

# bar counsel report

## SUPREME COURT OF NEVADA

**In re:** Jennifer Wensink  
**Bar No.:** 8919  
**Docket No.:** 56675  
**Filed:** July 27, 2011

### ORDER OF DISBARMENT

*Disbarment warranted in matter where attorney prepared fictitious pleadings, failed to diligently pursue litigation and communicate with clients, and failed to respond to the state bar.*

This is an automatic review of a decision of a hearing panel of the Southern Nevada Disciplinary Board, recommending that attorney Jennifer K. Wensink be disbarred from the practice of law in Nevada. See SCR 105(3)(b). Neither Wensink nor the state bar filed briefs in this matter; therefore, it has been submitted for final decision on the record without briefing or oral argument, SCR 105(3)(b). We conclude that disbarment is warranted.

#### **Facts and Procedural History**

Wensink's misconduct stems from five separate matters.

First, Wensink represented Maria Villarnovo in an uncontested divorce. After Villarnovo made numerous phone calls to Wensink for an update on her case, Wensink provided her with divorce related documents purportedly filed with the court. However, Villarnovo discovered that the documents had not been filed and, after several attempts to contact Wensink, Villarnovo retained another attorney to secure a divorce.

Second, Wensink represented Chase Harmer in a number of traffic tickets that he had received. Wensink failed to handle the matter or appear at a hearing. Harmer repeatedly and unsuccessfully attempted to reach Wensink. Wensink did, however, send Harmer's mother e-mails where she informed Harmer's mother that motions to withdraw had been filed in those matters and copies of those pleadings had been mailed to Harmer, but Harmer never received the pleadings. As a result of Wensink's inaction, Harmer's driver's license was suspended.

Third, Keith Zerlin retained Wensink's employer, Jeffrey Posin & Associates, to seal a felony conviction. Wensink was assigned the case. Zerlin attempted to contact Wensink over a three-week period to no avail. Zerlin appeared at Wensink's office and met with her. She informed Zerlin that the documents necessary to seal the conviction were with the District Attorney's office. A week later, Wensink informed Zerlin that the matter was completed. Relying on that statement, Zerlin represented on a job application with a casino that he had never been arrested or convicted of a felony, as allowed under NRS 179.285(1). Zerlin was hired by the casino but later fired for lying about his conviction on his job application. However, Zerlin discovered from the District Attorney's office that it had never received any documents related to the sealing of records.

Fourth, Wensink represented Patti Kelly in a divorce. Rather than commencing divorce proceedings, Wensink created a fictitious divorce decree for Kelly after Kelly threatened to contact

Jeffrey Posin & Associates to express her frustration regarding lack of progress on her case.

Fifth, Jeffrey Posin & Associates was listed as the attorney of record in a case, *David Baumgartner v. Venetian Casino Resort, LLC*, and referred to the state bar by this court for investigation and possible disciplinary proceedings pursuant to SCR 105. Because the state bar did not receive a response, it commenced a disciplinary proceeding against Posin. Acting as Posin's counsel, Wensink sent a letter to the state bar indicating that a response would be sent within a week, but the state bar did not receive a response until after the formal complaint was filed. At the disciplinary hearing, Posin explained that he discovered that Wensink had hidden certain correspondence, including this court's orders and state bar letters, related to the *Baumgartner* matter. Posin also became aware that Wensink altered information in the firm's case management system so that the system would not produce status reports on cases and failed to inform Posin of issues in the *Baumgartner* case and other matters. Posin subsequently terminated Wensink, after which he discovered that Wensink had provided a fictitious divorce decree to a client (unrelated to allegations in the instant proceeding), produced a fictitious document in a worker's compensation matter, and filed a bankruptcy action using another attorney's bankruptcy court account and Posin's bar number.

The state bar sent multiple letters to Wensink regarding the investigation into the matters described above, but Wensink failed to respond. The state bar filed three formal complaints against Wensink, alleging a total of 26 counts of misconduct. Despite receiving ample notice of the proceedings against her, Wensink failed to file an answer or otherwise defend against the charges.<sup>1</sup>

The panel found five violations of RPC 1.3 (diligence), five violations of RPC 1.4 (communication), one violation of RPC 1.16 (declining or terminating representation), five violations of 3.2 (expediting litigation), one violation of RPC 3.4 (fairness to opposing party and counsel), four violations of RPC 8.1 (bar admission and disciplinary matters), five violations of RPC 8.4 (misconduct). The panel also found the following aggravators, pursuant to SCR 102.5: (1) Wensink had a dishonest motive in preparing fictitious documents and pleadings in an attempt to mask her lack of diligence, (2) a pattern of misconduct, and (3) multiple offenses – 26 violations of RPCs. The panel found no mitigating circumstances. Based on its findings, the panel recommended that Wensink be disbarred from practice of law in Nevada and that she be required to pay the costs of the disciplinary proceeding.

