

## SUPREME COURT OF NEVADA

**In re:** Steven E. Jones  
**Bar No.:** 1601  
**Docket No.:** 66696  
**Filed:** December 5, 2014

### ORDER OF DISBARMENT BY CONSENT

*Attorney consented to disbarment following his guilty plea to a felony count in United States District Court.*

The Southern Nevada Disciplinary Board and attorney Steven Jones (Bar No. 1601), have filed a joint petition for Jones's disbarment by consent, pursuant to SCR 112. The petition acknowledges that Jones recently pleaded guilty to a felony count in the U.S. District Court. Jones agreed to surrender his law license to the state bar as part of that plea agreement. The petition is supported by Jones's affidavit, in which he states that he consents to disbarment and does so freely and voluntarily, that he has not been subjected to any coercion or duress in consenting to disbarment and that he is fully aware of the implications of his consent, having had an opportunity to consult with counsel prior to consenting to disbarment. Jones acknowledges that the state bar must file a petition under SCR 111, based on his conviction of a crime, and that, as a result, he may be suspended and the matter referred to the appropriate disciplinary board. Jones concedes that the material facts in the joint petition for disbarment by consent are true and that he submits the affidavit with full knowledge that, if the state bar were to prosecute his case, he could not successfully defend against the charges.

Pursuant to SCR 112(1), an attorney who is the subject of an investigation or proceeding involving allegations of misconduct may consent to disbarment by submitting the requisite affidavit. Jones's affidavit meets the requirements of SCR 112(1). Therefore, the petition for disbarment by consent is granted. Steven Jones is hereby irrevocably disbarred. SCR 102(1); SCR 112. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1 regarding notice and publication.

It is so ORDERED.

**In re:** John H. Sarb  
**Bar No.:** 7896  
**Docket No.:** 62946  
**Filed:** November 10, 2014

### ORDER OF DISBARMENT

*Attorney disbarred after misrepresenting to a client that case was pending, when it was, in fact, dismissed; appearing at a hearing*

*for a client while suspended; and failing to respond to the state bar or appear at the disciplinary hearing.*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney John H. Sarb be disbarred from the practice of law in Nevada.<sup>1</sup> See SCR 105(3)(b).

The underlying disciplinary proceedings arose from Sarb's representation of clients in two separate family law matters. With respect to the first client, Sarb misrepresented, to the client, that the client's case was still pending and requested \$800 in order to serve an opposing party in a foreign country, even though the matter had been dismissed two months prior to Sarb's request. With respect to the second client, Sarb appeared at a hearing on behalf of the client in December 2011, even though he was suspended from the practice of law. In both matters, Sarb failed to respond to numerous attempts by the clients to ascertain the status of their cases, failed to personally inform them that he was terminating his representation and failed to propel their pending matters forward in a diligent manner.

Sarb failed to respond to the state bar's complaints alleging the foregoing. See SCR 105(2) (If an attorney fails to respond to a state bar complaint, the charges shall be deemed admitted). The matters were consolidated and proceeded to a hearing. Although he was personally served with notice of the hearing, Sarb did not appear, or otherwise participate, in the proceedings.

The panel found that Sarb violated RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.16 (declining or terminating representation), RPC 5.5 (unauthorized practice of law), RPC 8.1(b) (bar admission and disciplinary matters), and RPC 8.4(c) and (d) (misconduct). While the panel found Sarb's lack of a prior disciplinary record a mitigating factor, it also found the following aggravating factors: a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law and indifference to making restitution. SCR 102.5. Based on these findings, the panel recommended that Sarb be disbarred from the practice of law in Nevada.

A disciplinary panel's recommendation of disbarment is subject to automatic review by this court. SCR 105(3)(b). Although persuasive, the panel's findings and recommendations are not binding on this court. *In re Discipline of Schaefer*, 117

Nev. 496, 515, 25 P.Sd 191, 204 (2001). This court must review the record de novo and exercise its independent judgment with respect to what type of discipline, if any, is warranted. *Id.* The panel's findings of misconduct must be supported by clear and convincing evidence. *Id.*

As Sarb failed to answer or otherwise respond to the state bar's complaints, the charges are deemed admitted (SCR 105(2)), and we conclude that clear and convincing evidence supports the panel's findings. Additionally, the state bar's recommended discipline is appropriate, in light of the nature of Sarb's misconduct and apparent abandonment of his law practice.

