

bar counsel report

SUPREME COURT OF NEVADA

In re: James Andre Boles
Docket No.: 61170
Filed: June 7, 2013

ORDER OF SUSPENSION

Attorney suspended from the practice of law for failure to communicate with his clients and diligently pursue their cases.

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings that attorney James Andre Boles violated two rules of professional conduct on two separate occasions and its recommendation that he be suspended from the practice of law for two years, subject to conditions.

The underlying facts in this matter provide that Boles represented two clients in two different matters. During his representation of these two clients, he was affected by a medical condition, which caused him to self-impose an indefinite medical leave. Prior to and during that time, these clients made numerous attempts to contact Boles regarding the status of their pending cases. However, Boles failed to adequately communicate with them regarding the status of their cases, did not personally inform them that he was on indefinite medical leave and failed to propel their pending matters forward.

The clients submitted grievances to the state bar, which filed a formal complaint against Boles. Following a disciplinary hearing, the panel found that Boles violated RPC 1.3 (diligence) and RPC 1.4 (communication).

The panel recommended that Boles be suspended from the practice of law for two years, with the conditions that Boles be:

1. Required to retake the Multistate Professional Responsibility Examination (MPRE), an attorney ethics portion of the Nevada Bar Examination, prior to applying for reinstatement;
2. Required to pay for the costs associated with the disciplinary proceedings pursuant to SCR 120;
3. Required to demonstrate to bar counsel that he has notified all his clients of his suspension within three days of the effective date of the order of suspension; and
4. Place all of his Nevada clients with other counsel, conclude representation or, with the assistance of bar counsel, attempt to expeditiously aid any remaining clients in finding new counsel, within 15 days of the order of suspension.

The findings and recommendations of a disciplinary board hearing panel are persuasive; however, our automatic review of a 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).

Having reviewed the briefs filed in this matter and the record of the disciplinary proceedings. We conclude that clear and convincing evidence supports the findings that Boles violated RPC 1.3 (diligence) and RPC 1.4 (communication). SCR 105(2)(e). We approve the panel's recommendation that Boles be suspended subject to conditions. However, we determine that a suspension of one year is appropriately tailored to the violations here. We therefore reject the recommended suspension term of two years and instead direct that Boles be suspended for one year.

Accordingly, Boles is hereby suspended from the practice of law for one year, subject to conditions set forth above. Boles shall pay the costs of the disciplinary proceedings within 30 days of receipt of the State Bar of Nevada's bill of costs. See SCR 120. Boles and the state bar shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is SO ORDERED.

In re: Treva J. Hearne
Docket No.: 59563
Filed: June 21, 2013

ORDER OF IMPOSING RECIPROCAL DISCIPLINE

Attorney suspended from the practice of law for one year, stayed, with two years' probation after failing to abide by the conditions of a private reproof imposed by California State Bar in 2009.

This is a petition under SCR 114 to reciprocally discipline attorney Treva J. Hearne, based on discipline imposed upon her in California. Hearne filed a response to the petition as permitted by SCR 114(3).

Hearne's misconduct resulted from her failure to abide by the conditions of a private reproof imposed by the California State Bar in 2009. Specifically, Hearne was found to have violated California Rule of Professional Conduct (RPC)1-110 (disciplinary authority of the state bar) for failure to comply or failure to timely comply with conditions of her disciplinary probation, including making required

continued on page 38

bar counsel report

reports, contacting her probation officer, attending MCLE classes, and retaking the Multistate Professional Responsibility Examination (MPRE).¹

On December 10, 2010, the California Supreme Court ordered a stayed one year suspension for Hearne, along with two years of probation with conditions. Hearne was further ordered to pay the costs of the disciplinary proceedings. Hearne did not self-report this violation to the State Bar of Nevada within 30 days as required by SCR 114(1).

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, that one of four exceptions applies. None of the exceptions is present in this case.

Accordingly, we grant the petition for reciprocal discipline. Attorney Treva J. Hearne is hereby suspended from the practice of law for one year, with that suspension stayed, and placed on probation for two years. Hearne shall provide to the state bar with proof that she has passed the MPRE and proof of compliance with the conditions of probation imposed upon her by California. Hearne and the state bar shall comply with SCR 115 and SCR 121.1.

In re: Colbern Cox Stuart, III, Esq.
Docket No.: 60061
Filed: June 21, 2013

ORDER OF TEMPORARY SUSPENSION

Attorney temporarily suspended from the practice of law following a conviction in California of 15 counts of harassing by telephone and two counts of repeated harassing by phone or electronic conduct.

This is a petition under SCR 111(4) concerning attorney Colbern Cox Stuart, III, based on his conviction in San Diego County, California, of 15 counts of harassing by telephone and two counts of repeated harassing by phone or electronic contact, all misdemeanors.² Based on this conviction, Stuart, who is also licensed in California, was placed on inactive member status in California.

Our initial review of this matter indicated that Stuart's convictions did not meet the definition of "serious crime," as set forth in SCR 111(6), but that they were not for minor offenses and they adversely reflected on Stuart's fitness to practice law. See 5CR 111(9). Thus, we directed Stuart to show cause why he should not be temporarily suspended and the matter referred for discipline. Stuart failed to respond to our show cause order.