#### **Discussion**

A disciplinary panel's decision recommending disbarment is subject to automatic review by this court. SCR 105(3)(b). "[A]lthough persuasive, the panel's findings and recommendation are not binding on this court." *Matter of Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007) (alteration omitted) (quoting *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992)) "This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted." *Id.* at 168, 160 P.3d at 884-85 (quoting *Stuhff*, 108 Nev. At 663, 837 P.2d at 855). The panel's findings of misconduct must be supported by clear and convincing evidence. *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

# bar counsel report

SCR 105(2) provides that if an attorney failed to plead in response to the complaint, the charges shall be deemed admitted. We conclude that the allegations in the complaints are deemed admitted. We further conclude that clear and convincing evidence supports the panel's findings. Finally, we conclude that the recommended discipline is appropriate in light of the nature of Wensink's misconduct.

Accordingly, we disbar Wensink from the practice of law in this state. Such disbarment is irrevocable. See SCR 102(1). Further, Wensink shall pay the costs of the disciplinary proceedings within 30 days of receipt of the State Bar of Nevada's bill of costs. SCR 120(1). The parties shall comply with the applicable provisions of SCR 115 and 121.1.

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**In re:** Randolph Anderson  
**Bar No.:** 7584  
**Docket No.:** 56503  
**Filed:** July 8, 2011

## ORDER OF SUSPENSION

*Attorney suspended for failing to safeguard money and converting the funds to his own use.*

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney Randolph Anderson violated five rules of professional conduct and its recommendation that he be suspended from the practice of law for one year, concurrent with other suspension he is currently serving, and with reinstatement subject to certain conditions. Having reviewed the evidence submitted and the transcript from the disciplinary hearing, we approve the panel's findings and recommendation to the extent that Anderson shall be suspended from the practice of law for one year with reinstatement subject to conditions; however, we reject the recommendation that the suspension be concurrent and instead direct that the instant suspension be consecutive to other suspensions Anderson is currently serving.<sup>2</sup>

During the course of divorce proceedings in which Anderson represented one of the parties, the district court determined that Anderson's client had no interest in the marital residence. Despite this determination, Anderson filed a separate lawsuit reasserting his client's ownership of the property; he also filed and recorded a notice of lis pendens against the property. Meanwhile, a title company had opened escrow for the sale of the property. Anderson demanded payment of \$20,000 from the escrow account in exchange for the release of his client's claims to the property, despite lacking any basis for making such a demand. Eventually, the district court presiding over the separate lawsuit expunged the notice of lis pendens.

Although he had notice of the lis pendens being expunged, Anderson subsequently accepted a check for \$20,000 from the title company. When the title company requested a refund of the payment, Anderson refused. Additionally, Anderson failed to

properly safeguard the funds and converted the funds to his own use. The title company subsequently sued Anderson for fraud and unjust enrichment. Anderson failed to answer or otherwise respond to the title company's complaint, and a default judgment was eventually entered against him.

After the state bar opened a grievance against him, Anderson was only partially responsive to the bar's questions and failed to provide information regarding his acceptance of the \$20,000 or his handling of it thereafter. Anderson failed to respond to the bar's subsequent formal complaint against him, except to send a facsimile stating that he would not be attending the disciplinary hearing and that the hearing should go forward without him.

The panel found that Anderson violated RPC 1.15 (safekeeping property), RPC 3.1 (meritorious claims and contentions), RPC 4.1 (truthfulness in statements to others), RPC 8.1(b) (bar admissions and disciplinary matters) and RPC 8.4 (misconduct).<sup>3</sup>

While findings and recommendations of a disciplinary board hearing panel are persuasive, our automatic review of panel decision recommending a suspension is conducted de novo, requiring the exercise of independent judgment by this court. SCR 105(3)(b); *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We conclude that clear and convincing evidence supports the panel's findings, and that Anderson violated RPC 1.15 (safekeeping property), RPC 3.1 (meritorious claims and contentions), RPC 4.1 (truthfulness in statements to others), RPC 8.1(b) (bar admission and disciplinary matters), and RPC 8.4 (misconduct). SCR 105(2)(e).

