

bar counsel report

NORTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Robert A. Grayson
Bar No: 231
File No: NG10-0177
Filed: July 21, 2011

Public Reprimand imposed for failure to respond to the state bar.

**FROM THE NORTHERN NEVADA
DISCIPLINARY BOARD
TO: ROBERT A. GRAYSON, ESQ.**

You represented a client in a family law matter. The client was attempting to obtain visitation of his granddaughters.

1. In June 2010, the client filed a disciplinary grievance with the State Bar of Nevada. In his grievance, the client made various complaints regarding the representation provided by you.
2. The state bar initially sent you a letter dated July 8, 2010, requesting your written response to the allegations contained in the client's grievance. You failed to respond and, therefore, the state bar sent a certified letter (for which a signed receipt was returned to the Office of Bar Counsel) dated August 2, 2010, directing you to provide a response to the state bar. The August 2, 2010, letter warned that if you did not provide a response, this matter would be presented to a screening panel of the Northern Nevada Disciplinary Board with the assumption that client's allegations were true. You were directed to provide a response by September 28, 2010. You failed to respond.
3. After still receiving no response from you, a grievance file was opened on September 10, 2010 and third letter was sent, again by certified mail, directing you again to provide a response. A signed receipt for the September 10, 2010, letter returned to the Office of Bar Counsel.
4. In or around late September 2010, a staff member of the state bar called your office to determine whether the previous materials had been received. The woman who answered the phone said that your office actually had a different suite number, Suite No. 4 instead of Suite No. 6, at the same street address in Carson City, Nevada.
5. Therefore, the state bar sent a certified letter dated on December 2, 2010, this time to the Suite No. 4 address, which again directed you to provide a response. A signed receipt for the certified letter was received by the state bar.
6. Although the first two certified letters from the state bar were sent to Suite No. 6 rather than Suite No. 4 of the same address, all three receipts for the certified letters were returned to the state bar and all three had been signed by the same person.
7. Accordingly, the Office of Bar Counsel was required to send you four letters, present this matter to a screening panel of the Northern Nevada Disciplinary Board and file a formal complaint before you filed a response with the state bar.

8. In mitigation, you ultimately cooperated with the state bar's investigation and accepted responsibility for your actions.
9. In light of the foregoing, you violated Rule of Professional Conduct 8.1(b) (Bar Admission and Disciplinary Matters) and are hereby PUBLICLY REPRIMANDED.

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Joseph A. Gembala, III, Esq.
File No: SG10-0488
Filed: August 3, 2011

Public Reprimand imposed on an attorney not licensed in Nevada (licensed in Pennsylvania and New Jersey) for failure to communicate with clients, lack of diligence and failure to safekeep property.

**FROM THE SOUTHERN NEVADA
DISCIPLINARY BOARD
TO: JOSEPH A. GEMBALA, III, ESQ.**

You were involved with a New Jersey company called Secure Property Solutions, LLC (SPS). SPS was engaged in foreclosure rescue, financial consulting and loan modifications. You claim that you were merely the attorney for SPS and that you had no involvement or responsibility in the day-to-day running of SLS.

The principal and owner listed for SLS was Mr. Michael J. Malone. Other principals of SLS included Mr. Kevin Malone, Mr. Christopher Frisch and Mr. Ernesto Ranieri. None of these individuals are licensed attorneys.

On or about November 24, 2009, Grievants retained the services of SLS and Joseph A. Gembala, III & Associates to negotiate a loan modification for their residence located in Pahrump. You claim that you were not the Grievants' retained counsel, but in fact they were clients of SLS, but you acknowledge then signed a written agreement with your firm name.

Grievants paid the sum of \$2,295 to your firm in exchange for the loan modification services.

Grievants were told that the fee was the "lowest in the country" and that the services of SLS came with "a 100 percent money back guarantee" with the exception of the attorney retainer fee of \$595.

Grievants also received a letter, apparently from you, stating that all checks were to be made payable to Joseph A. Gembala, III & Associates. The letter stated in part: "Rest assured our team has expertise in mortgage and real estate law. We will provide you with the tools that you need to allow you to rest soundly knowing that we will make every attempt to get your loan modification completed." You claim you never drafted that letter.

You deposited the funds received from Grievants into an IOLTA/escrow account maintained by your firm. You deny retaining a portion of the fee from Grievants, but you admit that you retained a portion of fees for numerous other clients of SLS and that it was your custom and practice to do so until late

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October or early November of 2009. You provided no proof to the State Bar of Nevada demonstrating that you did not take a similar fee from Grievants.

SLS did not perform the necessary work to obtain a loan modification for Grievants and you did nothing to ensure that their modification was done correctly. You claim it was not your responsibility. Grievants did not receive a refund of the fees paid to you.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property) and RPC 5.4(a) (Professional Independence of a Lawyer) and are hereby PUBLICLY REPRIMANDED.

LETTERS OF REPRIMAND

File No.: 10-025-3310

Letter of Reprimand imposed when an attorney failed to comply with the Rules of Professional Conduct governing advertising.