Accordingly, we disbar Sarb from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Sarb 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.

It is so ORDERED.

**In re:** Christopher Geiger  
**Bar No.:** 9029  
**Docket No.:** 66012  
**Filed:** November 10, 2014

### ORDER OF DISBARMENT

*Attorney disbarred following default hearing for violations of failure to pursue clients' cases; failure to communicate with clients and state bar; mishandling client funds; assisting in the unauthorized practice of law; and failure to supervise his non-lawyer assistants.*

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings that attorney Christopher Geiger violated multiple Rules of Professional Conduct, and its recommendation that he be disbarred.

Geiger is the subject of six grievance files alleging incompetence, failure to diligently pursue clients' cases, failure to communicate with clients and the state bar, mishandling of client funds, assisting in the unauthorized practice of law and failing to supervise non-lawyer assistants, and failure to comply with rules governing multijurisdictional law firms. The state bar filed two complaints in this matter. Geiger answered the first complaint, but did not answer the second complaint, did not appear at the formal hearing and filed no briefs on appeal.

The hearing panel therefore proceeded on a default basis, and determined that Geiger had committed the violations alleged

in the first complaint. The violations alleged in the second complaint were deemed admitted, based on Geiger's failure to respond SCR 105(2). The panel found a total of 35 violations of the Rules of Professional Conduct, specifically: three violations of RPC 1.1 (competence), two violations of RPC 1.3 (diligence), two violations of RPC 1.4 (communication), two violations of RPC 1.5 (fees), two violations of RPC 1.15 (safekeeping property), one violation of RPC 3.1 (meritorious claims and contentions), two violations of RPC 3.2 (expediting litigation), two violations of RPC 3.3 (candor toward the tribunal), one violation of RPC 3.4 (fairness to opposing party and counsel), two violations of RPC 4.1 (truthfulness in statements to others), two violations of RPC 5.3(b) (responsibilities regarding non-lawyer assistants), three violations of RPC 5.5(a)(2) (unauthorized practice of law), one violation of RPC 7.5A (registration of multi-jurisdictional law firms), two violations of RPC 7.5A(j) (responsibility of Nevada-licensed member), three violations of RPC 8.1(b) (bar admissions and disciplinary matters) and five violations of RPC 8.4(c) (misconduct).

This court's automatic review of a disciplinary panel's findings and recommendations is de novo. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The state bar has the burden of showing, by clear and convincing evidence, that Geiger committed the violations of which he was charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

Having reviewed the record of the disciplinary proceedings in this matter, we conclude that clear and convincing evidence supports the panel's findings that Geiger committed the offenses charged. See SCR 105(2)(f). We further conclude that the panel's recommendation of disbarment is appropriately tailored to Geiger's misconduct. Despite Geiger's failure to respond to the second complaint or to appear at the formal hearing, clear and convincing evidence supports a finding that Geiger was properly put on notice of the charges and proceedings against him. Geiger was aware of the charges in the second complaint and chose not to defend

them. We therefore approve the panel's recommendation that Geiger be disbarred.

Accordingly, Christopher Geiger is hereby irrevocably disbarred from the practice of law in Nevada. SCR 102(1). Geiger shall pay the costs of the disciplinary proceedings, SCR 120, and shall comply with SCR 115. The state bar shall comply with SCR 121.1.

It is so ORDERED.

**In re: James E. Herbe**  
**Bar No.: 9583**  
**Docket No.: 63150**  
**Filed: November 10, 2014**

#### ORDER OF SUSPENSION

*Attorney suspended two years for multiple rules violations, term to commence after attorney resolves his CLE suspension. Since the attorney will have been continuously suspended for five years, he shall take, and pass, the Nevada Bar Examination prior to any petition for reinstatement.*

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney James Herbe violated multiple Rules of Professional Conduct, and its recommendation that Herbe be suspended for two years.

The hearing panel considered two complaints based on four grievances lodged against Herbe. The alleged violations in the complaint stem from Herbe's conduct and handling of various cases while employed at the firm of Black & LoBello. Herbe neither answered the complaints nor attended the hearing. Thus, the allegations in the complaints were deemed admitted, and the hearing occurred in default.

