

SUPREME COURT OF NEVADA

In re: Philip Singer

Bar No: 7914

Docket No: 52779

Filed November 24, 2008

ORDER OF TEMPORARY SUSPENSION

Temporary suspension warranted based upon evidence of attorney's misappropriation of funds belonging to clients and third-party lienholders, accepting retainer checks without performing work, and commingling client and personal funds in his trust account.

This is a petition by the Southern Nevada Disciplinary Board chair for an order temporarily suspending attorney Philip Singer from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Singer appears to have misappropriated funds from clients and third-party lienholders, accepted and cashed retainer checks without performing any services, and commingled client and personal funds.

SCR 102(4)(a) provides, in pertinent part:

On the petition of a disciplinary board, signed by its chair or vice chair, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

In addition, SCR 102(4)(a) provides that we may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Singer poses a substantial threat of serious harm to the public, and that his immediate temporary suspension is warranted.¹ We further conclude that Singer's handling of funds should be restricted.²

Accordingly, Singer is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against him.³ In addition, Singer is prohibited from withdrawing any funds from his client trust account, or from any other account containing funds belonging to third parties, except upon written approval of bar counsel or by order of a court of competent jurisdiction.⁴ The state bar shall immediately serve Singer with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Singer's law office or residence, or by publication. When served on either Singer or a depository in which he maintains an account, this order shall constitute an

injunction against withdrawal of the proceeds except in accordance with the terms of this order.⁵

It is so ORDERED.⁶

NORTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF (PRIVATE) REPRIMAND⁷

File No. N07-28-2165

Attorney received a letter of reprimand for failure to file pleadings resulting in a dismissal of his client's case.

Attorney was retained by Client in or about 2004 to pursue a civil action involving alleged damage to her home by a neighbor. Attorney filed a complaint on Client's behalf in December 2004 in the Third Judicial District Court.

However, the District Court dismissed the case in or about December 2006 after Attorney failed to file pleadings as required by Nevada law.

In June 2007, Attorney filed a Motion to Set Aside Default Judgment in Client's matter. In the motion, Attorney acknowledged that the default was entered as a result of Attorney's failure to file necessary pleadings "in a timely fashion and not because of any negligence or failure to act" on the part of Client. The court, however, did not grant the motion.

Attorney was reprimanded for violating SCR 153/RPC 1.3 (Diligence).

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF (PRIVATE) REPRIMAND

File No. 07-035-0354

Letter of reprimand and fine of \$1,000 appropriate when attorney failed to communicate with his client in an immigration matter.

Client and his sister retained Attorney sometime around October 2004 to assist them with various immigration matters, including an H-1B Visa for Client. They found the firm through an advertisement in a local Filipino newspaper. Client and his sister dealt exclusively with Paralegal for almost two years into the representation. Furthermore, the first time Attorney met with them to discuss the merits of their case was *two months* after Attorney received a private reprimand for failing to supervise Paralegal as a matter of established practice in another case.

The panel acknowledged that the majority of the allegations in this case occurred before Attorney received a private reprimand in February 2006 for, *inter alia*, failure to supervise Paralegal, and, the panel accepted that Attorney has attempted to amend his business practices. However, Attorney's subsequent actions in this case after February 2006 up until Attorney's termination evince he was still over-delegating immigration cases to Paralegal and not fulfilling the ethical obligations of diligence and communication.

In this instance, Paralegal handled the consultation, advised the clients of immigration procedures, explained the paperwork that would need to be filed, and quoted a total fee of \$6,985. Attorney was unavailable. Paralegal accepted the representation without a written retainer. Client and his sister paid a \$3,185 partial payment that day and the final balance on April 3, 2005 pursuant to their agreement with Paralegal to settle up within six months.

The panel understands long timelines are inherent to the immigration process; in this matter the lack of clear direct communication from Attorney to his clients as to the reasons for those delays, both substantive and procedural, substantially exacerbated the clients' anxiety.

