

bar counsel report

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No.: 09-R111-1127

Letter of Reprimand imposed for failure to notify bar counsel of conviction for driving under the influence.

A criminal complaint was filed in Las Vegas Municipal Court, Clark County, Nevada charging Attorney with one count of Driving Under the Influence, a misdemeanor in violation of LVMC 10.02.010, LVMC 11.14, NRS 484.038 and NRS 484.379(1)(a). The complaint charged Attorney with willfully and unlawfully driving a motor vehicle while under the influence of alcohol.

Attorney pleaded not guilty at the arraignment on September 3, 2008. On June 10, 2009, Attorney changed his plea to *nolo contendere* and given credit for time served – two days jail time – was fined \$400 and assessed fees of \$160, ordered to attend the victim impact panel and attend the mandatory DUI short review program.

On October 20, 2009, the State Bar of Nevada became aware of his conviction from the Hawaii State Bar Office of Disciplinary Counsel (ODC), where Attorney is also licensed. ODC was inquiring as to whether the State Bar of Nevada was aware of the conviction.

The state bar sent a letter to Attorney on November 3, 2009, requesting that Attorney provide information pertaining to his conviction.

On November 6, 2009, Attorney submitted a letter to the state bar notifying the state bar of the case number and court in which the conviction occurred. Attorney also advised that a status check was scheduled for December 2, 2009.

At the status check of December 2, 2009, the court noted that the fines and fees were paid and Attorney attended the victim impact panel and counseling. The matter was closed.

In accordance with SCR 111(4), upon receipt of a certificate of conviction of an attorney for a crime, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, Bar Counsel filed a petition with the Supreme Court on February 10, 2010.

On February 26, 2010, the Supreme Court entered an Order of Referral to the Disciplinary Board. The court stated that the “seriousness of drinking and driving can not be minimized: a drunk driver is considered a societal menace” but “first offense DUI is not the type of offense for which professional discipline is imposed.”

Further, the order stated that his “failure to inform bar counsel within 30 days of his conviction as required by SCR 111(2) appears to be an act of misconduct constituting grounds for discipline.”

A copy of the order was sent to Attorney with a request to respond. In his response dated March 7, 2010, Attorney stated that the ODC informed the State Bar of Nevada of the conviction. Attorney disclosed the arrest and conviction to the ODC pursuant to an inquiry contained in the annual registration statement. Attorney stated further that Attorney did not intend to conceal this mistake. Attorney stated he was unaware of the reporting requirements of SCR 111, and “this rule went into effect in 2007 and I was unaware of the obligations there under.”

The panel considered that first-time DUI offenders typically do not receive disciplinary sanctions in any jurisdiction. However, the Supreme Court appears to be more concerned with the fact that Attorney failed to disclose the conviction to the State Bar of Nevada.

Based on the foregoing, Attorney was **REPRIMANDED** for violating SCR 111(2) (Attorneys convicted of crimes: Duty to inform bar counsel).

File No. : 10-098-3382

Letter of Reprimand imposed on attorney for failure to safekeep property.

On October 9, 2006, Attorney entered into a contract with Lender as the guarantor of a loan for Attorney’s clients. The Clients borrowed \$7,500 at a 20 percent monthly interest rate and a \$500 origination fee. Attorney stated in his response to the State Bar of Nevada that Attorney was reluctant to sign the lien but agreed to do so because Lender assured Attorney that he was “a reputable lender and was licensed in the state of Nevada.”

After Attorney signed the lien, Attorney discovered that Lender was not licensed as a lender in the state of Nevada. Attorney contended that Lender was in violation of NRS 675.060, which states in part:

No person may engage in the business of lending in this state without first having obtained a license from the Commissioner.

Believing that the October 9, 2006, contract was not valid based on the fact that Lender did not have a lender’s license, Attorney disbursed Clients’ portion of the settlement to them and advised them not to pay the loan to Lender which had increased to an amount in excess of \$40,000.

On June 6, 2008, Lender filed a complaint against Attorney’s law firm, the Clients, and Attorney for breach of contract.

