

# bar counsel report

## SOUTHERN NEVADA DISCIPLINARY BOARD

**In Re:** Geraldine Kirk-Hughes, Esq.  
**Bar No.:** 3444  
**Case Nos:** 07-163-0358, 07-195-0358,  
 08-011-0358, and 09-068-0358  
**Issued:** January 22, 2010

*Public reprimand warranted where attorney failed to adequately monitor her non-lawyer assistant.*

### **PUBLIC REPRIMAND:**

TO: GERALDINE KIRK-HUGHES, ESQ.

#### **Case No. 07-163-0358**

Rachel Taylor (Taylor) retained Respondent in regard to a personal injury matter. In connection with Taylor's case, Respondent allowed Shelly Bawa (Bawa), a non-lawyer assistant employed by her, to negotiate and compromise liens, as evidenced by various letters signed and sent by Bawa.

The foregoing conduct by Respondent's non-lawyer assistant was performed in accordance with her office policies and practices.

#### **Case No. 07-195-0358**

Carole Fernandez, (Fernandez) met with Respondent on or about February 27, 2007, and retained Respondent to represent her in her federal worker's compensation claims. The retainer agreement Fernandez signed failed to indicate a basis for Respondent's fee. However, the State Bar of Nevada is informed and believes that staff verbally advised Fernandez that the fee was a contingent fee agreement.

The federal Office of Workers' Compensation Programs (OWCP) does not recognize contingent fees for representatives in federal worker's compensation claims.

On May 29, 2007 Fernandez and Christine Heckman (Heckman) met with Bawa. Bawa promised Fernandez that she would have medical retirement granted by the time of her surgery in June, 2007. This failed to happen.

Fernandez made repeated requests of Respondent's office for a copy of the representation letter that Respondent sent to Department of Labor (DOL). Finally, Respondent met with Fernandez and Heckman on or about September 24, 2007. At this meeting, Respondent informed Fernandez that she was ineligible for medical retirement. Respondent promised to arrange a telephone conference call with each client and the DOL claims adjuster. Respondent failed to do so.

On or about October 16, 2007, Fernandez and Heckman met with Bawa. At this meeting, Bawa promised both clients that she would obtain benefits for them that included: vocation rehabilitation or \$15,000, permanent partial disability payments and health insurance benefits repayments.

During this time, Fernandez was having financial problems. Bawa referred her to her father, Vinay Bawa. Mr. Bawa then referred Fernandez to his son, Shaun Bawa at Lucky Cash 4 U. Fernandez borrowed \$750 and within a few weeks had to repay more than \$900 for the loan.

The state bar is informed and believes that Fernandez contacted the DOL on at least two occasions and was informed as late as October 26, 2007, that Respondent had failed to file a letter of representation and did not represent Fernandez. On or about October 26, 2007, Fernandez e-mailed Respondent and terminated the attorney-client relationship. Fernandez made due demand for the return of her files. On the same day, Respondent acknowledged the termination but quoted a fee for worked performed of \$325 per hour.

The state bar is informed and believes that thereafter, despite the termination, Respondent communicated her representation to DOL and requested a copy of Fernandez's DOL files.

### **DISCIPLINE IMPOSED**

Respondent is hereby **PUBLICLY REPRIMANDED** as follows:

In the matter of 07-163-0358/Rachel Taylor, Respondent violated Rule of Professional Conduct (RPC) 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 5.5 (Unauthorized Practice of Law).

In the matter of 07-195-0358/Carole Fernandez, Respondent violated RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.8 (Conflict of Interest: Specific Rules), RPC 1.16 (Declining or Termination Representation), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 5.5 (Unauthorized Practice of Law).

In the matter of File No. 09-068-0358/Teresa Jackson, and in accordance with the stipulation of facts herein, Respondent violated RPC 1.7 (Conflict of Interest: Current Clients), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 5.5 (Unauthorized Practice of Law).

In addition to the Public Reprimand the following conditions will be imposed:

1. Respondent must remove the two non-lawyers presently identified as signatories on her trust account. In their stead, the other attorney in the office will be added as a signator.
2. This matter concerned a complaint dated October 7, 2009, attached to that complaint as Exhibit 1 as meaningful legal correspondence signed by a

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non-lawyer, Shelly Bawa. In the future as a further condition, such correspondence will be signed by Respondent or another attorney in the office.

