

## SUPREME COURT OF NEVADA

**In re:** Edmund C. Botha  
**Bar No:** 3890  
**Docket No:** 52800  
*Filed December 3, 2008*

### ORDER OF TEMPORARY SUSPENSION

*Temporary suspension warranted based upon attorney's felony conviction of willful evasion of the payment of tax.*

Bar counsel of the State Bar of Nevada has petitioned this court to enter an order temporarily suspending attorney Edmund C. Botha from the practice of law under SCR 111. The petition is supported by certified copies of documents evidencing a guilty verdict against Botha on September 25, 2008. Botha was convicted in the United States District Court, District of Nevada, of one count of willful evasion of the payment of tax, a felony under 26 U.S.C. §7201. Botha's sentencing is scheduled for January 7, 2009.

Having reviewed the petition and the supporting documentation submitted by bar counsel, we conclude that the petition conclusively establishes Botha's conviction of a serious crime warranting temporary suspension.<sup>1</sup> Accordingly, we temporarily suspend Botha from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceeding in which the sole issue to be determined is the extent of discipline to be imposed.<sup>2</sup>

It is so ORDERED.<sup>3</sup>

**In re:** Mark A. Lobello  
**Bar No:** 3994  
**Docket No:** 52777  
*Filed December 3, 2008*

### ORDER OF TEMPORARY SUSPENSION

*Temporary suspension warranted based upon attorney's felony conviction of attempt to evade or defeat federal income taxes.*

Bar counsel of the State Bar of Nevada has petitioned this court to enter an order temporarily suspending attorney Mark A. Lobello from the practice of law under SCR 111. The petition is supported by certified copies of documents evidencing a conviction against Lobello on August 12, 2008. Lobello was

convicted in the United States District Court, District of Nevada, pursuant to a guilty plea agreement, of one count of attempt to evade or defeat federal income taxes, a felony under 26 U.S.C. §7201.

Having reviewed the petition and the supporting documentation submitted by Bar Counsel, we conclude that the petition conclusively establishes Lobello's conviction of a serious crime warranting temporary suspension.<sup>4</sup> Accordingly, we temporarily suspend Lobello from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceeding in which the sole issue to be determined is the extent of discipline to be imposed.<sup>5</sup>

It is so ORDERED.<sup>6</sup>

## SOUTHERN NEVADA DISCIPLINARY BOARD

### LETTERS OF (PRIVATE) REPRIMAND<sup>7</sup>

**File No. 07-196-2682**

*Letter of reprimand appropriate when attorney failed to communicate with his client in a divorce proceeding.*

Client retained Attorney regarding his divorce matter in the Family Division of the Eighth Judicial District Court. Client complained of a lack of communication from Attorney, alleging in part that Attorney canceled several meetings in May 2007 with little or no notice, and was unable to get his case status from Attorney's staff. Client also was upset with having to meet with an associate attorney, who reportedly indicated that he "was not up to speed in the case." Client also complained that after he obtained new counsel in July 2007, Attorney refused to give any refund whatsoever.

Client claimed that Attorney billed him 38.6 hours regarding a *Motion to Compel Discovery Responses and Sanctions* that was filed by opposing counsel. Client also noted that Attorney was sanctioned by the court as a result of the motion.

Attorney's response to the state bar noted that Attorney accepted representation of Client without a retainer in November 2006 due to Client's limited financial resources and agreed to bill the file at an apparently discounted rate of \$150 per hour.

Since Client and his spouse had failed to make payments on the marital residence, it was at risk of foreclosure. Attorney stated that he immediately sought an order permitting the sale of the marital residence. Opposing counsel did not oppose the motion.

Although Attorney obtained a court order permitting the sale, there was an issue as to whether Client had any interest in the property since he had quitclaimed the property to his spouse. As a result, the proceeds of the sale were placed in a blocked account pending trial.

Attorney's billing records indicated several in-person meetings between Attorney and Client, and noted that there were also phone and mail communications. Attorney stated that Client was introduced to the Associate Attorney in May 2007, and this associate was subsequently assigned the case due to growth in Attorney's firm.

In regard to the lack of information from Attorney's office, Attorney stated that staff is not permitted to have substantive legal conversations with clients. Rather, they may only inform the client of upcoming court hearings and other relevant dates. Attorney claimed that although his firm provided a reasonable amount of communication to Client, an unreasonable amount of communication was demanded from his firm.

In regard to the *Motion to Compel*, Attorney stated that he had initially responded to the Plaintiff's request for documents, wherein Attorney indicated that all documents were available for viewing in his office pursuant to NRCP 34.