The hearing panel found, by clear and convincing evidence, that Herbe violated RPC 1.1 (competence), RPC 1.3 (diligence) (two violations), RPC 1.4 (communication), RPC 1.7 (conflict of interest: current clients), RPC 1.15 (safekeeping property), RPC 3.4(c) (fairness to opposing party and counsel: knowingly disobey an obligation under the rules of a tribunal), RPC 8.1 (bar admission and disciplinary matters) (two violations) and RPC 8.4 (misconduct) (three violations). The panel recommended that Herbe be suspended for two years and be required to pay the costs of the disciplinary proceedings within six months of receipt of the bill of costs.

Although persuasive, the findings and recommendations of a panel of the Southern Nevada Disciplinary Board are not binding, and this court's automatic review of a

panel's decision is conducted de novo. SCR 105(3)(b); *In re Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884-85 (2007). The panel's findings of misconduct must be supported by clear and convincing evidence. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings that Herbe committed the violations alleged. See SCR 105(2)(f). We further conclude that the panel's recommended discipline is appropriately tailored to Herbe's misconduct, and we approve the recommendation in its entirety.

Accordingly, attorney James Herbe is hereby suspended from the practice of law for two years. However, we note that Herbe is currently suspended for failure to meet his Continuing Legal Education (CLE) requirements, and has been so since July 2010. See *In re Application of the Bd. of Continuing Legal Education*, Docket No. 56143 (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys, July 21, 2010). In light of this, the suspension imposed in the instant order will not commence until after Herbe resolves his CLE suspension. See SCR 213. As such, by the time Herbe is eligible to petition for reinstatement, he will have been continuously suspended for five years or more. Therefore, Herbe shall provide proof of successful completion of the Nevada State Bar Examination, including the Multistate Professional Responsibility Examination, prior to any petition for reinstatement. See SCR 116(5). Herbe shall pay the costs of the disciplinary proceedings within six months of receipt of the state bar's bill of costs. See SCR 120. Upon any attempted reinstatement, Herbe shall comply with SCR 116. Additionally, Herbe shall comply with SCR 115, and the state bar shall comply with SCR 121.1.

It is so ORDERED.

**In re: Emily R. Dow**  
**Bar No.: 10570**  
**Docket No.: 64217**  
**Filed: October 28, 2014**

#### ORDER OF SUSPENSION

*Two-year suspension (stayed), with six months and one day actual suspension, with conditions, imposed on attorney who suggested that her inmate-client stage an attack on a guard.*

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This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings that attorney Emily Dow violated two rules of professional conduct, and its recommendation that she be suspended for two years, with conditions.

This matter stems from an inappropriate, recorded conversation between Dow and Brett Miller, who, at the time of the conversation, was an inmate in the Washoe County Detention Center, awaiting sentencing on a bank robbery charge. Dow was Miller's attorney in certain civil matters, unrelated to the bank robbery charge. Dow and Miller had also begun a personal relationship.<sup>2</sup> Dow was aware that, during a previous incarceration, Miller had assisted a prisoner who had injured himself. By so doing, Miller received credit for saving the inmate's life and gained an early release because of his conduct.

Based on this information, Dow presented Miller with a similar scenario during one of the many telephone calls that took place between them, while Miller was incarcerated. Dow set forth a scenario in which Miller arranged the transfer of an acquaintance to the jail and staged a jailhouse fight between the acquaintance and a guard; Miller would then intervene and assist the guard. The purpose of the plan was to secure an early release for Miller, as in the previous incident. Dow and Miller did not discuss the scheme in any of their later conversations and no action was taken toward implementing any part of it.

A hearing panel of the Northern Nevada Disciplinary Board determined that Dow had violated RPC 1.2(d) and RPC 8.4(a)-(d). The panel considered aggravating and mitigating factors and found that, in aggravation, Dow had acted with a dishonest and selfish motive and had not acknowledged that her conduct was wrongful. Dow's lack of a prior disciplinary record and relative inexperience in the practice of law were found to be mitigating circumstances.