3. All clients will be required to sign in and out with the receptionist prior to meeting with any staff, including Respondent's non-lawyers and associate lawyers. This will assist with the implementation of the new billing sheet requirements.
4. Non-lawyer staff will submit their time and billing sheets to Respondent for review prior to disbursement of any paychecks and/or bonuses.
5. Compensation to non-lawyer staff will follow the mandates of RPC 5.4 (Professional Independence of a Lawyer). Respondent shall cease and desist any further practice or payment to non-lawyer staff either actually or apparently on a contingency fee basis.
6. Respondent will immediately transfer funds to her general account or payroll account for payment of payroll to non-lawyer and lawyer staff.
7. In addition to the 12 units of Continuing Legal Education (CLE) required each year, Respondent shall take an additional two hours of CLE regarding trust accounts. The additional two hours of CLE will be completed within one year from the date of this hearing.
8. Respondent shall provide Bar Counsel with a written verification that the new office procedures are in place within 30 days from the date of this hearing.

In mitigation, Attorney cooperated with the State Bar of Nevada's investigation and explained that Attorney essentially forgot about the client's funds. Attorney also indicated that Attorney has implemented new policies in the law practice that will avoid such problems in the future.

Based upon the foregoing, Attorney was reprimanded for violating Rule of Professional Conduct 1.15 (Safekeeping Property).

## File No. 09-144-1904

### *Letter of Reprimand warranted for failure to diligently pursue divorce on behalf of Client.*

In May 2007, Client retained Attorney in regard to her divorce matter. In July 2008, Client submitted her grievance to the State Bar of Nevada. Client complained, in part, that despite repeated requests, Attorney never provided her a copy of her divorce decree. According to Client, Attorney informed her that Attorney was rewording the decree, which was prepared by opposing counsel, and that Attorney would thereafter provide her with a copy. However, Attorney instead filed a notice of withdrawal from her matter on May 16, 2008.

After several failed attempts to obtain her divorce decree from Attorney, Client went to Family Court and obtained a copy in June 2008. Upon reviewing the decree, she discovered that it did not reflect what she and her husband had agreed upon, and that the decree was filed without Attorney signature. Client stated she then contacted Attorney regarding the discrepancies in the divorce decree. Attorney purportedly informed her that Attorney would order a video of the hearing. She did not hear from Attorney again.

Attorney response to the state bar noted, in part, that on January 30, 2008, there was a pre-trial conference prior to the trial in the matter, wherein an agreement was reached and placed on the record. Client indicated, also on the record, that she understood and willingly entered into the agreement. Opposing counsel was to prepare the order.

Attorney indicated disagreement with the opposing parties' language in the divorce decree. As such, Attorney refused to sign it and purportedly ordered the video recording of the hearing to confirm what was stated in the decree.

However, opposing counsel subsequently filed the decree without Attorney's signature. Attorney noted that, as the divorce decree was entered and the matter concluded, Attorney subsequently filed a notice of withdrawal in the matter.

Client, in her reply to Attorney's response, reiterated that Attorney never provided her a copy of the divorce decree, and only mentioned obtaining the video transcript of the hearing after she called, upset, about the divorce decree.

Client's ex-husband submitted a letter on her behalf, wherein he stated that Attorney had the proposed order for two-and-a-half months before his attorney finally submitted it to the court in April 2008. Client's ex-husband also noted that

## **LETTERS OF (PRIVATE) REPRIMAND<sup>1</sup>**

**File No.:** 09-087-1064

**Filed:** December 10, 2009

### *Letter of Reprimand imposed for failure to promptly disburse settlement funds.*

Attorney represented Client in a civil matter which resulted in an award of \$15,000 on behalf of Client. Although Attorney initially received the disbursement check in or about November 2005, Attorney placed it into Client's file and never deposited it into Attorney's trust account.

Attorney discovered the check in 2008, but it had by then become stale and non-negotiable. Attorney received a replacement check in or about September 2008 and deposited it in the trust account. However, Attorney did not disburse the funds until August 2009.

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his attorney had repeatedly asked Attorney to review and sign the order.

In September 2008, the Client's new attorney filed a *Motion to Set Aside Or In The Alternative Modify the April 30, 2008 Divorce Decree*. The motion was made pursuant to NRPC 60(b), claiming that the ex-husband reaped an unfair benefit from Client's "counsel's indolence." The motion claimed that the division of property was grossly disproportional in light of NRS 125.150(1)(b).

The motion was granted by the court on December 18, 2008, and the ex-husband was required to return certain property to Client.

Although SCR 46 (Withdrawal or change of attorney) allows an attorney to withdraw from a matter "[a]fter judgment or final determination," it was obvious that Client's divorce matter was not completed as the divorce decree failed to accurately reflect the parties' agreement and was, in fact, corrected in December 2008. Although Attorney was aware of the issue, Attorney still withdrew from the matter and failed to inform Attorney's client that the order was filed.