According to Attorney, several weeks later opposing counsel requested copies of these documents and Attorney agreed to provide them. Unfortunately, around this same time the partner at the firm decided to leave the practice of law, creating confusion in the office. Only after the *Motion to Compel* was filed did Attorney discover that the copies were never provided.

Attorney acknowledged that the *Motion to Compel* was granted and that the firm was sanctioned in the amount of \$2,500. Billing records indicated that, except for a \$180 charge on June 11, 2007 for research regarding the *Motion to Compel*, Client was not billed for time spent by the firm opposing the motion. There was no indication that any work was performed regarding the *Motion to Compel* prior to that date. Client was charged for time spent discussing the discovery dispute with opposing counsel prior to the *Motion to Compel* being filed. Further, Attorney did not attempt to collect the \$2,500 sanction from Client.

Attorney concluded by stating that he understood the aggravation and anger that Client felt due to his contested divorce proceeding. However, Attorney claimed that his performance, which could be seen through court records, was at least adequate, if not greater.

In regard to the *Motion to Compel*, court records in Client's matter indicated opposing counsel filed a Motion to Compel Defendant's Responses to Discovery; Motion for Sanctions on May 11, 2007. The motion noted that

opposing counsel had served the Plaintiff's Request for Production of Documents on November 13, 2006. Attorney requested a two-week extension on December 13, 2006, the date on which the responses were due. However, no response was provided by that extended date.

On January 12, 2007, opposing counsel's partner faxed Attorney a letter demanding a response and requesting a conference pursuant to Eighth Judicial District Court Rule ("EDCR") 2.34 (Discovery disputes; conferences; motions; stays). On January 16, 2007, Attorney sent opposing counsel's office a letter requesting another extension, citing a recent office move as the reason for the request. The request was granted, making the responses due by January 30, 2007. However, no response was provided by that date, either.

On February 13, 2007, Attorney finally served a response to the discovery request. However, no documents were produced and the response stated the records were available for inspection at Attorney's office.

On April 6, 2007, opposing counsel again sent Attorney a letter requesting an EDCR 2.34 conference, and requested that copies of the relevant documents be copied and sent to their office. On April 10, 2007, Attorney sent opposing counsel correspondence indicating that she could call him at 2 p.m. on April 13, 2007 to discuss the discovery dispute. Another attorney from opposing counsel's contacted Attorney at that time, and Attorney promised to make copies of all responsive documents and submit them by April 23, 2007.

However, no documents were provided by April 23, 2007. In a final attempt to resolve the dispute, Attorney was sent correspondence with the deadline of April 25, 2007 to respond or else a motion to compel would be filed. Attorney again failed to respond and, as noted above, the motion to compel was filed on May 11, 2007.

Attorney's opposition to this motion claimed that opposing counsel had failed to demonstrate any details describing how opposing counsel attempted a good faith attempt to resolve the dispute and that Attorney's offer to make the documents available complied with the discover request. Attorney also claimed that the failure to respond was due to a partner abruptly leaving the firm and that the documents would be provided prior to the hearing.

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Attorney's opposition also sought sanctions against opposing counsel.

Attorney apparently provided opposing counsel the responsive documents prior to the June 15, 2007, hearing, where the discovery commissioner recommended that opposing counsel receive \$2,500 in attorney's fees due to Attorney's failure to timely respond. Court records do not indicate that Attorney contested the recommendation.

Attorney was REPRIMANDED for violations of RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.2 (Expediting Litigation) and RPC 3.4 (Fairness to Opposing Party and Counsel).

#### **File No. 07-041-0354**

*Attorney received a letter of reprimand for failure to communicate with client.*

On or about October 4, 2006, Client was served with a summons and complaint in a matter in Eighth Judicial District Court, wherein her former boyfriend was seeking distribution of certain property, including a house.

Client retained Attorney and paid a \$4,500 retainer over the course of the next few weeks. The supplemental monies came from commission checks that Client received from her employer and then forwarded to Attorney. No answer to the complaint or other responsive pleading was filed prior to December 2006, when Client relocated to the Virgin Islands. Client provided Attorney with her contact information prior to relocating.

Client's letter noted that she received a letter from Attorney dated May 1, 2007, where she found out for the first time that her ex-boyfriend had obtained a default judgment against her. After reading the correspondence, Client immediately attempted to reach Attorney, and Attorney purportedly blamed the default on the mail and convinced Client to allow Attorney to file an appeal of the default judgment, claiming that there was a good chance of winning the appeal.

Client stated that she reluctantly agreed as she had no other legal contacts in Nevada. At that time Client also requested a billing statement from Attorney regarding all the charges billed to her file. However, she never received any such statement prior to submitting her grievance to the state bar.

