

SUPREME COURT OF NEVADA

In re: Manuel O. Montelongo
Bar No: 8578
Docket No: 53899
Filed: September 2, 2009

ORDER OF DISBARMENT BY CONSENT

Attorney consented to disbarment following the investigation of seven pending grievance files and three formal hearing complaints concerning allegations of misappropriation and failure to supervise nonlawyer assistants.

The Southern Nevada Disciplinary Board and attorney Manuel O. Montelongo, Bar Number 8578, have filed, under SCR 112, a joint petition for Montelongo's disbarment by consent. The petition is supported by Montelongo's affidavit, in which he states that he consents to disbarment and does so freely and voluntarily; that he has not been subjected to any coercion or duress; that he is fully aware of the implications of his consent; and that he has had an opportunity to consult with counsel prior to consenting to disbarment. He acknowledges in the affidavit that the State Bar of Nevada is currently investigating seven pending grievance files and has filed three complaints that contain allegations that are grounds for discipline against him.¹ Montelongo concedes that the material facts in the petition are true and reflect the allegations in the grievance files and in the pending complaints. He submits the affidavit with full knowledge that if the state bar prosecuted the complaints and grievances, he could not successfully defend against the charges.

Pursuant to SCR 112(1), an attorney who is the subject of an investigation or proceeding involving allegations of misconduct may consent to disbarment by submitting the requisite affidavit. Montelongo's affidavit meets the requirements of SCR 112(1). Therefore, the petition for disbarment by consent is granted. Manuel O. Montelongo is hereby disbarred.² The parties shall comply with applicable provisions of SCR 115 and SCR 121.1 regarding notice and publication.

In re: Milton Eichacker
Bar No: 4143
Docket No: 53052
Filed: September 2, 2009

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Suspended attorney must take and pass the essay portion of the Nevada bar examination and the Multi-State Professional Responsibility Examination (MPRE) as a condition precedent to the reinstatement to practice of law.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that we approve a conditional guilty plea in exchange for a stated form of discipline pursuant to SCR 113 for attorney Milton Eichacker. Under the agreement, Eichacker admits to violating: SCR 78.5 (Maintenance of trust funds in approved financial institutions; overdraft notifications); SCR 79 (1)-(3) (Address of Member); SCR 153 (Diligence); SCR 154 (Communication); SCR 157(2) (Conflict of Interest: general rule); SCR 158(1) and (6)(b) (Conflict of Interest; prohibited transactions); SCR 165(1) (Safekeeping Property); and SCR 200(2) (Bar admission and disciplinary matters).³

In exchange the State Bar of Nevada agrees to dismiss the charges of violating: SCR 151 (Competence); SCR 158(10) (Conflict of Interest; prohibited transactions); SCR 187(1) and (2) (Responsibilities regarding nonlawyer assistants); and SCR 203(1), (2), (3), and (4) (Misconduct). The state bar further agrees to dismiss the entire formal complaint filed on May 19, 1998.

The agreement provides for a suspension from the practice of law for the time period since the order of temporary suspension of respondent from the practice of law pursuant to 102(4)(a) dated November 21, 1997, with Eichacker receiving credit for time served from that date. Further, Eichacker is required to sit for the essay portion of the Nevada bar examination and achieve a scaled score of 140, with a minimum scaled score of 75 on at least three essays. This condition applies regardless of how many times it is necessary for Eichacker to take the examination; however, the examination fee will be waived for Eichacker for three sittings. In addition, Eichacker must take and pass the Multi-State Professional Responsibility Examination (MPRE).

The formal hearing conducted for this disciplinary matter shall constitute the character and fitness evaluation normally performed by the admissions department of the state bar, but only for the first time Eichacker sits for

the bar examination. Should Eichacker not pass the examination on his first attempt, the state bar shall determine whether a character and fitness evaluation should be conducted, considering only the time since the formal hearing in the instant matter.

Finally, Eichacker shall pay the costs of the disciplinary proceeding, excluding bar counsel and staff salaries.

At the hearing, Eichacker testified concerning injuries he received in a 1998 incident wherein he was struck in the head by a billiard ball, rendering him mentally and physically disabled. Prior to the incident, Eichacker was temporarily suspended by an order entered by this court on November 21, 1997. Following the order of suspension, two complaints were filed before the Southern Nevada Disciplinary Board, on March 13, 1998 and May 19, 1998. Those complaints were pending at the time of Eichacker's injury. On July 30, 1998, Bar Counsel and Eichacker's counsel stipulated to stay the disciplinary proceedings until such time as Eichacker was able to proceed with the formal hearings. During that time, Eichacker remained suspended.

