

bar counsel report

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Robert L. Cardwell
Bar No.: 8395
File No.: SG10-0670, SG10-0776
Filed: December 5, 2011

Public Reprimand imposed for failure to comply with Supreme Court orders in two separate cases and for failure to respond to the State Bar of Nevada.

TO: ROBERT L. CARDWELL, ESQ.

In two separate matters which underlie the above-referenced disciplinary cases, you represented clients in appeals filed in the Supreme Court of Nevada (Supreme Court).

SG10-0670/The Johnnie Ryan Company

In one matter, you represented the appellant in a civil matter entitled *The Johnnie Ryan Company, Inc, a New York Company, vs. Star Distributing, LLC, a Nevada Limited Liability Company; J. Mario Sanchez, an individual; and Don Crancer*, in the Supreme Court of Nevada (Supreme Court). After originally being heard in the Eighth Judicial District Court, the matter was appealed to the Supreme Court on or around October 2009.

On March 1, 2010, a Notice to Pay Supreme Court Filing Fee was filed in the Office of the Clerk of the Supreme Court which notified you that the appeal, Supreme Court Case No. 55524, had been docketed without payment of the \$250 filing fee. The notice directed that the filing fee be paid within 10 days and, in addition, warned that failure to pay the required fee could result in the imposition of sanctions.

On or around March 11, 2010, the appellant filed a document entitled Notice of Withdrawal of Appeal.

In an order dated March 22, 2010, the Supreme Court stated that it construed the appellant's March 11, 2010, motion as a request to voluntarily dismiss the appeal. The Supreme Court, however, deferred a ruling on the motion to dismiss and directed the appellant to pay the \$250 filing fee within 10 days.

The filing fee was not paid pursuant to the Supreme Court's direction. Therefore, on May 20, 2010, the Supreme Court entered an order which (1) sanctioned you and (2) directed you to pay \$500 to the Supreme Court Law Library within 10 days and to provide proof of payment to the Supreme Court. The order added, however, that the sanction would be automatically vacated if the original \$250 filing fee was paid by May 30, 2010.

Despite the foregoing, neither the filing fee nor sanction had been paid by September 2010. Therefore, the Supreme Court entered its order of September 29, 2010, which referred you to the state bar for investigation and appropriate disciplinary action pursuant to Supreme Court Rule (SCR)

105. The Supreme Court's order also dismissed the appeal and denied as moot the appellant's motion of March 11, 2010, to dismiss the appeal.

The state bar sent a Letter of Investigation dated October 5, 2010, to you via regular and certified mail to the address which you had provided to the state bar as required by SCR 79 (Disclosures by members of the bar). The state bar's letter directed you to address each allegation contained in the order received from the Supreme Court within 14 days.

Neither the letter sent by regular mail nor the certified letter was returned to the Office of Bar Counsel. Neither was a receipt for the certified letter returned to the state bar.

No response was received from you and, therefore, the state bar sent another letter, again via regular and certified mail, dated November 19, 2010, which again directed you to provide a written response to the allegations contained in the Supreme Court's referral to the Office of Bar Counsel.

The state bar's letter of November 19, 2010, also warned that if you did not provide a response, the Office of Bar Counsel would present this matter to a screening panel of the Southern Nevada Disciplinary Board with the assumption that the Supreme Court's allegations were true, and would ask the panel to consider your actions (1) as failure to cooperate with the state bar in its efforts to enforce the Rules of Professional Conduct and (2) as a separate violation of RPC 8.1(b) (Admissions and Disciplinary Matters).

A signed receipt for the state bar's certified letter of November 19, 2010, was returned to the Office of Bar Counsel.

After a formal disciplinary complaint was filed by the Office of Bar Counsel, your answer was your first response in this matter to the state bar.

In mitigation, you ultimately cooperated with the state bar's investigation and accepted responsibility for your actions.

SG10-0776/Eric Connite

You represented the appellant in a civil matter entitled *Eric Connite, an Individual vs. Clyde Turner and Rhonda Turner, Individually and as Husband and Wife*, in the Supreme Court. After originally being heard in the Eighth Judicial District Court, the matter was subsequently appealed to the Supreme Court on or around June 21, 2010.