From October 2004 through February 2006, this case languished. Paralegal consistently blamed the USCIS for the delay, and advised Client that he had failed to meet quota, although Paralegal never satisfactorily explained to Client exactly what the quota system entailed. Client was told by the USCIS his paperwork was not filed, while Paralegal stated the application was rejected under the quota system.

On or around July 10, 2006, Paralegal advised Client she had just received back from the post office the original packet of paperwork she sent to the USCIS back in October 2005. Paralegal purportedly told Client the post office had just called her that day, and the documents had been sitting in unclaimed/undelivered mail the entire time. Paralegal stated this was due to continued problems associated with the law office move the previous year.

Attorney finally met with the clients at this point, 21 months into representation. However, Attorney knew very little about the case and relied on Paralegal for the substantive content of the meeting. Attorney promised to take personal responsibility to get this matter completed.

However, in or around July 2006, Client personally filed his own documents under Paralegal's guidance. The documents were returned in September 2006 for failing to meet quota. Attorney met with the clients again, at their request without Paralegal. Nothing was resolved, the matter was not completed, and the clients shortly thereafter terminated representation.

Attorney's response to the state bar in this case stated that this conduct mostly occurred before the private reprimand, that the blame is on INS, that Paralegal is an experienced immigration paralegal of almost 20 years, and that the clients are not entitled to a refund since the firm did work on the case.

The panel found that no matter how experienced or competent Paralegal may be, it does not obviate Attorney's personal ethical duty to be responsible for the competent representation of and timely communication with each of his clients. After Attorney received the February 2006 private reprimand, he still failed to personally meet with Client and his sister for two additional months to substantively discuss their case, and even then, knew next to nothing about the facts or procedural history. Most disturbing, the client's original paperwork had been sitting at the post office undelivered for months while Paralegal insisted she had personal knowledge the application had been processed and returned for failure to meet quota.

Attorney was REPRIMANDED for violations of RPC 1.3 (former SCR 153) (Diligence) and RPC 1.4 (former SCR 154) (Communication). Further, in accordance with SCR 102(6), Attorney was assessed a \$1,000 fine to be paid to the State Bar of Nevada within 30 days.

File No. 07-041-0354

Attorney received a letter of reprimand and \$1,000 fine for failure to supervise non-lawyer assistant in immigration matter.

Mr. and Ms. Client retained Attorney's law firm to handle various immigration matters. Sometime in July 2006, Ms. Client received a call from Attorney's secretary advising that the office had received, a month earlier, an approval letter from the National Visa Center (NVC) for her son's visa. A few weeks later, Ms. Client received another call from the secretary stating her son's approval letter was received. Ms. Client was advised that an additional \$450 per visa was required to finish the process, which was remitted in September 2006 in the form of two cashier's checks.

For the next six months, Clients called Attorney's law office many times and were always routed to Paralegal for a status. Paralegal repeatedly told them to be patient because the NVC is very busy. By January 2007, the Clients had not received notice of any forward progress. When they were told by Attorney's office that Paralegal was leaving for the Philippines for a month, they decided to call the NVC themselves.

On or around January 26, 2007, Ms. Client called the NVC and was allegedly told Attorney had not submitted anything in either matter since the approval letters issued in July 2006. Subsequently, Ms. Client verified the cashier's checks given to Attorney in these matters were cashed by the State Department in late September 2006. Clients were advised by Attorney's office that rather than speak

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to Attorney, they needed to speak with Paralegal. They awaited Paralegal's return.

Paralegal eventually met with Clients and told them the NVC had made the error, not her, in not properly logging the paperwork. Specifically, incorrect tracking numbers had been written on the documents and checks. She allegedly stated other clients had this problem, and promised to consult with Attorney and resolve the matter.

