

bar counsel report

SUPREME COURT OF NEVADA

In re: Douglas H. Clark*
Bar No: 4566
Docket No: 54669
Filed: November 18, 2009

***Please note that Douglas H. Clark had an office on Torrey Pines in Las Vegas and should not be confused with H. Douglas Clark, Bar Number 1655, whose office is located on E. Charleston Boulevard, Las Vegas.**

ORDER OF TEMPORARY SUSPENSION

Temporary suspension ordered following allegations of improper handling of client funds.

This is a petition by the Southern Nevada Disciplinary Board for an order temporarily suspending Douglas H. Clark from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Clark appears

to have engaged in misconduct involving multiple clients, including improper handling of client funds, being overdrawn on his client trust account, neglecting cases, failing to communicate with clients, and failing to turn over client files upon termination.

SCR 102(4)(a) provides, in pertinent part:

On the petition of a disciplinary board, signed by its chair or vice chair, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

We conclude that the documentation properly before us demonstrates that Clark poses a substantial threat of serious harm to the public, and that this immediate temporary suspension is warranted under SCR 102(4)(a). Accordingly, attorney Douglas H. Clark is temporarily suspended from the practice law pending the resolution of formal disciplinary proceedings against him.

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In addition, pursuant to SCR 102(4)(a), (b), and (c), we impose upon Clark the following conditions:

1. Clark is precluded from accepting new cases and is precluded from continuing to represent existing clients effective immediately upon service of this order;
2. All proceeds from Clark's practice of law and all fees and other funds received from or on behalf of clients shall, from the date of service of this order, be deposited into a trust account from which no withdrawals may be made by Clark except upon written approval of bar counsel; and
3. Clark is prohibited from withdrawing any funds from any and all accounts in any way relating to his law practice, including but not limited to his general and trust accounts, except upon written approval of bar counsel.

In re: Ronald Serota
Bar No: 7904
Docket No: 54856
Filed: November 18, 2009

ORDER OF TEMPORARY SUSPENSION

Temporary suspension ordered following attorney's misappropriation of client funds from his trust account.

This is a joint petition by the State Bar of Nevada and attorney Ronald Serota for an order temporarily suspending Serota from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Serota misappropriated \$319,000 from his client trust account.

SCR 102(4)(a) provides, in pertinent part:

On the petition of a disciplinary board, signed by its chair or vice chair, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

We conclude that the documentation properly before us demonstrates that Serota poses a substantial threat of serious harm to the public, and that this immediate temporary suspension is warranted under SCR 102(4)(a). Accordingly, hereby order attorney Ronald Serota temporarily suspended from the practice law pending the resolution of formal disciplinary proceedings against him.

In addition, pursuant to SCR 102(4)(a), (b), and (c), we impose upon Serota the following conditions:

1. Serota is precluded from accepting new cases and is precluded from continuing to represent existing clients effective immediately upon service of this order;
2. All proceeds from Serota's practice of law and all fees and other funds received from or on behalf of clients shall, from the date of service of this order, be deposited into a trust account from which no withdrawals may be made by Serota except upon written approval of bar counsel; and
3. Serota is prohibited from withdrawing any funds from any and all accounts in any way relating to his law practice, including but not limited to his general and trust accounts, except upon written approval of bar counsel.

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SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF (PRIVATE) REPRIMAND¹

File No. : 07-106-1821

Filed: December 7, 2009

Letter of reprimand imposed for violation of failure to supervise non-lawyer assistants.

Client and his wife were involved in a serious motor-vehicle accident which occurred on or about January 5, 2007. Client's injuries were life-threatening. He suffered an open skull fracture and resulting brain damage, sustained neck and spinal injuries, and was in a coma for several days.

Wife called Attorney's office in response to an advertisement in the Yellow Pages. A non-lawyer investigator was dispatched to the hospital when Client became conscious. Non-lawyer did the consultation and had Client sign the retainer agreement.

Per Attorney's office policy, the Client signed an acknowledgement that they understood the investigator was not a lawyer and could not render any legal advice. Attorney sent an introductory letter following this initial meeting, confirming the representation and establishing the attorney-client relationship. This letter directed the Client to deal with Paralegal. Almost all subsequent communications were exclusively with her.

In or around February 26, 2007, Paralegal telephoned the Client to discuss a settlement offer from the opposing insurance companies. The Client maintains that they spoke only with Paralegal in this conversation, who strongly suggested that Client accept the offer, which Client did.