When you filed the notice of appeal, it was not accompanied by a case appeal statement. After notifying the appellant in this matter that certain documents needed to be filed in the appeal, the Supreme Court entered an order on September 15, 2010, directing you to file an original and copy of the case appeal statement within 10 days or face sanctions that included possible dismissal of his appeal.

Despite the foregoing, you failed to file the requested documents or to respond to the Supreme Court's directives by October 2010. Therefore, the Supreme Court entered an order on October 26, 2010, which referred you to the state bar for investigation and appropriate disciplinary action pursuant to SCR 105. The Supreme Court's order also dismissed the appeal.

The state bar sent a Letter of Investigation dated November 24, 2010, to you via regular and certified mail to the address

bar counsel report

which you had provided to the state bar as required by SCR 79 (Disclosures by members of the bar). The state bar's letter directed you to address each allegation contained in the order received from the Supreme Court within 14 days.

A signed receipt for the state bar's certified letter, which was returned to the Office of Bar Counsel, indicated that the correspondence was delivered on November 29, 2010.

No response was received from you to the first letter. Therefore, the state bar sent a second letter, again via regular and certified mail, dated January 13, 2011, which again directed you to provide a written response to the allegations contained in the Supreme Court's referral to the Office of Bar Counsel within 10 days.

The state bar's letter of January 13, 2011, also warned that if you did not provide a response, the Office of Bar Counsel would present this matter to a screening panel of the Southern Nevada Disciplinary Board with the assumption that the Supreme Court's allegations were true, and would ask the panel to consider your actions (1) as failure to cooperate with the state bar in its efforts to enforce the Rules of Professional Conduct and (2) as a separate violation of RPC 8.1(b) (Admissions and Disciplinary Matters).

After a formal disciplinary complaint was filed by the Office of Bar Counsel, your answer was your first response in this matter to the state bar.

In mitigation, you ultimately cooperated with the state bar's investigation and accepted responsibility for your actions.

In light of the foregoing, you violated Rules of Professional Conduct (RPC) 1.3 (Diligence), RPC 3.4(c) (Fairness to Opposing Party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b) (Bar Admission and Disciplinary Matters), and RPC 8.4(d) (Misconduct: Engaging in conduct that is prejudicial to the administration of justice), and are hereby **PUBLICLY REPRIMANDED**.

You also are directed to pay the Supreme Court sanctions still outstanding within 10 days of this order.¹

LETTERS OF REPRIMAND

File No.: SG10-0083

Letter of Reprimand imposed when Attorney failed to file a bankruptcy and failed to meaningfully respond to the state bar. Other conditions imposed required Attorney to pay costs of disciplinary hearing, restitution to Client in the amount of \$1,500 and completion of an additional 10 continuing legal education hours in law office management.

Client retained Attorney to represent him in a bankruptcy matter, executing a retainer agreement on March 3, 2009 and paying a retainer fee of \$1,500 by check dated May 6, 2009. Attorney failed to deposit the retainer check into her trust account, instead cashing it and depositing the proceeds into her operating account.

Attorney never filed Client's bankruptcy papers and his house was foreclosed upon in July 2009. In September 2009, Client attended an eviction hearing and the bankruptcy papers were still not filed. He was escorted by the constable from his home three days later. While Attorney testified that Client failed to provide all of the necessary information to complete a bankruptcy filing, Client testified that he provided all information and documents requested of him in a timely manner.

The state bar sent Client's grievance to Attorney by letter dated April 21, 2010. Attorney failed to respond to the state bar's letter and a second letter was sent via regular and certified mail, return receipt requested, on May 14, 2010. The return receipt card was returned signed by Attorney's father-in-law.

On May 25, 2010, Attorney contacted the state bar and requested an extension in which to provide a response. Attorney's response was calendared for June 8, 2010. Attorney failed to respond.

On June 16, 2010, the state bar opened a grievance file and sent a letter to Attorney via regular and certified mail, return receipt requested. The return receipt card was returned again signed by the father-in-law. Again, Attorney failed to respond. On July 22, 2010, another letter was sent via regular mail and certified mail, return receipt requested. The return receipt card was returned signed by Attorney's father-in-law.

