

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF (PRIVATE) REPRIMAND¹

File No. 08-134-2924

Letter of reprimand appropriate when attorney failed to appear at hearing. Attorney was also ordered to return the client's retainer.

Client hired Attorney A in or about October 2007 to represent him in a traffic matter pending in Clark County Justice Court. Although Attorney placed Client's matter on the court's attorney calendar for January 28, 2008, Attorney failed to appear at that time.

Attorney also failed to inform Client that attorney missed his court date and that, accordingly, his matter remained unresolved. Client subsequently contacted another attorney who handled his matter, which is now closed.

In his response to the State Bar of Nevada, Attorney acknowledged that he failed to appear in court on Client's behalf.

Attorney was reprimanded for violating Rule of Professional Conduct 1.3 (Diligence) and RPC 1.4 (Communication). In addition, pursuant to Supreme Court Rule 102(5), Attorney was directed to pay restitution to Client in the amount of \$100, which is the amount of the retainer which he originally paid Attorney to handle his matter.

File No. 08-087-2212

Letter of reprimand warranted when Attorney failed to communicate with his client and failed to diligently pursue a matter.

Client retained Attorney in April 2006 regarding \$25,000 that her friend allegedly converted. In April 2008, Client complained to the State Bar of Nevada that Attorney allowed Client's case to go "cold." According to Client, the only updates that Attorney provided consisted of informing her that Attorney had been performing research on her case.

Client also noted that she has repeatedly asked Attorney to provide a billing statement indicating the work was performed. However,

Attorney failed to provide her with an accounting as of the date she submitted her grievance to the state bar.

Attached to Client's correspondence was a letter she sent Attorney in December 2007, wherein she noted that she obtained an Arizona attorney who had attempted to contact Attorney numerous times in the previous month. However, Attorney never communicated with the new Arizona attorney. The letter also noted that, at the time the correspondence was sent, Attorney had had the case for 17 months and had only issued 3 letters in that time. The letter concluded with Client requesting that Attorney inform her of the status of her case.

Attorney's response to the state bar noted that Client retained him regarding \$25,000 Client had given her friend to purchase a vehicle in Arizona. This vehicle was to replace Client's Mercedes, which had been stolen in Las Vegas.

However, shortly after Client gave her friend the funds, her Mercedes was found in the Florida Keys. Client then asked that her funds be returned but the vehicle had already been purchased and had to be returned.

A purported refund via a Bank of Arizona cashier's check was sent to Client from Arizona. Client never received this check. When Client contacted the Bank of Arizona to indicate that the check had been lost, she was informed the account number she provided contained too few numbers to be a valid Bank of Arizona account.

Attorney advised Client that she may wish to retain Arizona counsel. But Client asked Attorney to assist her and Attorney subsequently sent the friend a letter in May 2006. The friend's attorney responded and disclaimed any responsibility for Client's loss. Attorney issued a reply letter in June 2006, wherein he requested the friend's assistance in recovering the monies. From the correspondence attached to these letters, it appears that the replacement vehicle was auctioned, resulting in a \$22,000 refund to Client. The friend indicated that the check was issued from the auctioneer. The friend also contributed his own funds to purchase the vehicle, as the final total for the vehicle amounted to \$25,500.

Attorney also consulted with an Arizona firm and prepared a complaint on Client's behalf. The firm

withdrew upon realizing that a conflict existed due to a social relationship between a partner in their firm and the friend. Another Arizona attorney was approached but declined the matter, stating that Client would be exposed to too much liability if she proceeded with a lawsuit against the friend.

Attorney stated that he subsequently researched *forum non conveniens*. A billing statement provided listed seven entries regarding work performed from May 2006 through June 2007. Attorney stated that the statement from July 2007 was not up to date. This billing statement did not contain any entry regarding the *forum non conveniens* research. The entries noted conversations with Client, friends of the client, as well as with Arizona counsel, along with time spent dictating letters and the complaint. No explanation was given as to why the billing statement was not current, especially due to Client's requesting a billing statement detailing all work in her matter.

In addition, Attorney did not address the allegation that he failed to keep Client informed regarding the status of her case, nor why Attorney had not communicated with the Arizona counsel Client obtained.