Attorney records and recollection are that attorney participated in this telephone call from a telephone outside of the Nevada office. After explaining the terms and import of the settlement, Attorney told the Client that his office would record their authority to settle the case. Attorney then left the telephone call and Paralegal recorded Client's acceptance of the settlement offer.

The representation lasted three months. Aside from the one telephone call, Client never met or spoke with an attorney during that entire time. During the representation, Client requested to speak with Attorney at least three times but the requests were denied.

Attorney properly executed Client's releases pursuant to a power-of-attorney contained in the retainer agreement. However, Paralegal notarized the signatures as those of the client.

In efforts to ensure an ethical practice, Attorney commissioned two professional liability risk surveys. One report issued in March 2006 and the second in July 2008 as a response to the instant grievance. The surveys document

changes Attorney has made to his practice in response to the problems identified herein, including being more selective in the quality of cases accepted to reduce the workload, and in using couriers rather than investigators to deliver papers to potential clients to prevent any unauthorized practice of law or misunderstanding by the clients.

The state bar and the panel had no problem with the result Attorney obtained for the client. Attorney achieved maximum value in short order. However, better communication on Attorney's part could have avoided this entire process.

The panel considered as mitigation the steps Attorney had taken to modify his business practices to address the issues raised in this grievance and the fact that Attorney completed a term of probation without further incident.

Based upon the foregoing, Attorney was REPRIMANDED for violations of RPC 1.4 (Communication) and RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants).

File No. 08-103-1225

Letter of reprimand warranted for failure to promptly disburse settlement funds.

Lienholder alleged that under the Federal Medical Care Recovery Act (42 U.S.C. § § 2651-2653) and the Coordination of Benefits statute (10 U.S.C. § 1095), the United States government has the right to recover, from any liable third party or statutorily defined third party payer, the reasonable value of medical care furnished or to be furnished to their covered beneficiaries.

Therefore, the Lienholder made claim for the cost of medical care provided to Attorney's Client as a result of an accident in which injuries were sustained.

Lienholder alleged that both the insurance company and Attorney were put on notice of the Lienholder's claim for medical reimbursement. Lienholder stated that balance inquiries from Attorney's office were faxed on or about January 14, June 25 and June 27, 2007. At all times the form was completed by Lienholder's office and faxed back to Attorney's office.

The case settled and the insurance company sent a check in the amount of \$562.92, the total amount of their bill, made out to the Lienholder and Attorney to the Attorney's office on July 25, 2007. Attorney's office deposited the check on August 1, 2007 into the trust account without endorsement from the Lienholder.

Lienholder stated that his office had not been paid by Attorney. Numerous telephone calls, letters, and/or faxes have been made to your office to inquire of the status of payment. Lienholder explained that his office has spoken to a nonlawyer in Attorney's office concerning payment.

Lienholder stated that faxes were sent to non-lawyer with documentation of their bill, the balance acknowledgments

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and proof of the canceled check by insurance company. Lienholder alleged that all non-lawyer said she could do was take their concerns and the information to her supervisor. Lienholder alleged his office contacted the patient and she had her husband go to Attorney's office to discuss non-payment of the bill. Per the husband, he was turned away by the front desk at Attorney's office. Lienholder further stated that this is not the first time Attorney has failed to pay them.

In Attorney's response letter to Bar Counsel dated August 8, 2008, Attorney explained that the insurance company for the at-fault party in this matter sent a separate draft in the amount of \$562.92 for an alleged lien for medical treatment rendered by the Lienholder.

Attorney stated, "Unfortunately, the draft did not have the client name but only my law office name and the lienholder. The draft was endorsed and deposited in the trust account in the ordinary course. These types of drafts are deposited into the trust account so a "paper trail" can

be established for the client. The problems concerning this matter have been rectified and the \$562.92 has been sent to the lienholder."

Accordingly, based upon the foregoing, Attorney is hereby **REPRIMANDED** for violating the following Rules of Professional Conduct:

- RPC 1.3 (Diligence) for failure to diligently move the case file along and waiting 19 months, which resulted in a complaint to the Office of Bar Counsel before they disbursed the settlement funds;
- RPC 1.15 (Safekeeping Property) for holding settlement funds and not disbursing the funds for almost a year; and,
- RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants) for lack of supervision regarding non-lawyer assistants in their office. ■

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):
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.