On June 4, 2007, Client made a return visit to Las Vegas and attempted to schedule an appointment to see Attorney. Attorney's secretary informed Client that Attorney would be unable to meet with her on any

day during her visit. According to Client, Attorney told his secretary to inform Client that he was with another client, even though Client could see Attorney sitting alone in his office through the office window.

Client noted that Attorney was thereafter fired and new counsel was hired in an attempt to overturn the default judgment, which required a new retainer of \$2,000.

Attorney's response to the state bar denied that Attorney was negligent in Client's matter and further denied stealing Client's money. Attorney explained that he first spoke with Client on or about October 9, 2006, and was informed that Client was planning to move out of the country and that Client was particularly upset that a lis pendens was filed against her property, making it difficult to sell her home.

Attorney stated that an Order to Show Cause was prepared to strike the lien. However, an affidavit from Client was required in order to file the pleading. Attorney claimed to have prepared the document in early December 2006 but that Client had already moved at that time. Therefore, Attorney now needed to send the affidavit to St. Thomas in the Virgin Islands, wherein he encountered difficulty in getting packages delivered to her.

Attorney complained that the affidavit was returned in January 2007 without any signatures and Client requested changes in the affidavit. Attorney claimed that the signed affidavit was not sent back to his office until February 15, 2007, and calls were made to Client over this period to return the documents.

Attorney also stated that, on October 23, 2007, a 20-day extension to file an answer was obtained from opposing counsel. Attorney provided the state bar with a copy of the confirming letter. Attorney claimed to have drafted the answer in early December and sent it to Client, but did not receive the package back until February 2007.

Attorney admitted that he was served with a Notice of Intent to Take Default on December 13, 2006, and allegedly contacted opposing counsel to obtain an additional extension. Attorney's response did not note the length of this extension and confirming letters were not provided to the state bar.

By the time Attorney filed the answer and the Application for Order to Show Cause on March 5, 2007, opposing counsel had already filed a default on February 27, 2007. Attorney alleged that he was not served with notice of the default. Attorney stated that he "immediately prepared a Notice of Motion with a Motion to Set Aside Default on an Order Shortening Time. . . ."

At the April 17, 2007 hearing regarding the Motion to Set-Aside, Attorney alleged that the judge “was extraordinarily prejudiced in favor of” opposing counsel. The court declined to set-aside the default.

On May 1, 2007, Attorney wrote a letter to Client informing her of what occurred in the litigation and that an appeal was advisable. Attorney claimed to have spoken with Client numerous times regarding the case and therefore she was not kept in the dark regarding the proceeding. Attorney claimed to have been diligent in the matter and the only person at fault for the outcome of the proceeding was the client herself.

Client’s reply noted she retained Attorney in October 2006, and did not move until the end of December 2006, and that Attorney did not file anything until the end of March 2007, four months after being retained. Client also clarified that Attorney received the FedEx package with her signature on or about February 15, 2007, but Attorney still failed to file the pleadings for more than two weeks. By the time Client received the May 1, 2007 letter, the time to appeal the court’s ruling had almost expired.

Client’s reply maintained that Attorney did not call her and keep her informed about the case, nor did he send her monthly statements or bills, which she also could have used to keep track of her case.

Attorney’s response to the state bar provided a billing summary, wherein Attorney claimed to have drafted the answer on or about December 12, 2006. No affidavit or any verification signed by Client was included with the answer filed on March 5, 2007.

Given Attorney’s claim to have spoken with Client numerous times on the phone during the course of representation, there is no justification for Attorney not having filed the answer prior to the default being entered, especially after being served with the Notice of Intent to Take Default. Further, the affidavit which Attorney discussed above had no bearing on his ability to file the answer in a timely manner. And, as Client accurately noted, she resided in Las Vegas for approximately two months after she had retained Attorney, and thus he had ample opportunity to file the answer before her departure. The Office of Bar Counsel also noted that Attorney only sent one confirmation letter regarding an extension in filing the answer, which expired long before opposing counsel filed his Notice of Intent to Take Default.

Attorney was REPRIMANDED for violations of RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees) and RPC 1.15 (Safekeeping Property).

1. See SCR 111(1), (6), and (7).
2. See SCR 111(8).
3. This order constitutes our final disposition of this matter. Any future proceedings concerning Botha shall be filed under a new docket number.
4. See SCR 111(1), (6), and (7).
5. See SCR 111(8).
6. This order constitutes our final disposition of this matter. Any future proceedings concerning Lobello shall be filed under a new docket number.
7. 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.