Client's reply reiterated that for two years, Attorney would only tell her that he was performing research in her matter. Client also indicated that, to date, she has not seen any evidence that the friend had actually purchased a vehicle on her behalf.

Although it appears that Attorney performed work from May 2006 until June 2007, there is no indication that Attorney communicated substantively with Client or performed any work on her matter within the past year. Nor is there evidence that Attorney notified Client that Attorney was withdrawing from her matter.

Attorney was reprimanded for having violated RPC 1.3 (Diligence) and RPC 1.4 (Communication).

File No. 08-005-2048

Attorney was reprimanded for failure to safekeep property and respond to the State Bar of Nevada. Fine in the amount of \$1,000 was ordered and reimbursement of disciplinary costs in the amount of \$260 was also ordered.

On July 24, 2007, Bank West of Nevada (a.k.a. Bank of Nevada) notified the state bar that a check written from the trust account of Attorney's law firm

was returned. This check was issued from a Client as restitution to a third party.

The state bar sent Attorney a letter on August 1, 2007, requesting an explanation for the overdraft. The response was calendared for August 15, 2007.

Attorney did not respond and three additional letters were sent via certified mail on September 10, October 4, and December 5, 2007. A signed return receipt card was returned to the state bar for all three letters. On January 16, 2008, another certified letter was sent to Attorney informing him that the state bar had opened a grievance file. Attorney did not respond to that letter, either.

The state bar issued a subpoena requesting copies of bank records and Attorney's response. This subpoena was given to a process server on February 11, 2008.

On February 19, 2008, two responses were provided from the Attorney's firm. The first letter attempted to explain the reason behind the overdraft. Attorney stated that when the check was delivered to the third party's attorney, the balance of the trust account was approximately \$3,000.

Attorney further explained that he checked the online balance on July 23, 2007, and it appeared as if the check had cleared. Attorney's partner, who is also an attorney, was preparing the billing later that day. The partner also thought the check cleared and believed that the balance was due to a missed payment of attorney fees in the amount of the \$2,000 from the prior month's billing. Thus, \$2,000 was transferred from the trust account.

In actuality, the check had not cleared. The bank transferred the \$2,000, leaving behind a balance which was not sufficient to clear the check.

The second response dated February 19, 2008, was signed by the partner. The partner stated that the check was re-deposited and cleared their trust account.

Unfortunately, these two responses did not address all of the items requested in the subpoena. Specifically, it did not include copies

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of the trust account records. A letter was sent to Attorney on February 25, 2008, requesting that he respond to the missing items.

Instead of receiving a response from Attorney, the partner responded on March 4, 2008, which caused the state bar concern. The partner stated that on February 13, 2006, a check in the amount of \$2,325 was deposited into their trust account from Client.

According to the bank statements provided by the partner, the beginning balance of the trust account on June 29, 2007 was \$0. It should have been \$2,325, which was the amount of money that Attorney was to keep on behalf of the third party in trust. The check issued to the third party was dated July 5, 2007.

The state bar also subpoenaed bank statements directly from the bank. Further review of the bank records indicated that the trust account did not hold a balance of \$2,325 or over for any significant period of time from June 29, 2007, to the date the check cleared on February 15, 2008.

A letter was sent to Attorney on March 6, 2008, requesting that he explain the discrepancy. Attorney did not respond.

On April 3, 2008, the state bar issued another subpoena for Attorney to come to the Office of Bar Counsel and meet with Assistant Bar Counsel on April 30, 2008. These subpoenas were given to the process server on April 8, 2008. They were served upon the partner on April 9, 2008.

On April 7, 2008, a response was received that was allegedly signed by Attorney, but the signature did not look like the other signatures on file. The letter attempts to explain the reason behind the overdraft and is very similar to the letter received from the partner. Attorney stated the problem has been rectified and from this point forward attorney would be the only one to access the trust account and handle the transactions.

Attorney did not appear for the scheduled meeting with Assistant Bar Counsel on April 30.

Attorney was reprimanded for violating RPC 1.15 (Safekeeping Property), RPC 8.1 (Bar Admission and Disciplinary Matters) and RPC 8.4 (Misconduct). In addition, Attorney was FINED in

the amount of \$1,000 and assessed COSTS in the amount of \$260.

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.