and handling of files, what clients should and should not be accepted by the company and the prioritization of handling of files. Attorney stated that most of these recommendations were not adopted.

Attorney did enter into retainer agreements with clients referred to him if they chose to have Attorney represent them. Those retainers were in writing and separate and apart from the client's agreements with the company. Attorney did appear in court several times on behalf of clients who had retained him. Attorney's last day of work at the company was December 23, 2008; he gave his notice on January 3, 2009.

Based upon the foregoing, the Panel of the Southern Nevada Disciplinary Board was concerned about Attorney's association with nonlawyers who were practicing law without a license and fee splitting. Attorney entered into a contract for legal services with nonlawyers when Attorney knew, or should have known, they would use Attorney's work-product to engage in the unauthorized practice of law.

Accordingly, Attorney was **REPRIMANDED** for violating RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law). ■

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.