Ms. Client phoned the NVC herself, and states the NVC advised her that the error had to be made by the attorney because the NVC would not hand-write tracking numbers, noting it is the attorney's responsibility to properly notate all documents submitted, and that the NVC would return any materials not so noted.

On February 7, 2007, Paralegal called Mr. Client and stated she had spoken to Attorney and that he would take care of the problem and no further money would be owed. The matter still remains unresolved.

During this entire representation, the clients only spoke with Attorney personally once at the initial consultation in May 2006.

Attorney's response to the state bar dated April 4, 2007, opines the problem is entirely with the NVC. Attorney further noted he was continuing to try and resolve the problem, and stated the handwriting on the documentation submitted to the NVC "does not appear to be that of anyone in office." No supplement was filed by Attorney.

Attorney received a private reprimand in February 2006 for failing to adequately supervise Paralegal, a non-lawyer assistant. Attorney only met or otherwise had contact with these clients one time at the initial consultation. While the panel understands the lengthy process involved in obtaining a visa, that does not obviate the duty to know what is going on with the attorney's cases, communicate with clients directly upon request and as otherwise is appropriate to adequately keep them informed of substantive issues, ensure paperwork is being competently prepared and submitted, and adequately supervise Paralegal's work. Even accepting Paralegal is a highly experienced and qualified legal assistant, the operative term is *assistant*. Attorney as the lawyer is responsible for Paralegal's work, all communications with clients, and Attorney's compliance with ethical duties in all dealings.

Attorney was REPRIMANDED for violations of RPC 1.3 (former SCR 153) (Diligence); RPC 1.4 (former SCR 154) (Communication); RPC 5.3 (former SCR 187) (Non-lawyer Assistants); and RPC 5.5 (former SCR 189) (Unauthorized Practice of Law). Further, in accordance with SCR 102(6), Attorney was assessed a \$1,000 fine to be paid to the State Bar of Nevada within 30 days.

File No. 07-001-1102 and 07-010-1102

Private reprimand appropriate when Attorney provided financial assistance to client in personal injury matter.

Client was involved in a serious accident on December 24, 2002, when he was struck by a drunk driver who was operating a rental car. The driver was arrested but skipped bail after being released.

Following the accident, Client was taken to University Medical Center (UMC) where he was admitted for his serious injuries. Doctor, who is also a grievant, operated on Client at UMC. Client's medical bills totaled \$485,479.76. Some of Client's medical bills were paid through Medicaid. Medicaid thereafter asserted a lien of \$87,976.81. Doctor asserted a lien in the amount of \$15,369.

Attorney was retained to represent Client shortly after the accident. Another attorney became Co-Counsel in Client's matter when the lawsuit was filed against the rental car company and the driver. The rental car company offered \$15,000 to settle the matter, which was the full amount of their mandatory liability coverage. The offer was accepted and the settlement of Client's claim against the rental car company occurred in July 2005.

While the adverse driver had opted to purchase the additional \$1,000,000 in supplemental insurance coverage, there was an exclusion clause if the driver was operating the vehicle while intoxicated when the accident occurred.

As a result, the insurance company denied any liability because of the DUI exclusion. They filed an action in the United States District Court for declaratory relief, arguing that the insurance coverage was not in place when the accident occurred due to the exclusion clause. Lengthy discovery occurred and the insurance company ultimately prevailed on its motion for summary judgment when the court ruled that the insurance exclusion was valid. Co-Counsel subsequently filed an appeal with the Ninth Circuit Court of Appeals. Prior to a mandatory settlement conference, the insurance company offered \$15,000 in exchange for dismissing the appeal.

On November 3, 2005, Client and his wife met with Co-Counsel to discuss the impact of settling the appeal matter for \$15,000. A staff member from Attorney's office translated for Client. Client signed the Authorization to Accept Settlement Offer on that same date. At the bottom of the authorization, Client hand-wrote in Spanish that he understood he would receive \$10,000 from the settlements. Client signed the release on December 15, 2005.