The panel further recommended that Anderson be suspended from the practice of law for one year and that this suspension be concurrent to other suspensions Anderson is serving.<sup>4</sup> The panel also recommended that Anderson be directed to comply with all current court orders and, as conditions to reinstatement, that Anderson be required to pass the Multistate Professional Responsibility Examination and pay restitution and/or comply with the judgment in *Equity Title, LLC v. Anderson*, Case No. A535831, in the Eighth Judicial District Court of the State of Nevada. Finally, the panel recommended that Anderson be required to submit full payment for the costs of the disciplinary proceeding pursuant to SCR 120(1) within 30 days after the state bar issued a bill of costs.

Having reviewed the record, we conclude that the recommended discipline is appropriately tailored to the circumstances, with the exception that Anderson's one-year suspension from the practice of law for these violations should be consecutive to the other suspensions he is currently serving.

Accordingly, Anderson is hereby suspended from the practice of law for one year, consecutive to the other suspensions he is currently serving. Anderson also must comply with all the conditions stated above, including, prior to petitioning for reinstatement pursuant to SCR 116, passing the Multistate Professional Responsibility Examination and paying restitution

continued on page 50

# bar counsel report

and/or complying with the judgment in *Equity Title LLC, v. Anderson*, Case No. A535831, in the Eighth Judicial District Court of the State of Nevada. Finally, Anderson and the state bar shall comply with the applicable provisions of SCR 115 and SCR 121.1.

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**In re:** Travis Chandler  
**Bar No.:** 8778  
**Docket No.:** 55625  
**Filed:** July 27, 2011

## ORDER IMPOSING PUBLIC REPRIMAND

*Attorney publicly reprimanded for diligence, communication and failure to respond to the state bar.*

This is an automatic review of the Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Thomas C. Chandler receive a public reprimand for violations of RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 8.1(b) (bar admission and disciplinary matters). See SCR 105(3)(b). We conclude that the recommended discipline is appropriate and that a public reprimand is warranted in this case.

### **Background and Facts**

In August 2005, Eddie Lane retained Chandler to perform three tasks: (1) a patent search, (2) a patent application and prosecution, and (3) a trademark registration. By letter dated February 17, 2006, Chandler informed Lane that a patent application had been filed and that the next significant date in the process would be 18 months later when the patent application would be published for examination. Chandler's letter further stated that Lane's trademark would be registered the following week – Chandler completed the task. Chandler also completed a patent application. In October 2008, Lane learned that United States Patent and Trademark Office (USPTO) had issued a notice rejecting his patent application. Lane made repeated attempts to contact Chandler to no avail. Chandler took no action in assisting Lane with his patent application upon learning from Lane that there was a "problem" with the application. On October 22, 2008, Lane e-mailed a grievance to the state bar, followed by a letter of complaint, dated November 17, 2008.

On December 4, 2008, the state bar sent a letter to Chandler concerning Lane's complaint and requested a response. Chandler did not respond. One month later, the state bar sent a certified letter to Chandler respecting Lane's allegations and requested a response within 14 days. Chandler did not respond. Three weeks later, on January 29, 2009, the state bar sent Chandler a certified letter, which was returned as undeliverable. The state bar sent a fourth letter, dated February 5, 2009, which was also returned. Subsequently, the state bar sent a certified letter to an alternative address for Chandler. The letter informed Chandler that failure to respond would result in the opening of a grievance file for a violation of RPC

81 (bar admission and disciplinary matters). Chandler signed the return receipt but did not respond to the letter. The state bar sent yet another certified letter dated March 17, 2009, to Chandler notifying him that a grievance file had been opened. The return receipt was signed but Chandler failed to respond to the letter. Approximately three months later, having learned of a new address, the state bar sent a certified letter to Chandler requesting a response and additional information. The return receipt was signed but Chandler did not respond to the letter.

The state bar filed a complaint against Chandler on September 17, 2009, alleging that his representation of Lane resulted in violations of RPC 1.3 (diligence), RPC 1.14 (communication), RPC 1.15 (safekeeping property), and RPC 8.1(b) (bar admission and disciplinary matters).