On December 13, 2009, Client complained to the state bar that he and his wife hired Attorney's law firm to assist them with a loan modification. Client paid a \$3,000 retainer fee. In September or October 2009, Client was informed by Attorney's secretary that Attorney was moving offices. Client claimed he made numerous attempts to reach Attorney but to no avail. In late October, he received a phone call from an unnamed California attorney who informed him that Attorney had relocated to California and was no longer practicing in Nevada. Shortly afterward, Client's file was returned to him in the mail along with instructions on completing the loan modification himself. Client complained that he paid Attorney to do a job that was not completed.

On January 5, 2010, the state bar sent a Letter of Investigation to both Attorney and his law partner. On January 13, 2010, Attorney responded (on behalf of both Attorney and his law partner) and took full responsibility for Client's file. Attorney stated that he had spent more than 31 hours on Client's case, that Client had unrealistic expectations in reaching a loan modification and that the retainer agreement Client signed gave no refund or guarantee of specific results. Attorney also felt his firm "exhausted all means necessary" to obtain a positive outcome in this case, and the Clients were only upset because they found themselves "upside down" in their home.

A copy of Attorney's response was sent to Client on January 28, 2010. Client's reply to the state bar noted, in part, that he only hired the law firm after receiving a letter in the mail offering homeowners' loan modifications "for any reason." State bar records did not reflect that the advertisement was filed with the state bar.

On February 9, 2010, the state bar opened a grievance file in this matter.

On April 5, 2010, the state bar received a supplemental response from Attorney stating that Attorney and his law partner parted ways on March 1, 2009, prior to Client retaining Attorney's law firm. The law partner, in a separate letter, also noted that the law firm had dissolved prior to Client retaining Attorney. In Attorney's correspondence, Attorney again stated Attorney was solely responsible for responding to this grievance. Although Attorney denied any wrongdoing in Client's complaint, in the interest of resolving this dispute quickly, Attorney included a refund check in the amount of \$1,500 made payable to Clients. On April 9, 2010, the state bar forwarded the check to Client,

along with copy of Attorney's response.

On April 8, 2010, the state bar received another letter from Attorney after a phone conversation with Assistant Bar Counsel regarding Attorney's failure to file Attorney's advertisement with the state bar. Attorney's letter apologized for not seeking approval for the advertisement and Attorney admitted he'd made a mistake. Attorney further stated that Attorney was under a lot of stress/pressure when Attorney retained the mail company to send out advertisements and it slipped Attorney's mind that he needed state bar approval. Attorney admitted to making a poor decision and asked the state bar for leniency in his violation for failing to get the advertisement approved. Please note that the advertising rules do not require that an attorney obtain prior approval. However, RPC 7.2A required that attorneys file advertisements with the state bar within 15 days of the ad's dissemination.

Although the law firm dissolved prior to Attorney being retained by Client, both the advertisement Attorney used and the fee agreement signed by Client represented that the law firm remained in existence. Even Attorney's termination letter, which was sent six months later, in October 2009, continued to feature the law firm's name. There was no indication that Client had been informed of the firm's split, and the grievance was, in fact, against both attorneys.

Further, Attorney failed to file the advertisement with the state bar pursuant to RPC 7.2A (Advertising Filing Requirements). In addition, the advertisement in question did not comply with the requirements of RPC 7.3 (Communication with Prospective Clients).

Based on the above, Attorney was **REPRIMANDED** for having violated RPC 7.2A (Advertising Filing Requirements), RPC 7.3 (Communications with Prospective Clients), and RPC 7.5 (Firm Names and Letterhead). Attorney was also reminded that, pursuant to RPC 1.5 (Fees), attorney's fees charged to a client must be reasonable and, as such, there is no per se non-refundable attorney's fee.

File No.: SG10-0416

Letter of Reprimand imposed when an attorney failed to timely file a request for a trial de novo for his client.

Attorney represented Client in a civil matter which Attorney filed on his behalf in the Eighth Judicial District Court. The civil matter ultimately was assigned to arbitration, and a hearing was held on November 19, 2009. In a decision dated November 30, 2009, the arbitrator entered a defense verdict. According to court records, the arbitrator mailed the decision to Attorney that day.

Pursuant to NAR 18(A), a request for a trial de novo must be requested within the 30 days after service of the arbitration award. Three days were added because the service was by mail, which meant that the last day to request a trial de novo was January 4, 2010.

A request for a trial de novo in Client's matter was filed by Attorney on January 12, 2010. In a letter dated January 15, 2010, to Attorney, ADR Commissioner Chris Beecroft, Jr., denied the request as untimely.

In a March 26, 2010, response to the state bar, Attorney acknowledged that "it is a matter of record" that Attorney filed the demand for a trial de novo after the deadline. Attorney added, however, that he did not intentionally miss the deadline.

Accordingly, Attorney is **REPRIMANDED** for violating RPC 1.3 (Diligence).

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 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.