On July 31, 2009, Attorney filed a Motion for Summary Judgment in which Attorney argued Lender was not licensed pursuant to NRS 675.060.

In an October 7, 2009 hearing, the court denied Attorney’s Motion for Summary Judgment finding that Attorney and Clients knowingly entered into the loan contract and that the referenced statute was not in effect at the time the contract was signed.

Pursuant to Rule of Professional Conduct 1.15 (Safekeeping Property), Attorney had an obligation to all third-parties who have an interest in a client's settlement proceeds (i.e. lien holders). Attorney has this obligation regardless of whether Attorney or his office signs the lien. If a dispute arises regarding the amount claimed on a lien or other assignment of interest in the settlement proceeds, Attorney is to segregate the disputed amount until the matter is resolved. If the matter cannot be resolved between the two parties, then Attorney is to file an interpleader action with the appropriate court. See *Achrem v. Expressway Plaza Limited Partnership*, 112 Nev. 737, 740, 912, P2d 447, 448, (1996). See, also, Model Rule 1.15, comment 4 ("A lawyer should not unilaterally assume to arbitrate a dispute between the client and a third-party, but, where there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.")

Based upon the foregoing, Attorney was **REPRIMANDED** for violating RPC 1.15 (Safekeeping Property).

File No. : 09-105-1904

Letter of Reprimand imposed for failure to timely comply with court order.

On April 9, 2009, the Supreme Court entered an order referring a matter to the State Bar of Nevada for investigation and possible disciplinary proceedings pursuant to SCR 105.

Attorney represented Appellant Client in the matter. On May 8, 2008, Attorney filed the Notice of Appeal but failed to pay the filing fee of \$250 as required by NRS 2.250(1)(a). As a result, the Supreme Court Clerk sent Attorney a notice on May 8, 2008, requesting that Attorney remit payment of the filing fee within 10 days of the notice.

The Supreme Court thereafter issued an order on October 15, 2008, which noted that the \$250 filing fee remained unpaid and that the docketing statement had not yet been filed. As a result, the Supreme Court ordered Appellant to pay the filing fee and file the docketing statement within 10 days. Appellant was cautioned that failure to comply with the order could result in sanctions and the dismissal of the appeal as abandoned.

Attorney failed to comply with the order of October 15, 2008. As a result, the Supreme Court entered another order on January 22, 2009, stating that Appellant's "failure to pay the filing fee and to file the docketing statement in compliance with the court's procedural rules, the notice issued in this matter and our previous order warrants the conditional imposition of sanctions."

Appellant was ordered to pay, within 15 days of the order, the sum of \$500 to the Supreme Court Law Library and provide the Supreme Court proof of payment. The Supreme Court stated that the sanctions would be automatically vacated if the filing fee was paid and the docketing statement was filed within the prescribed time period. Appellant was

also given the alternative of filing a motion to extend time within 10 days.

However, Attorney again failed to pay the filing fee, failed to file the docketing statement or a motion to extend time and failed to provide the Supreme Court with proof of payment of the \$500 sanction that was imposed.

The Supreme Court thereafter entered an order on March 10, 2009, wherein it stated that counsel for the Appellant "shall have seven days from the date of this order to pay the filing fee, file and serve appellant's docketing statement and provide this court with proof of payment of the \$500 sanction." The court also cautioned Attorney that failure to do so may result in further sanctions, including a referral to the State Bar of Nevada for investigation.

On March 27, 2009, Attorney filed a *Motion to Dismiss Appeal, Notice of Withdrawal of Appeal*. On April 9, 2009, the court entered an order noting that, as of the date of the order, Attorney had failed to comply or respond to the Supreme Court's notices, orders, or procedural rules. Therefore, the court referred Attorney to the state bar for investigation and appropriate disciplinary action.

The Supreme Court's order also removed Attorney from the docket due to Attorney's dilatory actions in the appeal. However, Attorney remained obligated to pay the \$500 sanction to the Supreme Court Law Library.

