

## SUPREME COURT OF NEVADA

**In re: Jennifer Wensink**

**Bar No: 8919**

**Docket No: 53348**

*Filed March 27, 2009*

### ORDER OF TEMPORARY SUSPENSION

*Temporary suspension imposed on attorney who generated fictitious pleadings and failed to respond to the state bar. Restrictions were also placed on attorney's handling of funds.*

This is a petition by the Southern Nevada Disciplinary Board Chair for an order temporarily suspending attorney Jennifer Wensink from the practice of law, pending the resolution of formal disciplinary proceedings against her. The petition and supporting documentation demonstrate that: (1) Wensink provided at least three clients with fictitious pleadings in an attempt to mask her lack of diligence in pursuing their cases. One of those matters is the subject of a pending formal disciplinary proceeding currently in default status due to Wensink's failure to answer the complaint. (2) Wensink has demonstrated a persistent pattern of failure to respond to the state bar in two pending formal disciplinary matters and has refused to cooperate with the state bar's investigations. (3) Wensink hid correspondence from her former employer, created fictitious time entries, and failed to properly manage cases. (4) Wensink filed a bankruptcy petition using one attorney's e-filing account and submitted the petition using another attorney's bar number, without either attorney's knowledge or consent, and then abandoned the petition.

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 prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

In addition, SCR 102(4)(b) provides that we may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Wensink poses a substantial threat of serious harm to the public, and that her immediate temporary suspension is warranted.<sup>1</sup> We further conclude that Wensink's handling of funds should be restricted.<sup>2</sup>

Accordingly, Wensink is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against her.<sup>3</sup> In addition, Wensink is prohibited from withdrawing any funds from any and all accounts relating in any way to her law practice, including but not limited to her general account and trust account, except upon written approval of bar counsel or by order of a court of competent jurisdiction.<sup>4</sup> The state bar shall immediately serve Wensink with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Wensink's law office or residence, or by publication. When served on either Wensink or a depository in which she maintains an account, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order.<sup>5</sup>

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

**In re: James Sitter**

**Bar No: 2481**

**Docket No: 53447**

*Filed March 27, 2009*

### ORDER OF TEMPORARY SUSPENSION

*Temporary suspension imposed on attorney who misappropriated client and third-party funds. Restrictions were also placed on attorney's handling of funds.*

In the matter of discipline of James P. Sitter, Esq. – This is a joint petition filed by the Southern Nevada Disciplinary Board Chair and James P. Sitter, Esq., for an order temporarily suspending attorney Sitter from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Sitter appears to have misappropriated funds from clients and third-party lienholders.

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.

In addition, SCR 102(4)(b) provides that we may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Sitter poses a substantial threat of serious harm to the public, and that his immediate temporary suspension is warranted.<sup>7</sup> We further conclude that Sitter's handling of funds should be restricted.<sup>8</sup>

Accordingly, Sitter is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against him.<sup>9</sup> In addition, Sitter is prohibited from withdrawing any funds from any and all accounts relating in any way to his law practice, including but not limited to his general and trust accounts, except upon written approval of bar counsel or by order of a court of competent jurisdiction.<sup>10</sup> The State Bar of Nevada shall immediately serve Sitter with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Sitter's law office or residence, or by publication. When served on either Sitter or a depository in which he maintains an account, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order.<sup>11</sup>

It is so ORDERED.<sup>12</sup>

## SOUTHERN NEVADA DISCIPLINARY BOARD

### LETTERS OF (PRIVATE) REPRIMAND<sup>13</sup>

#### **File No. 08-153-2241**

*Letter of reprimand appropriate when attorney failed to file docketing statement and transcript request form with the Supreme Court of Nevada.*

On September 5, 2008, the Supreme Court entered an order in a case in which Attorney represented the

appellant. The state bar received the order on September 9, 2008, and opened a file the following day. The state bar sent Attorney a letter by regular mail advising him that the order had been received and a grievance file opened. A copy of the order was enclosed.

Investigation by the state bar indicated that Attorney was appointed by the Eighth Judicial District Court as counsel for the appellant on March 28, 2008, after prior counsel filed the notice of appeal and a subsequent request to withdraw as attorney-of-record.

On April 2, 2008, the clerk of the Supreme Court issued notice to Attorney indicating that the docketing statement and transcript request form were to be filed on or before April 17, 2008.

On April 7, 2008, Attorney prepared an order that was entered in District Court appointing him as counsel-of-record.

Attorney failed to file the docketing statement and transcript request form by April 17, 2008.

On June 3, 2008, the Supreme Court entered an Order Conditionally Imposing Sanctions, wherein a condition sanction of \$500 would be due within 15 days. However, the Court ordered that if Attorney filed the docketing statement and transcript request form, or in the alternative a motion for extension of time, within 10 days the sanction would be vacated.

Attorney failed to file any of these items. On July 3, 2008, the Supreme Court entered another order providing Attorney with seven days to serve the transcript request form and docketing statement, and provide the Supreme Court with proof of payment of the \$500 sanction. Attorney was also instructed that failure to comply with the order would result in a referral to the state bar for investigation.