At the beginning of the disciplinary hearing, the parties stipulated to a violation of RPC 8.1(b) and the state bar withdrew the allegation involving RPC 1.15. There was no dispute that until Lane complained to the state bar, he was satisfied with Chandler's representation. At the hearing, Chandler explained that after receiving an angry message from Lane expressing his intent to file a grievance against Chandler, he ceased communicating with Lane because he believed Lane had fired him, although Lane never expressly terminated Chandler's representation. Chandler made no notation in his records and did not inform USPTO that his representation of Lane had terminated. Nor did Chandler advise Lane of his options respecting the rejected patent application or take any action to protect Lane's interest in the matter. Chandler also explained that he did not respond to the repeated communications from the state bar because it was a difficult emotional situation. Chandler indicated that he had no prior discipline with the state bar.

At the hearing, Lane outlined his numerous attempts to contact Chandler by phone and by facsimile from April to September 2008. In October 2008, Lane learned that the USPTO had rejected his patent application and again attempted to contact Chandler but received no response. Lane explained that he has suffered financial difficulties as a result of pursuing his invention and was unaware of the status of his patent application.

At the conclusion of the hearing, the panel found that Chandler violated RPC 1.3, RPC 1.4, and RPC 8.1(b). The panel recommended that Chandler: (1) be issued a public reprimand for violating RPC 1.3, RPC 1.4 and RPC 8.1(b); (2) be required to attend the next available "Bridge the Gap" seminar conducted by the state bar following the Supreme Court's order approving the recommendations; (3) be required to fulfill an additional six CLE credit hours in either small office management or ethics within six months of the Supreme Court's order approving the recommendations; (4) be required to enter into a mentoring agreement with a mentor approved by the state bar for one year, during which time the mentor shall submit written quarterly reports to the Office of Bar Counsel regarding Chandler's practice; and (5) be required to pay all costs of the disciplinary proceedings within 30 days of the Supreme Court's

# bar counsel report

order approving the recommendations. This automatic review followed. Neither Chandler nor the state bar filed briefs in this matter; therefore, it has been submitted for decision on the record without briefing or oral argument. SCR 105(3)(b).

## Discussion

A disciplinary panel's decision recommending a public reprimand is subject to automatic review by this court. SCR 105(3)(b). "[A]lthough persuasive, the panel's findings and recommendation are not binding on this court." *Matter of Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007) (alteration omitted) (quoting *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992)) "This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted." *Id.* At 168, 160 P.3d at 884-85 (quoting *Stuhff*, 108 Nev. At 663, 837 P.2d at 855). The panel's findings of misconduct must be supported by clear and convincing evidence. *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

The panel's findings of misconduct are supported by clear and convincing evidence. Chandler failed to communicate with Lane regarding his patent once Lane learned that the USPTO rejected it and he failed to advise Lane about his options or protect Lane's interest in the patent matter upon learning that the patent application had been rejected. Further, Chandler did not dispute that he repeatedly failed to respond to the state bar concerning Lane's grievance and complaint. Chandler does not dispute the disciplinary panels' findings of misconduct.

Based on Chandler's conduct, we conclude that a public reprimand is appropriate. Accordingly, we approve the disciplinary panel's recommendation and publicly reprimand attorney Travis Chandler for violations of RPC 1.3, RPC 1.4, and RPC 8.1(b). Chandler shall comply with all the other conditions recommended by the disciplinary panel.

1. Wensink sent an e-mail to the state bar on the day of the disciplinary hearing explaining that she is suffering from mental illness, that she does not wish to be an attorney and will voluntarily surrender her law license and that she is sorry for any harm she has caused.
2. Neither Anderson nor the state bar submitted a brief challenging the panel's findings and recommendation.
3. The panel determined that some of Anderson's actions violated former Supreme Court Rules that governed attorney conduct. As the substance of the provisions did not significantly change when they were recodified in the current Rules of Professional Conduct, we refer to the RPC designations of the violations.
4. Anderson is also serving a suspension ordered by the state bar for nonpayment of bar dues. Additionally, Anderson is currently under suspension by this court for violations of RPC 1.3 (diligence), RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct), *In re: Discipline of Anderson*, Docket No. 54396 (Order of Suspension, April 9, 2010), and for failure to comply with rules regarding continuing legal education, *In re: Continuing Legal Education*, Docket No. 54333 (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys, October 21, 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):  
[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 Council 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.