

# bar counsel report

## SUPREME COURT OF NEVADA

**In re:** Kenneth Long  
**Bar No:** 6042  
**Docket No:** 56461  
**Filed:** September 20, 2011

### ORDER APPROVING REVISED CONDITIONAL GUILTY PLEA AGREEMENT

*Suspension for 32 months, retroactive to date of temporary suspension, warranted following Respondent's conviction of conspiracy to commit exploitation of an elderly and vulnerable person. Costs were also assessed.*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that we approve attorney Kenneth Long's revised conditional guilty plea in exchange for a stated form of discipline. See SCR 113(1), (3). Under the agreement, Long admits to violating RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). In exchange, the state bar agrees to dismiss a charge of violating RPC (c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The record reflects that Long assisted a friend in securing a quitclaim deed from the friend's grandmother, transferring certain property to the friend. Apparently unbeknownst to Long, the property was held in trust, with the grandmother and another individual designated as trustees. Additionally, a court had previously determined that the grandmother was incompetent to control her assets and a family member had been appointed as guardian over the grandmother and her estate. Title was eventually quieted in favor of the trust. Long pleaded no contest to conspiracy to commit exploitation of an elderly and vulnerable person—a gross misdemeanor. That conviction was the basis for the state bar disciplinary proceedings. The record also indicates that Long has no prior discipline and cooperated with the state bar during its investigation of the matter.

The agreed-upon discipline provides for Long to (1) be suspended from the practice of law for 32 months, retroactive to March 7, 2008, when this court temporarily suspended Long from the practice of law and (2) pay the actual costs of the disciplinary proceeding, excluding Bar Counsel and staff salaries, within 30 days of receipt of a billing from the state bar. Having reviewed the record, we conclude that the agreement should be approved.<sup>1</sup> See SCR 113(1).

Accordingly, attorney Kenneth Long is suspended from the practice of law for 32 months, effective March 7, 2008. Long shall also comply with the other conditions in the agreement.

It is so ORDERED.<sup>2</sup>

### **CHERRY, J., dissenting:**

I respectfully dissent from the Order Approving Revised Conditional Guilty Plea Agreement.

The stated form of discipline is insufficient to protect the public from a person who admitted that he exploited an elderly and vulnerable person. If Mr. Long is allowed to return to the practice of law in our state he should be on a period of probation. Until such time as his probation is completed he should be mentored by a member of the bar, not allowed to be a sole practitioner and limited in the type of cases to be handled.

Since I find the revised conditional guilty plea agreement inadequate and insufficient, I have no alternative but to dissent.

**In re:** J. Michael Schaefer

**Bar No:** 2089  
**Docket No:** 54990  
**Filed:** September 20, 2011

### ORDER DENYING REINSTATEMENT

*Reinstatement of disbarred attorney denied.*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that disbarred attorney J. Michael Schaefer's petition for reinstatement be denied. Having reviewed the record and the submitted briefs, we conclude that the panel correctly found that Schaefer has failed to meet his burden of showing by clear and convincing evidence that he should not be reinstated.

While a disciplinary panel's recommendation is persuasive, we review a petition for reinstatement de novo. *In re Nubar Wright*, 75 Nev. 111, 335 P.2d 609 (1959) (noting that consideration of the record is made without deference to the hearing panel's findings). The person seeking reinstatement bears the burden of proof and must show by clear and convincing evidence that he "has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that his...resumption practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest." SCR 116(2).

Based on the record and briefs before this court, we conclude that Schaefer has failed to meet his burden under SCR 116 to show that he is entitled to reinstatement. Schaefer's litigation activities in the short time frame between his second petition for reinstatement and this petition illustrate Schaefer's continued failure to comply with many of the professional conduct rules, his violations of which led to his disbarment. Additionally, Schaefer failed to address his significant financial and gambling issues as we directed him to do in our order denying his second petition for reinstatement.

Accordingly, we approve the panel's recommendation and deny the petition for reinstatement.<sup>3</sup>

It is so ORDERED.<sup>4</sup>

## NORTHERN NEVADA DISCIPLINARY BOARD

### LETTERS OF REPRIMAND

**File No.: N09-27-644**

*Letter of Reprimand imposed when an attorney failed to respond to the State Bar of Nevada.*

Attorney had occasion to retain Consultant, the grievant in this matter, as a consultant in a construction-defect matter. Attorney promised to pay Consultant for his services, which included appearing at an arbitration hearing.

Consultant claims to have never received payment from Attorney, prompting him to file a grievance with the state bar. On July 29, 2009, the state bar sent a letter to Attorney asking for a response concerning Consultant's grievance. No response was received from Attorney, so on August 18, 2009, a follow-up letter was sent via certified mail/return receipt requested, cautioning Attorney that if no response was received a grievance file would be opened.

A grievance file was opened in this matter on September 10, 2009, based primarily on Attorney's failure to respond to the state bar. Thereafter, two follow-up letters were sent to Attorney via certified mail/return receipt requested, one of which was returned unclaimed.

On December 14, 2009, a Screening Panel of the Northern Nevada Disciplinary Board reviewed the grievance file and recommended that this matter proceed to a formal hearing. On January 14, 2010, a complaint was drafted and served on Attorney pursuant to Supreme Court Rule 105.

On May 13, 2010, Attorney provided an answer to the state bar's complaint along with a response to Consultant's grievance. Since that time Attorney has been cooperating with the state bar's prosecution of this matter.

Attorney accepted responsibility for his actions and was apologetic with respect to the lack of communication with the state bar. In light of the foregoing, Attorney was REPRIMANDED for having violated Rule of Professional Conduct 8.1(b) (Bar Admission and Disciplinary Matters).