On August 19, 2010, a state bar investigator attempted to reach Attorney via phone. Attorney did not answer and the investigator left Attorney a voicemail to call her back. Also on August 19, 2010, the investigator e-mailed Attorney requesting that Attorney contact the state bar immediately.

On September 16, 2010, Attorney left a voicemail for the investigator that stated Attorney was unable to reply to the investigator's email. Attorney further stated that Attorney had been in the hospital and would like to respond to the grievance. The investigator e-mailed Attorney confirming receipt of the voicemail. The investigator also confirmed the address to which to send the grievance and gave Attorney a deadline of September 20, 2010.

Attorney immediately responded to the e-mail and stated that Attorney was having health issues and requested another copy of the grievance. Attorney stated that Attorney was on a medical leave of absence for the next 4-6 weeks and the documents should be sent to Attorney's San Diego address.

The grievance was e-mailed to Attorney on September 23, 2010. A deadline of October 7, 2010, was provided. Five hours later, Attorney sent a confirming e-mail that stated, "Got it. Thank you!"

However, Attorney failed to respond to the state bar regarding the grievance and the matter proceeding to formal hearing. Attorney later failed to file an Answer or respond to the Notice of Default. The matter was set for a formal hearing on July 27, 2011, to proceed in a default basis.

Attorney appeared telephonically at the hearing and moved to set aside the default and continue the hearing. Attorney represented that she had documents responsive to Client's allegations along with billings showing Attorney was

continued on page 50

bar counsel report

suffering from a medical condition that interfered with her ability to timely respond to the state bar.

After deliberating, the panel granted Attorney's motion. However, in its order, the panel specifically directed Attorney to provide, by September 23, 2011, documents both responsive to Client's grievance and establishing medical treatment to support Attorney's failure to respond.

Attorney filed an Answer which admitted to all of the allegations for failing to respond. However, despite written and verbal reminders, Attorney failed to provide the documentation until the morning of the continued hearing.

Based upon the foregoing the panel found unanimously that Attorney violated RPC 1.1 (Competence), RPC 1.15 (Safekeeping property), and RPC 8.1 (Bar admission and discipline matters) and Attorney is hereby **REPRIMANDED**. The panel further ordered that within 120 days Attorney pay restitution to Client of \$1,500; pay all costs of the disciplinary proceedings pursuant to SCR 120; and complete 10 hours of CLE in law office management, in addition to what is required of Attorney annually.

File No.: SG10-0597

Letter of Reprimand imposed when Attorney failed to comply with Supreme Court order.

Attorney represented clients in the appeal to the Nevada Supreme Court of a civil case originally filed in the Eighth Judicial District Court in Clark County, Nevada.

On December 28, 2009, the Supreme Court entered a notice directing that the appellants file the required docketing statement within 10 days. The docketing statement, however, was not filed during that period. Therefore, the Supreme Court entered an order on April 28, 2010, which again directed the appellants to file the docketing statement within 10 days.

On June 10, 2010, when a docketing statement still had not been submitted, the Supreme Court entered an order which conditionally imposed a \$500 sanction upon Attorney for failure to file the statement. The order noted, however, that if the docketing statement was filed within ten days, the sanction would automatically be vacated.

Attorney failed to comply with the Supreme Court's order of June 10, 2010, and, therefore, the Supreme Court entered an order on July 9, 2010, directing Attorney to pay the sanction and file the docketing statement. According to Supreme Court records, Attorney paid the \$500 sanction on or around July 19, 2010, but again failed to file the docketing statement.

In an order dated July 28, 2010, the Supreme Court gave Attorney another 10 days to file the docketing statement. Finally, in an order filed September 14, 2010, the Supreme Court noted that Attorney still had not filed a docketing statement despite the multiple orders referenced above. Therefore, the Supreme Court dismissed the appeal and referred Attorney to the state bar for investigation pursuant to Supreme Court Rule 105 (Procedure on receipt of complaint).

In Attorney's response to the state bar, Attorney acknowledged that the docketing statement indeed had not been filed. Attorney stated that the failure was "solely a clerical oversight on my part and not done for the purpose of delay or in bad faith in any manner."

On or about September 14, 2010, coincidentally on the same day that the Supreme Court filed its referral of the instant matter to the state bar, Attorney electronically filed a Motion For Enlargement of Time to File Docketing Statement with this Court.