SCR 111(9) provides:

Upon receipt of a petition demonstrating that an attorney has been convicted of a crime which is not a serious crime, the supreme court may refer the matter to the appropriate disciplinary board for any action it may deem warranted under these or any other rules of the

Supreme Court that pertain to the conduct of attorneys, provided, however, that the Supreme Court may decline to refer a conviction for a minor offense to the board.

If the conviction adversely reflects on the attorney's fitness to practice law, the Supreme Court may issue an order to show cause, requiring the attorney to demonstrate why an immediate temporary suspension should not be imposed.

Having reviewed the petition and the supporting documentation submitted by bar counsel, and in light of Stuart's failure to respond to our show cause order, we conclude that a temporary suspension is warranted.³ Accordingly, we temporarily suspend Stuart from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of disciplinary proceedings.⁴ See SCR 11 i(9).

It is so ORDERED.⁵

NORTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Paul Freitag
Bar No.: 216
File No.: NG11-1514
Filed: January 23, 2013

Public Reprimand imposed on attorney who assisted in the unauthorized practice of law by lending name and brief support to enterprise run by non-Nevada lawyer.

In early Spring 2011, after returning to work from an illness, your business associate Eric Deitlan relayed that non-Nevada attorney William Breck wanted you to serve on the Board of Directors for the Public Interest Law Firm (PILF). You agreed to serve on PILF's Board in a voluntary capacity. Sometime after your agreement to serve, you learned that Breck had already added you as an incorporator and director of PILF.

You were aware at the time you agreed to serve that non-lawyers were listed as directors of PILF. PILF advertised and promoted itself as a 501(c)(3) nonprofit public interest law firm, which it was not. PILF identified you as a director and as "of counsel" for approximately a year and included this information in their client fee agreement.

The law firm advertised that it practiced primarily in the area of assisting struggling homeowners regarding their troubled mortgages. The law firm represented to clients that, for a fee, they would be included in a multi-joinder or mass-joinder lawsuit against their lender and that the lawsuit would prevent a foreclosure. In fact, the

representations of the law firm to its clients were false. There was no such multi-joinder or mass-joinder lawsuit. The homeowners were never included as plaintiffs in any multi-joinder lawsuit, yet the law firm charged and retained legal fees anyway.

When you were contacted by the Office of Bar Counsel, you explained that while you did agree to be on the Board of PILF, you had since resigned and had not given the law firm authority to use your name on their fee agreement. You assured Bar Counsel that you did not receive any fees or compensation from the law firm.

The President/Executive Director of PILF was not authorized to practice law in Nevada. By your conduct, you assisted the out-of-state attorney in engaging in the unauthorized practice of law in Nevada. You failed to conduct an adequate inquiry into the legal status of the out-of-state attorney or the activities of the law firm. Therefore, you have violated NRPC 5.5 (a)(2) which states,

“A lawyer shall not... assist another person in the unauthorized practice of law.” For this violation, you have accepted responsibility.

You discontinued your anticipated association with the law firm as soon as you became aware of the law firm’s questionable practices and, at the same time, demanded that your name be removed from their agreements.

In mitigation, it is understood that the out-of-state attorney, through his non-attorney associates, created a false appearance of legitimacy. The state bar’s investigation did not produce evidence that you or your law firm profited from the activities of the out-of-state attorney or the law firm. You have cooperated with the state bar’s investigation.

In a time such as this, when many people have been financially injured by a severe economic downturn, it is incumbent upon attorneys to be ever vigilant for those who may not be well intentioned, and who may seek to harm the least advantaged among us.

Every lawyer is responsible for observance of the Rules of Professional Conduct. Neglect of even the least of these responsibilities, and those unintended consequences occasioned therefrom, may compromise the independence of the profession and the public which it serves.

In light of the foregoing, you have violated Nevada Rules of Professional Conduct 5.5(a)(2) (assisting in the unauthorized practice of law) and are hereby **PUBLICLY REPRIMANDED**. ■

1. Nevada’s counterparts are RPC 3,4(c) (fairness to opposing party and counsel) and RPC 8.1 (bar admission and disciplinary matters).
2. Stuart failed to report his conviction to bar counsel pursuant to SCR 111(2), which itself could be construed as an act of misconduct constituting grounds for discipline. See SCR 101 (acts or omissions of an attorney that violate rules of the Supreme Court are misconduct and constitute grounds for discipline).
3. See *Iowa Supreme Court Attorney Discipline Bd. v. Weaver*, 812 N.W.2d 4 (Iowa 2012) (holding that an attorney’s criminal conviction for the telephonic harassment of his wife reflected

adversely on the attorney’s honesty, trustworthiness and fitness as a lawyer).

4. We recognize that Stuart has been suspended from the practice of law in Nevada since August 2003, for failure to pay his bar dues. See SCR 98(12). Accordingly, in order to be reinstated to the practice of law in Nevada, Stuart must comply with the reinstatement requirements of SCR 98(13), in addition to the disciplinary conditions and/or reinstatement requirements, if any, imposed in the instant matter.
5. The Honorable Nancy M. Saitta, Justice, did not participate in the resolution of this matter.

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.