## SOUTHERN NEVADA DISCIPLINARY BOARD

### LETTERS OF REPRIMAND

**File No.: 10-088-0520**

*Letter of Reprimand imposed when an attorney failed to act diligently and communicate with his client.*

The State Bar of Nevada received a complaint from Client, who retained Attorney in June 2007 to seal her criminal record

pertaining to a case that occurred in the 1980s in Nevada. Client paid Attorney \$500 in advance for Attorney's services.

Client stated that in January 2008, Attorney informed her that Attorney had filed the petition in the Las Vegas Justice Court, but it was rejected because Attorney had filed it in the wrong court. The petition was supposed to be filed in the Eighth Judicial District Court. At Attorney's request, Client sent Attorney an additional \$150 money order, dated January 22, 2008, to file the petition in District Court.

In February 2008, Client said she called the District Attorney's office and was informed that prosecutors had approved the sealing of her records and had signed off on the matter. Accordingly, all that needed to be done was the petition needed to be filed in District Court. However, after waiting eleven (11) additional months with no petition being filed and making numerous phone calls to Attorney that were never returned, Client felt that she had no other recourse but to file a complaint.

Attorney responded that Client's version of events was "rife with errors." Attorney indicated that Attorney had met with Client, prepared the petition, and made the request for records from the Nevada Highway Patrol. After receiving the records, Attorney forwarded the final materials to the Clark County District Attorney's Office. Attorney claimed in December 2007 the materials were returned to Attorney's office because Client had lied to Attorney about her criminal record, so a revised petition had to be filed to reflect Client's complete criminal record. Attorney did not detail the substance of Client's "lies."

Attorney claimed to have resubmitted the revised packet of material to the Clark County District Attorney's Office on December 13, 2007. Those documents were returned to Attorney in August 2008 with the indication they were ready to be submitted to the court. On August 28, 2008, Attorney claimed to have resubmitted the order to seal Client's record to the Eighth Judicial District Court. Attorney said Attorney never received a file-stamped copy of the order back from the District Court.

On February 5, 2009, Client replied to Attorney's response. Client stated she did not lie to Attorney and, in fact, she had provided Attorney a copy of her criminal record from the Las Vegas Metropolitan Police Department when the two met, which indicated her complete criminal history. The records provided to the state bar indicated she had only been convicted of one crime.

Client went on to state she had not spoken with Attorney since she paid Attorney the additional \$150 in January 2008. Client claimed she left over thirty (30) messages for Attorney since then, which included inquiries about the status of her case, requests for documentation of filing fees, and requests for a copy of the petition Attorney filed. Client said she spoke with "a girl" in Attorney's office on three separate occasions who said she would send Client the requested records after she spoke with Attorney, but to date, Client has not received any records from Attorney's office.

On February 6, 2009, the state bar closed this matter citing a lack of clear and convincing evidence.

On February 9, 2009, Client sent the state bar a letter requesting reconsideration of this matter. Client subsequently provided to the state bar: (1) a copy of a "Letter of No Record" from the Eighth Judicial District Court dated February 10, 2009,

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that indicated a search of their records from June 18, 2007, through February 9, 2009, and revealed no civil Petition to Seal Records had been filed on Client's behalf; and (2) a copy of the petition Client filed herself with the Eighth Judicial District Court on February 10, 2009, along with another \$157 receipt for filing fees Client paid. Client stated her criminal record was finally sealed on February 11, 2009.

On April 16, 2009, the state bar reopened the instant grievance file, noting Rule of Professional Conduct (RPC) 1.3 (Diligence) issues.

Client subsequently sued Attorney for a refund of her fees. A small claims referee initially found in Attorney's favor, finding that Attorney prepared the petition but failed to file the pleading. Client appealed the referee's decision, and Justice of the Peace reversed the referee's decision. Attorney then appealed the judge's decision, which was affirmed by Chief Justice. Attorney again appealed to the District Court, which upheld the lower court's decision and granted an additional \$178 for travel costs to Client (court records indicated that Attorney did not appear at the hearing).

Client received the bond from the Justice Court for a little over \$700 that Attorney was required to post, however, to date she has not received the additional \$178 awarded to her by the District Court.

Based upon the above, Attorney was **REPRIMANDED** in this matter for violating Rule of Professional Conduct (RPC) 1.3 (Diligence) and RPC 1.4 (Communication).

1. This court rejected two other conditional guilty pleas that included 6- and 18-month suspensions. In a February 16, 2010, order rejecting Long's conditional guilty plea (18-month suspension), this court noted that it "would be inclined to approve a revised conditional guilty plea where, in exchange for pleading guilty to violating RPC 8.4(b), Long agrees to a 32 month suspension from the practice of law, retroactive to the beginning of the March 7, 2008, temporary suspension, and to pay the costs of the disciplinary proceedings." *In re: Discipline of Kenneth Long*, Docket No. 53400 (Order Rejecting Conditional Guilty Plea and Remanding for Further Disciplinary Proceedings, February 16, 2010), at 2 n.3.
2. The Honorable Nancy M. Saitta, Justice, did not participate in the decision in this matter.
3. Schaefer's motions for oral argument are also denied.
4. The Honorable Michael Cherry, Mark Gibbons and Kristina Pickering, Justices, voluntarily recused themselves from participation in the decision of this matter.

## 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 six 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 REPRIMAND** – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine and restitution. Remains eligible to practice.

**ADMINISTRATIVE SUSPENSION** – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or 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.