With Attorney's motion, Attorney attached an affidavit which stated that Attorney learned on September 11, 2010, that the docketing statement had not been filed. Attorney contended that incident had occurred "due to inadvertence." In the affidavit, Attorney also accepted responsibility for the problem. However, the Supreme Court denied Attorney's motion as moot.

Attorney thereafter electronically filed an Appellants' Motion to Reconsider Dismissal of Appeal with the Supreme Court. With Attorney's motion to reconsider, Attorney attached an affidavit which included many of the statements Attorney made in Attorney's response to the state bar. Attorney also stated that Attorney had tried to file a docketing statement when Attorney first learned of Attorney's "error," but Attorney's electronic filing was rejected.

On November 9, 2010, the Supreme Court denied Attorney's motion that requested reconsideration of the dismissal of the appeal.

Accordingly, Attorney was **REPRIMANDED** for violating RPC 1.3 (Diligence), RPC 3.4(c) (Fairness to Opposing party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (Misconduct: Engaging in conduct that is prejudicial to the administration of justice).

File No.: SG10-0084

Letter of Reprimand imposed when attorney failed to respond to Supreme Court orders.

Attorney represented Client in the appeal to the Supreme Court of a civil case originally filed in the Eighth Judicial District Court.

When the appellate matter was filed, however, the filing fee of \$250 was not paid at that time as required by rules of appellate procedure. On December 22, 2009, the parties filed a stipulation to dismiss the appeal and therein informed the Supreme Court that they had reached a settlement.

On January 12, 2010, the Supreme Court entered an order which deferred a ruling on the stipulation to dismiss and directed the appellant to pay the \$250 filing fee by January 22, 2010.

However, the filing fee was not paid pursuant to the Supreme Court's direction. Therefore, on April 1, 2010, the Supreme Court entered an order which sanctioned the appellant and directed that \$500 be paid to the Supreme Court Law Library.

Pursuant to the order of April 1, 2010, proof of payment was to be filed with the Supreme Court by April 16, 2010. The order added, however, that the sanction would be automatically vacated if the original \$250 filing fee was paid by April 12, 2010.

In Attorney's response to the state bar, Attorney stated that Attorney had attempted to pay the filing fee of \$250 with a check dated April 7, 2010, and at that time believed that Attorney's payment "would resolve the court's concerns on this case."

However, despite the foregoing, neither the filing fee nor sanction had been received at the Supreme Court by June 2010. Therefore, the Supreme Court entered its order of June 10, 2010, which referred Attorney to the state bar for investigation pursuant to Supreme Court Rule 105. The order also approved the parties' stipulation to dismiss despite the unpaid filing fee "in the interest of judicial economy."

In Attorney's response to the state bar, Attorney provided the Office of Bar Counsel with a copy of Check No. 6989, dated April 7, 2010, to the Supreme Court of Nevada in the amount of \$250 for Case No. 54510. Attorney also provided a copy of Attorney's check register which listed the \$250 check.

Attorney claimed that Attorney "had no indication that this check was not received by the Nevada Supreme Court" until on or about June 14, 2010, when Attorney received Supreme Court's order of June 10, 2010. Attorney stated that Attorney immediately reissued the filing fee check for \$250 and sent a separate check in the amount of \$500 for the sanctions. Attorney provided the state bar with copies of those checks.

In Attorney's response, Attorney apologized for what Attorney described as Attorney's "oversight" which may have occurred in the Supreme Court matter. Attorney stated:

It was certainly inadvertent and unintentional.
I accept full responsibility for any errors which
may have occurred by my staff or myself.

According to court records reviewed by the Office of Bar Counsel, the proof of payment of the Supreme Court's sanction of \$500 to the Supreme Court Law Library was filed on July 9, 2010. Court records also showed that a check for \$250 from Attorney was received by the Supreme Court on July 12, 2010.

Accordingly, Attorney was **REPRIMANDED** for violating RPC 1.3 (Diligence), RPC 3.4(c) (Fairness to Opposing party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (Misconduct: Engaging in conduct that is prejudicial to the administration of justice). ■

1. The Office of Bar Counsel has noted that you already have provided a check for the sanctions to the Supreme Court.

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.