The settlement statement noted that attorney fees in the amount of \$10,000 would be split between Attorney and Co-Counsel. The settlement statement also showed that Attorney incurred \$5,500 in office expenses and \$5,900 in "Advances to Client." Attorney took a \$3,900 reduction of the charged expenses and reimbursements. On February 6, 2006, Attorney received a check in the amount of \$12,500 for reimbursement of advances, costs and attorney fee.

Also on February 6, 2006, Attorney was given a check in the amount of \$10,000 to distribute to Client after he signed the settlement statement. Client refused to sign the settlement statement, apparently because he had discovered that UMC had recorded a lien in the amount of \$479,489.19 against his property. It was around this time that Doctor's lien was also discovered. A stop-payment was subsequently issued on the check for Client. The \$10,000 remained deposited in Co-Counsel's trust account.

Thereafter, Co-Counsel investigated whether UMC lien had been paid by Victims of Crimes and Medicaid. Co-Counsel established that they were paid and the lien was removed from Client's property. Co-counsel then began working with Medicaid and Doctor in an effort to have their liens reduced.

A proposed reduction was given to Medicaid and Doctor. Medicaid, through Health Management Systems, agreed to accept payment of \$4,256.50 to resolve the lien on March 13, 2007. Doctor refused to accept the reduction, as he would only receive \$743.50 for a \$15,369 lien under Co-Counsel's proposal. Client would have been given \$5,000 under this proposal.

On March 20, 2007, the Attorney General's office sent a follow-up-letter to Co-Counsel regarding the reduction agreed to by Health Management Systems. The letter noted that normally, Medicaid would reduce their lien to one-third of the total settlement. In this instance, one-third of the total settlement amounted to \$10,000. Because Doctor was also asserting a lien, the Attorney General's office agreed to split the \$10,000 with Doctor.

However, Medicaid raised the amount necessary to resolve the lien as they noticed that the settlement disbursement sheet indicated that Client had previously received cash advances totaling \$5,900. The Attorney General's letter noted that a cash advance to a client who is a Medicaid recipient is not permitted under Nevada law, as the Medicaid lien must be satisfied prior to any distribution to the client. As such, they demanded payment of \$8,513 in order to resolve the lien.

Attorney was asked by the state bar why \$5,900 was advanced to Client during the course of representation. Attorney responded by stating that the money was for non-medical lien providers, such as pharmacies, transportation to and from providers, medical equipment and other miscellaneous providers who would not provide services on a lien.

The panel was concerned with the amount of time it has taken to resolve these liens and to distribute Client's monies, but found that Co-Counsel's firm controls these funds. As such, the panel found no misconduct against Attorney in this regard.

In addition, the panel was concerned with the \$5,900 in client advances Attorney gave Client. Attorney was advised that he is not permitted to provide financial assistance to a client in pending or contemplated litigation except for court costs and litigation expenses.

Attorney was **REPRIMANDED** for violating of SCR 158 (Conflict of Interest: Prohibited transactions).⁸

1. See SCR 102(4)(a).
2. See SCR 102(4)(b).
3. Under SCR 102(4)(c), Singer is immediately prohibited from accepting new clients. He may continue to represent existing clients for 15 days. Any fees or other funds received from or on behalf of clients during this 15-day period shall be deposited in a trust account, from which no withdrawals may be made except upon written approval from bar counsel or by order of a court of competent jurisdiction. *Id.*
4. See SCR 102(4)(b).
5. See *id.*
6. Singer shall comply with SCR 115.
7. See SCR 121 (Confidentiality) as amended eff. March 1, 2007.
8. On May 1, 2006, Supreme Court Rule 158 was replaced by Rule of Professional Conduct 1.8 (Conflict of Interest: Current Clients: Specific Rules).

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):
<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 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 PRIVATE REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION/INACTIVE STATUS – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or placed on CLE inactive status 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.