Attorney again failed to file these items with the Supreme Court. On September 5, 2008, this court entered another order imposing additional sanctions, removing Attorney as counsel-of-record and remanding the case to District Court for appointment of new counsel. This matter was also referred to the state bar for investigation. Attorney was ordered to provide proof of payment of the \$500 sanction within seven days of the order.

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On September 16, 2008, Attorney filed proof of payment of the sanction with the Supreme Court.

In Attorney's response to the state bar dated October 10, 2008, he provided proof of payment of the sanction. Attorney further stated that he provided the District Court with a proposed order for a draft of the transcripts on August 4, 2008. However, the form that was used was incorrect and the judge declined to sign the proposed order. Attorney stated that although he had been counsel-of-record for other appeals, it was while he was in a law firm and had access to other licensed attorneys who could provide guidance. This appeal was this first appeal that Attorney handled on his own, in solo practice.

Attorney further stated, "I am greatly aware that my relative ignorance does not vitiate my duties in this case to both my client as well as the Supreme Court."

The Screening Panel considered in mitigation pursuant to Supreme Court Rule 102.5 (Aggravation and Mitigation) the following:

- Attorney accepted full responsibilities for his actions;
- A public sanction had already been imposed by the Supreme Court in the forms of the various orders entered;
- Attorney has been licensed for eight years with no public discipline; and
- Attorney is new to the solo practice of law.

Attorney was reprimanded for violating RPC 1.3 (Diligence) and RPC 3.4(c) (Fairness to Opposing Party and Counsel: Knowingly disobey an obligation under the rules of the tribunal).

#### **File No. 08-087-2212**

*Letter of reprimand appropriate when Attorney engaged in the unauthorized practice of law in South Carolina.*

This matter was referred to the State Bar of Nevada by the Office of the Disciplinary Counsel for the Supreme Court of South Carolina, after its investigative panel considered Attorney's conduct, described below, and directed South Carolina's Disciplinary Counsel to refer the matter to the state bar.

The referral stemmed from a July 3, 2007, *Order* issued by the United States District Court

for the District of South Carolina. The subject matter of the litigation was alleged misconduct by the Horry County Police Department against the named plaintiffs.

As noted in the order, Attorney was initially admitted *pro hac vice* in the matter, but was later removed as counsel, as Attorney's relationship with local counsel apparently became acrimonious. However, Attorney continued to engage in the practice of law in South Carolina after being removed from the case and without being re-admitted *pro hac vice*.

The conduct in question involved Attorney filing a *Motion to Vacate Judgment* without being properly admitted and filing a faulty affidavit in support of said motion. The court also noted that local counsel had not signed Attorney's Notice of Appeal to the 4th Circuit.

The motion to vacate was dismissed for not being properly before the court. And, as the court predicted in its order, Attorney's appeal was later dismissed for being untimely.

Attorney's response to the state bar denied the court's finding that Attorney had acted improperly. Attorney maintained that he had merely prepared the motion to vacate the judgment at issue which was thereafter filed by local counsel (the motion to vacate however, indicated that it was solely signed by Attorney). Attorney stated that he filed the documents at issue because Attorney's client had special disabilities and Attorney subsequently represented several plaintiffs before the 4th Circuit Court of Appeals. Attorney's response also noted that he did not oppose the motion to dismiss the appeal once it became clear that the appeal was untimely.

Attorney was reprimanded for having violated Rule of Professional Conduct ("RPC") 1.1 (Competence), RPC 3.1 (Meritorious Claims and Contentions) and RPC 5.5 (Unauthorized Practice of Law).

#### **File No. 08-027-1865 and 08-047-1865**

*Attorney was reprimanded for failure to supervise nonlawyer assistants and for unauthorized practice of law.*

Client A was an alien residing in Miami, Florida. As a condition to his release pending removal from the United States and being allowed to work, he was required to check in periodically with United States Customs & Immigration Services (USCIS) at the Miami office.

In February 2006, after moving to Las Vegas, Client A retained Attorney to handle a divorce by publication and to have his file transferred to the Las Vegas office. Attorney's office submitted a Freedom of Information Act (FOIA) request to locate the file, which request USCIS acknowledged by letter dated March 31, 2006.

It appears that a year passed with no activity on the file. Client A later complained to the State Bar of Nevada that he would call Attorney's office repeatedly and was unable to get a definitive status on his case. Attorney agreed that during this time communication from Attorney's office could have been better. At some point, Client A contacted Attorney's office to state that he was actually divorced for several years and that Attorney should focus only on the file transfer.

In May 2007, Attorney's associate met with USCIS in Las Vegas to inquire as to Client A's status. The official was unable to give Attorney's associate any status as to Client A's file or immigration status. When asked about applying for a work authorization, the official told the associate to file a request in Chicago since it appeared that was where his file was located.