The panel recommended that Dow be suspended for two years, with the following conditions: Dow must take and pass the Multistate Professional Responsibility Exam (MPRE) before applying for reinstatement; Dow must demonstrate to Bar Counsel that she has notified her employer, and all clients, of her suspension, within three days of the effective date of the suspension order; Dow must wind up her practice within 15 days of the suspension order, placing her clients with other counsel or concluding

representation; and Dow must pay the costs of the instant disciplinary proceeding.<sup>3</sup>

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's finding that Dow violated RPC 1.2(d), and RPC 8.4(a), (c) and (d). We further conclude that clear and convincing evidence does not support a finding that Dow's conduct falls within the ambit of RPC 8.4(b), which states that it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." See SCR 105(2)(f). This conclusion is supported by the fact that both the U.S. Attorney and the FBI heard the conversation at issue and declined to prosecute the matter.

We therefore approve the panel's recommendation that Dow be suspended. However, due to the isolated nature of the incident, which Dow and Miller did not discuss in later conversations; the lack of any action taken to implement the plan; and the lack of client harm, we conclude that an actual suspension of six months and one day, with a two-year stayed suspension, during which Dow shall make quarterly reports to the state bar, is more appropriately tailored to Dow's misconduct. A suspension of this length will require Dow to petition for reinstatement. SCR 116. The two-year stayed suspension shall become active upon any further misconduct. We approve the additional reinstatement conditions recommended by the hearing panel.

Accordingly, Emily Dow is hereby suspended from the practice of law for six months and one day, with a two-year stayed suspension, that shall become active upon any misconduct other than a minor traffic violation. Dow shall comply with the conditions approved above. Dow is ordered to pay the costs of the disciplinary proceedings. SCR 120. Dow shall comply with SCR 115. The state bar shall comply with SCR 121.1.

It is so ORDERED.

**In re:** Rick Lawton  
**Bar No.:** 694  
**Docket No.:** 63286  
**Filed:** November 10, 2014

#### ORDER GRANTING PETITION FOR RESIGNATION

*Petition for resignation with charges pending granted.*

This is an application, by attorney Rick Lawton, for his resignation from the Nevada bar, with disciplinary charges pending.

Lawton acknowledges that there are charges pending against him, stemming from his consent to entry of judgment in a civil action against him, filed by the Securities Exchange Commission. Bar Counsel has filed a motion in support of the application and recommended that the resignation be approved, subject to the requirements of SCR 98(5)(b)-(d). SCR 98(5)(b) and (d) provide:

b. A member of the state bar against whom disciplinary charges are pending may tender a written application resigning from membership in the state bar and relinquishing the right to practice law. No such resignation shall become effective unless and until ordered by the Supreme Court after consideration and recommendation by bar counsel.

d. The state bar shall retain jurisdiction to investigate and take action with respect to matters involving a past member's conduct prior to the member's resignation from the state bar.

Lawton acknowledges that his resignation is irrevocable, and he agrees to relinquish his right to practice law in Nevada. See SCR 98(5)(c).

We conclude that the application satisfies the requirements of SCR 98(5). Accordingly, we grant the motion and approve Rick Lawton's application for resignation, subject to the state bar's continuing jurisdiction under SCR 98(5)(d). Lawton shall comply with SCR 115 and the state bar shall comply with SCR 121.1. See SCR 98(5)(e).

It is so ORDERED.

**In re:** Manuel O. Montelongo  
**Bar No.:** 8578  
**Docket No.:** 65355  
**Filed:** October 10, 2014

#### ORDER OF REINSTATEMENT

*Attorney reinstated, with conditions, following disbarment by consent.*

This is a petition for reinstatement to the practice of law, by disbarred attorney Manuel O. Montelongo.<sup>4</sup> A hearing panel of the Southern Nevada Disciplinary Board unanimously recommended that Montelongo be reinstated to the practice of law.