On May 19, 2008, Eichacker, through his counsel, filed a motion to set the formal hearing, and the hearing was conducted on November 6, 2008. Following the hearing, the panel approved the guilty plea agreement.

Having reviewed the record, we conclude that the plea agreement should be approved.⁴ Accordingly, Eichacker is reinstated to the practice of law with the conditions contained in his guilty plea agreement.

In re: John S. Rogers
Bar No: 4730
Docket No: 53399
Filed: September 2, 2009

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS AND REFERRAL FOR EXAMINATION BY QUALIFIED MEDICAL EXPERT

Attorney transferred to disability inactive status pending further determination from a qualified medical expert.

Bar Counsel for the State Bar of Nevada and attorney John S. Rogers have jointly petitioned this court for a determination of competency and an order transferring Rogers to disability inactive status. Rogers and his counsel have signed the joint petition. The parties have stipulated that Rogers is currently disabled under SCR 117 and should be transferred to disability

inactive status pending a determination regarding Rogers' capacity to continue to practice law.

Having reviewed the petition and the stipulations contained therein, we conclude that Rogers should be transferred to disability inactive status pending further determination by a qualified medical expert of Rogers' capacity to practice law. Accordingly, John S. Rogers is transferred to disability inactive status until further order of this court. Any pending disciplinary proceedings against Rogers are suspended. Pursuant to SCR 117(7), Rogers shall comply with the provisions of SCR 115.

Pursuant to SCR 117(2) and (3), within 30 days from the date of this order, Rogers shall, if he has not already done so since the filing of the petition, submit to examination by a Nevada licensed medical expert for determination of his capacity to practice law. Within 30 days of the State Bar of Nevada's receipt of the medical expert opinion, a hearing shall be set, if one has not already been set, pursuant to SCR 117(2).

The state bar shall effect notice of this order as required under SCR 121.1. Bar Counsel shall provide this court with proof that notice has been served.

In re: Joshua Landish
Bar No: 289
Docket No: 53144
Filed: September 2, 2009

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS

Attorney transferred to disability inactive status.

On January 23, 2009, counsel for the State Bar of Nevada and attorney Joshua M. Landish jointly petitioned this court for an order transferring Landish to disability inactive status. On May 11, 2009, this court entered an order transferring Landish to disability inactive status pending further determination by a qualified medical expert of Landish's capacity to practice law. Dr. Louis F. Mortillaro has now filed a medical report regarding Landish's capacity to practice law.

Having reviewed the petition and its attachments, as well as Dr. Mortillaro's report, we conclude that the relief requested in the joint petition is warranted under the circumstances. Accordingly, Joshua M. Landish is transferred to disability inactive status. Landish may resume the active practice of law only after he has complied with SCR 117(4) and (5). In light of

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this order, any pending disciplinary proceedings against Landish are suspended.

The state bar shall effect notice of this order as required under SCR 121.1. Bar counsel shall provide this court with proof that notice has been served.

RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this rule:

Melissa Campbell

Bar No. 1807 Order 54460 Filed 9/25/09

Jeanne Davila

Bar No. 494 Order 54457 Filed 9/25/09

Christopher Mulvaney

Bar No. 8585 Order 54458 Filed 9/25/09

Cynthia Sue Sully

Bar No. 5517 Order 54459 Filed 9/25/09

James V. McGetterick

Bar No. 1112 Order 54455 Filed 9/25/09

SOUTHERN NEVADA DISCIPLINARY BOARD

In Re: Brian K. Griffith, Esq.

Bar No.: 7362

Case No: 08-145-2006

Issued: September 3, 2009

Public reprimand warranted where attorney failed to comply with multiple Supreme Court orders.

PUBLIC REPRIMAND:

TO: BRIAN K. GRIFFITH, ESQ.

You represented Steve Coneal (Coneal), the appellant in a family law matter that was appealed to the Nevada Supreme Court (Supreme Court) in January 2006. You failed to comply with the Nevada Rules of Appellate Procedure (NRAP) and several notices and orders issued by the Supreme Court. The procedural omissions were set forth in Supreme Court notices issued on February 10, 2006 and February 21, 2007, and in orders entered on March 28, 2007, December 14, 2007, March 4, 2008, April 4, 2008, April 25, 2008, June 6, 2008 and August 22, 2008.