The April 9 order also addressed Attorney's *Notice of Withdrawal of Appeal*, which the Supreme Court construed as a voluntary dismissal of the appeal. The Supreme Court denied the motion because Attorney had failed to provide proof of service to demonstrate that all parties were served with the notice. Additionally, the Supreme Court noted that the voluntary dismissal that Attorney sought was improper considering the imposition of sanctions and his removal from the appeal.

The April 9 order gave Appellant 30 days to: (1) retain new counsel and file a notice of appearance with the Supreme Court; (2) inform the Supreme Court that she does not intend to retain counsel and will appear in *pro per*, or (3) file a motion to voluntarily withdraw the appeal. The Supreme Court also stated that, regardless of what was filed, Appellant was to pay the filing fee within 30 days.

The April 9 order was received by the state bar on April 14, 2009. Grievance File No. 09-105-1904 was opened the following day and Attorney was sent a letter of investigation.

Attorney's May 7, 2009, response to the state bar indicated that, following an adverse District Court ruling to Appellant Client regarding child support arrearages, Attorney discussed with Appellant Client the possibility of filing an appeal. Attorney noted that Appellant Client was concerned about the cost of the appeal and so she was unsure as to whether she wished to pursue an appeal.

Attorney stated that "out of an abundance of caution I filed the notice of appeal on May 5, 2008."

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Thereafter, Appellant Client informed Attorney that she did not wish to pursue the appeal. Attorney acknowledged that, at this point, the case “fell off the radar” in Attorney’s office.

Attorney stated that, upon receiving the Supreme Court’s October 2008 order, Attorney directed his staff to take the appropriate steps to dismiss the appeal, but “[u]nfortunately, this did not happen.” After receiving the next order from the Supreme Court, Attorney again directed his staff to withdraw the appeal, which they attempted to do. However, they failed to serve the defendant with a copy of the notice, resulting in the order of April 9, 2009.

Attorney informed the state bar that Attorney subsequently filed a *Motion for Reconsideration* with the Supreme Court so that Attorney could be reinstated as counsel-of-record and withdraw the appeal in the proper manner.

On May 26, 2009, the Supreme Court entered an order deferring ruling on Attorney’s motions as Respondent had not been served with the pleadings. Appellant was ordered to serve Respondent with the motion within 15 days of the date of the order. In addition, the court stated that the desire to dismiss the appeal did not alleviate the requirement of paying the \$250 filing fee as previously ordered on April 9, 2009.

On June 19, 2009, Attorney’s *Motion for Reinstatement* was granted for the purpose of seeking to voluntarily dismiss the appeal. However, the ruling on the voluntary dismissal of the appeal was deferred because the \$250 filing fee had not been paid. The Supreme Court imposed another *conditional sanction* of \$500 payable to the Supreme Court Law Library, due within 15 days, if the filing fee was not paid within 10 days.

The Supreme Court order, however, inadvertently omitted Attorney from the list of those to be served with the order of June 19, 2009. Attorney only learned of the order upon receiving the state bar’s status report to the Supreme Court, which was filed on July 13, 2009. Attorney then filed a motion to reconsider the voluntary dismissal of appeal and sanctions due to lack of notice.

The Supreme Court, on August 7, 2009, granted Attorney’s motion and conditionally imposed sanctions. If Attorney paid the filing fee within 15 days, the \$500 would be vacated. The ruling on the *Notice of Withdrawal of Appeal* was deferred.

Attorney paid the \$250 filing fee on August 12, 2009. On August 25, 2009, the Supreme Court dismissed the case.

During the disciplinary hearing, Attorney testified that family issues and staffing issues affected Attorney’s ability to timely comply with the Supreme Court’s orders. The panel also noted that Attorney acknowledged as true all the factual allegations contained in the state bar’s complaint and Attorney further acknowledged that Attorney’s conduct in regard to the appeal failed to meet the minimum standards of diligence required of attorneys.

Based upon the foregoing, Attorney was **REPRIMANDED** for violating RPC 1.3 (Diligence) and RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants). ■

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 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.