The hearing panel found that Montelongo fulfilled SCR 116's requirements for an attorney seeking reinstatement, and demonstrated, with clear and convincing evidence, that he has the

moral qualifications, competency and legal education required for readmission to the practice of law. Further, the panel found that Montelongo's resumption of the practice of law would not be detrimental to the integrity and standing of the bar, the administration of justice or the public interest. The panel unanimously recommended that Montelongo be reinstated, subject to the following conditions:

1. Montelongo must enter into a two-year mentoring agreement, focusing on law office management and accounting practices. Nevada attorney Nadia von Magdenko has agreed to act as Montelongo's mentor, and the state bar has approved her selection. During this time, von Magdenko shall submit quarterly reports to the state bar, indicating, in a final report, whether or not Montelongo would benefit from continued mentorship;
2. During the two-year period following reinstatement, Montelongo shall practice only criminal law;
3. Montelongo must complete 21 hours of continuing legal education (CLE) each year during the two-year period following reinstatement. This CLE shall include courses on office management, trust accounts and law office practice. The CLE shall consist of 15 general credit hours and six ethics credit hours each year;
4. Montelongo shall timely resolve an outstanding State Bar Client Security Fund (CSF) matter: *Ruiz v. Montelongo*;
5. Montelongo shall pay the costs of the reinstatement proceedings, in accordance with SCR 120.<sup>5</sup>

We also agree with the panel's recommendation that Montelongo repay the CSF \$127,470, from his settlement of a civil suit against Wells Fargo Bank, stemming from the conduct that led to his disbarment. Montelongo has provided documentation demonstrating that this amount has been paid. To the extent the clients have not been fully reimbursed by the CSF, Montelongo shall use any settlement funds, in excess of the \$127,470 specified by the hearing panel (excluding reasonable attorney fees), to reimburse affected clients, on a pro rata basis, until all clients are fully compensated or the funds are exhausted.

SCR 116(2) requires that an attorney seeking reinstatement must:

demonstrat[e] by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this state, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice or to the public interest.

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings and conclusions. We therefore approve the panel's recommendation that the petition be granted, subject to conditions. Accordingly, Manuel O. Montelongo is hereby reinstated to the practice of law, subject to the conditions set forth above.

It is so ORDERED.

**In re: Colbern Cox Stuart, III**  
**Bar No.: 6513**  
**Docket No.: 63964**  
**Filed: September 26, 2014**

#### ORDER GRANTING PETITION

*Reciprocal discipline of five years imposed on attorney who was disbarred in California for 15 counts of harassment by telephone and two counts of repeated harassment by telephone or electronic contact.*

This is a petition, under SCR 114, for reciprocal discipline of attorney Colbern C. Stuart, III, based on discipline imposed upon him in California. Stuart did not self-report his California discipline, as required by SCR 114(1), nor did he respond to this petition. See SCR 114(3).

Stuart, an attorney admitted to practice law in Nevada and California, has been suspended in Nevada since August 2003, based on his failure to pay bar dues. See SCR 98(9)-(12). In December 2012, the Office of Bar Counsel received notice from the State Bar of California that Stuart had been disbarred in California, based on his conviction for 15 counts of harassment by telephone and two counts of repeated harassment by telephone or electronic contact.

#### California Disciplinary Proceedings:

Following Stuart's conviction, the California bar initiated a hearing before the state bar court, recommending that he be disciplined, pursuant to California Business and Professional Code § 6101(a) (West 1996) (providing that conviction of a misdemeanor that involves moral turpitude is cause for disbarment or suspension). Despite some initial, limited participation

in the discipline process, Stuart failed to file a response to the notice of hearing he was sent, and a default was entered against him. Because Stuart failed to file a response and failed to have the default set aside, the facts alleged in the petition were deemed admitted, see State Bar of California Rule 5.82(2) (2011), resulting in the California bar later filing a petition to have him disbarred.<sup>6</sup> See State Bar of California Rules 5.83(C)(1) and 5.85(A) (2011) (requiring California bar counsel to file a petition for disbarment if an attorney fails, within 180 days, to have a default entered in a disciplinary proceeding set aside or vacated).

The admitted facts demonstrate that Stuart was convicted of 17 counts of harassment, because he initiated or sent approximately 21 telephone calls or emails to his ex-wife that were threatening and intended to harass or frighten her. While the state bar court found that repeated harassment by telephone or email does not always involve conduct warranting discipline, it concluded that Stuart's harassment of his ex-wife did involve moral turpitude and, thus, warranted discipline. It further determined that, because Stuart failed to have the default entered against him set aside, disbarment was warranted under State Bar of California Rule 5.85. Following the state bar court's entry of an order recommending that Stuart be disbarred, the California Supreme Court entered an order disbaring him from practicing law in California.