Based upon the foregoing, Attorney was **REPRIMANDED** in this matter for violating RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), and RPC 1.16 (Declining or Terminating Representation).

## File No. 09-144-1904

*Letter of Reprimand warranted for failure to diligently pursue matter.*

Client retained Attorney in August 2006 regarding a mortgage firm's alleged invasion of privacy and harassment against her. Client apparently paid Attorney a \$5,000 retainer at the time.

Client stated that, after one-and-a-half-years of difficulty obtaining information from Attorney's office, Client requested a final accounting as Attorney had never provided her with a bill. Client claimed that during this one-and-a-half-year time period, the only information she was given was early in the case when the opposing party's insurance company offered \$1,500 to settle the matter, and that Attorney mentioned that her case grew "weaker" as time went on.

In March 2008, Client received an accounting from Attorney which contained no dates, and only referenced contact with her in a single half-hour entry describe as "numerous discussions with client."

Client requested, but was not provided, a more detailed billing statement. However, Attorney thereafter provided Client with a copy of the complaint Attorney had filed on her behalf, along with pleadings filed by opposing counsel and responses to interrogatories which she claimed not to have seen previously.

Client noted that the pleadings Attorney provided contained no court orders regarding the outcome of the

motions. As such, Client subsequently checked the Eighth Judicial District Court website and discovered that her case had been dismissed nearly a year earlier, in September 2007, and claimed that sanctions had been imposed against her.

Client then called Attorney on July 25, 2008, wherein Attorney claimed to have been unaware of the sanction. According to Client, Attorney stated that Attorney would pay the sanction if needed and would provide her with a more detailed billing statement.

Instead, Attorney sent her a letter dated July 30, 2008, wherein Client was blamed for failing to sign a stipulation to dismiss, and Attorney's letter further claimed that Attorney's office had not received the September 2007 dismissal. Client then responded to Attorney with a rebuttal letter denying she was ever informed of the document prior to the July 30 letter and in fact, was unaware the case was dismissed until she checked court records.

Client's grievance concluded, stating that Attorney failed to keep her adequately informed about the case and that Attorney still held property and funds which belonged to her. As such, she sought a refund of the \$5,000 retainer she paid Attorney.

Attorney's response to the State Bar of Nevada claimed that Client verbally agreed to dismiss the case, but that she never went to Attorney's office to sign the stipulation. Attorney indicated that Attorney was sanctioned by the discovery commissioner for failing to sign the document. Attorney claimed he intentionally did not sign the document so that Client could not blame Attorney if she changed her mind, which Attorney claimed she was prone to do.

Attorney also included a copy of the July 30, 2008, letter to Client, in which Attorney stated that "[m]y billings are extremely generous and I left out numerous phone calls and meetings with you which included your Dad coming in with you I believe to the meeting." The letter also rejected Client's request for a \$3,500 refund.

Attorney's response to the State Bar maintained that the \$5,000 retainer was earned and that his office spoke with Client on numerous occasions and kept her updated. Attorney, in conclusion, stated that Client's complaint was more of a fee dispute question and that he would welcome a fee dispute arbitration.

Client's reply to Attorney's response maintained she was never consented to dismiss the case. Despite her requests, Attorney failed to provide Client with any documentation, letters, e-mails, faxes or otherwise, regarding her alleged agreement to dismiss the case.

A review of court records from Client's matter indicated that on August 15, 2007, the Alternative Dispute Resolution (ADR) Commissioner recommended that the case be dismissed. The commissioner's report noted that on June 11, 2007, the arbitrator assigned to the Client matter filed a change of status indicating that the case had settled.

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As a result, the ADR office advised the parties' attorneys that the matter must be dismissed within 30 days, and that failure to comply would result in a recommendation for dismissal with sanctions. Defendant's counsel sent the ADR office a letter on July 19, 2007, stating that Plaintiff was not responding to their letters regarding the status of the dismissal.

As of the date of the ADR recommendation, no dismissal had been filed, nor had Attorney responded to the ADR status letter. As such, the ADR Commissioner recommended that the case be dismissed and that Attorney be sanctioned \$100 pursuant to Nevada Arbitration Rule 12(b) and EDCR 1.91. The Eighth Judicial District Court approved the recommendation in its entirety.

The certificate of service attached to the order indicated that Attorney was sent a copy of the recommendation as well as the dismissal.

Based upon the foregoing, Attorney was **REPRIMANDED** in this matter for violating RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), RPC 1.3 (Diligence), RPC 1.4 (Communication), and RPC 3.4(c) (Fairness to Opposing Party and Counsel; Knowingly disobeying an obligation under the rules of a tribunal). ■

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](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.