The procedural problems primarily dealt with your failure to file an opening brief and submit various documents necessary as part of the appellate process. Multiple orders from the Supreme Court directed you to either (1) pay the court reporter's deposit and file a transcript request form in compliance with NRAP 9(a); (2) file, in the appropriate District Court, a motion to proceed *in forma pauperis* in compliance with NRAP 24(a); (3) file a motion to withdraw the appeal; or (4) file counsel's motion for leave to withdraw or, alternatively, a motion to extend time.

In orders dated April 4 and June 6, 2008, the Supreme Court imposed separate sanctions of \$500. The June 6 order directed you to pay the total of \$1,000 to the Supreme Court Law Library by June 16, 2008. You also were directed to file one of the above-referenced documents and, within 60 days of June 6, 2008, file and serve the opening brief and appendix. The Supreme Court warned you that failure to comply with the above directives could result in the imposition of additional sanctions and referral to the State Bar of Nevada for investigation.

On August 22, 2008, the Supreme Court entered an order which indicated that you still had not paid the previously imposed sanctions, otherwise complied with its previous orders, or communicated in any way with the Supreme Court. Therefore, the Supreme Court removed you as counsel-of-record for Coneal and placed his appeal in the proper person pilot program. The order also referred the Coneal case to the state bar for investigation of your actions pursuant to Supreme Court Rule 105.

You paid the sanctions with a check dated November 25, 2008. Despite your request to be reinstated as counsel-of-record, the Supreme Court denied your motion and dismissed the appeal in January 2009.

In mitigation, you cooperated with the state bar's investigation and, in fact, acknowledged that you failed

to comply with orders of the Supreme Court and pay the sanctions in a timely manner.

You also explained that shortly after filing Coneal's appeal, you were diagnosed with a serious medical condition which required extensive surgery and lengthy hospitalization in Los Angeles, California. Your period of recovery was much longer than expected and thereby impacted your ability to pursue Coneal's appeal and comply with court directives.

However, you acknowledged that while the appeal was pending, you should have provided the Supreme Court with ongoing status reports regarding your efforts and activities to pursue the *in forma pauperis* order in District Court.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.3 (Diligence), RPC 3.4(c) (Fairness of Opposing Party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (Misconduct: Engaging in conduct prejudicial to the administration of justice) and are hereby **PUBLICLY REPRIMANDED**. [NL](#)

- The grievance files are numbered 08-073-2256, 08-114-2256, 08-116-2256, 08-124-2256, 09-033-2256, 09-085-2256 and 09-092-2256. The first complaint, case number 05-201-2256, filed October 3, 2006, alleged that Montelongo violated then-SCR 153 (Diligence), SCR 165 (Safekeeping Property) and SCR 187 (Responsibilities regarding nonlawyer assistants). The second complaint, filed December 29, 2008, encompassed two different cases, numbers 07-030-2256 and 07-088-2256, and alleged that Montelongo violated RPC 1.3 (Diligence), RPC 1.15 (Safekeeping Property), and RPC 8.1(b) (Bar admission and disciplinary matters) in the first case, and violated RPC 1.3 (Diligence) RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property), RPC 8.1 (b) (Bar admission and disciplinary matters) and RPC 8.4 (Misconduct) in the second case. The third complaint, filed December 29, 2008, encompassed five different cases numbers 07-028-2256, 08-098-2256, 08-011-2256, 08-112-2256 and 08-113-2256, and alleged Montelongo violated RPC 1.5 (Fees) and RPC 1.15 (Safekeeping Property) in the first case; violated RPC 1.3 (Diligence), RPC 1.4 (Communication) and RPC 1.15 (Safekeeping Property) in the second case; violated then-SCR 153 (Diligence), SCR 154 (Communication), SCR 187 (Responsibilities regarding nonlawyer assistants), and SCR 189 (Unauthorized practice of law) in the third case; violated RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property), and RPC 8.1 (b) (Bar admission and disciplinary matters) in the fourth case; and violated RPC 1.3 (Diligence) and RPC 8.1 (b) (Bar admission and disciplinary matters) in the fifth case.
- The first complaint against Montelongo was filed October 3, 2006. Accordingly, the parties concede that the rules in effect at that time apply. SCR 122. Montelongo's disbarment is therefore not irrevocable. See former SCR 116(2) (disbarred attorney may not apply for reinstatement until at least 3 years from effective date of disbarment).

- The rules governing professional conduct were substantially revised effective May 1, 2006. Eichacker's conduct occurred before these revisions became effective. The disciplinary complaint in this matter properly charged violations of the rules in effect at the time of the particular misconduct, in which Eichacker has admitted.
- See SCR 113(1).

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.