In July 2007, Attorney's office prepared a I-765 Work Authorization Petition for Client A's signature. Apparently, Client A refused to come in and sign as he had lost confidence in Attorney's representation.

Upon receipt of the grievance, Attorney met personally with USCIS officials to inquire about Client A's case. Attorney was told that there was still no new information and that Client A may have to return to Miami to start the process anew. Attorney did make several attempts to contact Client A, who refused to speak with Attorney.

In September 2007, Attorney finally received a copy of Client A's file, sent from Missouri. As of April 2008, it appears that Client A's file is now in Las Vegas and he is in compliance with his supervision order.

In the second matter, Client B went to Attorney's office in May 2006. Her mother had petitioned for Client B's naturalization in 1997 and Client B was concerned that her own pending marriage would adversely affect it.

Client B met with a nonlawyer assistant in Attorney's office. It appears that the nonlawyer gave Client B and her mother legal advice – incorrect legal advice – about their immigration matters and quoted a fee to them. The nonlawyer also signed up Client B as a client.

Client B eventually paid the additional fees and costs quoted by the nonlawyer. However, her mother

encountered problems with her matter based upon the incorrect advice she received from the nonlawyer. As to Client B's case, she called repeatedly but was continually transferred to new staff as a result of heavy turnover in Attorney's office. No one seemed to know the status of Client B's case.

In March 2007, Attorney's office informed Client B that her application was denied because a new fee was required, contrary to what nonlawyer had told her. Client B requested a meeting with Attorney. When informed what nonlawyer had told her, Attorney stated, "That is why he no longer works for me."

A few days later, Attorney called Client B to request a meeting with her and her husband. At the meeting Attorney agreed to pay the application fee given the confusion. The application was re-filed in July 2007.

In November 2007, USCIS requested an additional affidavit of support (actually a Request for Further Evidence (RFE)). Attorney's office contacted Client B and indicated that there would be an additional fee of \$799 to complete this form.

Upset, Client B contacted USCIS herself, which indicated that Client B could likely do it on her own. Client B did so in December 2007. In hindsight, Attorney admitted that this form should have been completed at no additional charge. In January 2008, Client B called and Attorney's office informed her that because she had responded on her own, Attorney's firm had terminated the representation. On January 16, 2008, Client B picked up the pertinent parts of her file.

Client B and her husband have since gone through the marriage interview in July 2008 and her petition is finalized and pending. As to her mother, Attorney's office has been in contact and Client B will inform the state bar of any further problems.

Attorney was reprimanded for violations of RPC 1.3 (Diligence) and RPC 1.4 (Communication) in the first matter and RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 5.3 (Responsibilities regarding nonlawyer assistants) and RPC 5.5 (Unauthorized practice of law) in the second matter.

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## UNAUTHORIZED PRACTICE OF LAW

Under NRS 7.285(3), the state bar may seek a civil injunction against a person or entity engaged in the unauthorized practice of law (UPL). The state bar also issues Cease and Desist letters to aid in UPL enforcement. While such letters are not court orders and attach no penalty, they put the recipient on notice of activity which constitutes UPL and

allows the recipient to amend business practices to conform to Nevada law. The state bar uses Cease and Desist notices in subsequent litigation.

### COMPLAINTS FOR INJUNCTIVE RELIEF

- *SBN v. Linwood E. Tracy, Jr. and the World Prayers Answered Ministry*, Third Judicial District Court, Case No. 34533, filed January 7, 2009.
- *SBN v. Jack Ferm, U.S. Justice Foundation and Mario Sanders*, Eighth Judicial District Court Case No. A584697, filed March 9, 2009.

### 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.

### CEASE AND DESIST LETTERS

Russell Torneby, issued November 12, 2008

Nevada State Corporate Network

Adam's Paralegal issued March 13, 2009

Victor G. Serna, J.D., issued March 13, 2009

Law Offices of S.F. Legal

Matthew A. Corzine, issued March 13, 2009

Chief Justice of the Western Sovereign Kingdom

1. See SCR 102(4)(a).
2. See SCR 102(4)(b).
3. Under SCR 102(4)(c), Wensink is immediately prohibited from accepting new clients and precluded from continuing to represent existing clients. Any fees or other funds received by Wensink from or on behalf of clients shall be deposited in a trust account, from which no withdrawals may be made except upon written approval of bar counsel or by order of a court of competent jurisdiction. *Id.*
4. See SCR 102(4)(b).
5. See *id.*
6. Wensink shall comply with SCR 115.
7. See SCR 102(4)(a).
8. See SCR 102(4)(b).
9. Under SCR 102(4)(c), Sitter is immediately prohibited from accepting new clients and precluded from continuing to represent existing clients. Any fees or other funds received by Sitter from or on behalf of clients shall be deposited in a trust account, from which no withdrawals may be made except upon written approval of bar counsel or by order of a court of competent jurisdiction. *Id.*
10. See SCR 102(4)(b).
11. See *id.*
12. Sitter shall comply with SCR 115.
13. See SCR 121(Confidentiality) as amended eff. March 1, 2007.