#### Nevada Disciplinary Proceedings:

Before receiving the notice of disbarment, the Nevada Office of Bar Counsel filed a petition in this court under SCR 111(4), based on Stuart's California convictions, that was docketed as Docket No. 60061. Because this court's initial review of that matter indicated that Stuart's convictions did not appear to meet the definition of serious crime, as set forth in SCR 111(6), but were not for minor offenses and did adversely reflect on Stuart's fitness to practice law, he was directed to show cause why he should not be temporarily suspended and referred for discipline in accordance with SCR 111(9). See *In re Discipline of Stuart*, Docket No. 60061 (Order to Show Cause, October 18, 2012). However, Stuart did not respond to the show-cause order, and this court ordered him temporarily suspended, and referred him to the Southern Nevada Disciplinary Board for further proceedings,

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based on the California convictions and his failure to respond to the show-cause order. *See id.* (Order of Temporary Suspension, June 21, 2013).

Following Stuart's California disbarment, Nevada Bar Counsel filed this petition for reciprocal discipline, noting that Stuart's conviction violated SCR 111 (regarding attorneys convicted of crimes) and RPC 8.4(b) (providing that a criminal act that adversely reflects on an attorney's fitness as a lawyer is professional misconduct). The petition correctly notes that the California State Bar Court order, recommending Stuart's disbarment, identifies no aggravating factors and indicates that Stuart had no record of prior discipline. Stuart did not file a response to the petition and the time to do so has passed.<sup>7</sup> *See* SCR 114(3) (allowing an attorney 15 days to file a response to a petition for reciprocal discipline).

SCR 114 mandates the imposition of identical reciprocal discipline, unless one of four exceptions applies. We conclude that one of the four exceptions exists in this matter, specifically, that the misconduct warrants different discipline in this state. SCR 114(4)(c). In particular, we conclude that disbarment is not warranted; disbarment in Nevada is not equivalent to the disbarment imposed on Stuart in California, as disbarment in Nevada is irrevocable, while in California an attorney may seek reinstatement after five years. *See* SCR 102(1); California Rules of Procedure of State Bar, Rule 5.442(B).

Accordingly, we grant the petition for reciprocal discipline, but instead impose discipline in Nevada that is equivalent to the disbarment discipline imposed in California. Therefore, Stuart is hereby suspended from the practice of law for five years. Stuart must petition this court for reinstatement pursuant to SCR 116. Stuart shall comply with SCR 115 and the State Bar of Nevada shall comply with SCR 121.1.

It is so ORDERED.

**In re:** Shannon L. Floyd  
**Bar No.:** 9016  
**Docket No.:** 64858  
**Filed:** October 24, 2014

### ORDER OF SUSPENSION

*Attorney suspended for three months and one year probation imposed, with conditions, for failure to properly deposit funds in trust account, file client's*

*bankruptcy petition, respond to the state bar, timely pay restitution and costs imposed by the state bar, failure to attend hearing and failure to timely provide proof of CLE requirements.*

This is an automatic de novo review, 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings of fact, conclusions of law and recommendations for attorney discipline, arising from attorney Shannon L. Floyd's handling of a client's bankruptcy case and Floyd's subsequent conduct, in the course of proceedings regarding that client's grievance against Floyd. The panel found that Floyd violated RPC 1.1 (competence), 1.15 (safekeeping property), 3.4(c) (fairness to opposing party and counsel: knowingly disobeying an obligation of a tribunal), 8.1 (bar admission and disciplinary matters) and 8.4(d) (misconduct: engaging in conduct that is prejudicial to the administration of justice). Based on these violations, the panel recommended that Floyd be issued a public reprimand and pay the costs of the disciplinary proceeding.

As explained below, clear and convincing evidence supports the panel's findings concerning Floyd's misconduct; however, having considered the record and the aggravating and mitigating circumstances, we reject the panel's recommended discipline as too lenient. Instead, we impose a three-month suspension, along with the additional conditions set forth below.

Although the disciplinary panel's findings and recommendations are persuasive, they are not binding, and this court must review the record de novo. SCR 105(3)(b); *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). To support imposing discipline, the panel's findings must be supported by clear and convincing evidence. *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). In determining the proper disciplinary sanction, we consider four factors:

1. The duties violated;
2. The lawyer's mental state;
3. The potential, or actual, injury caused by the lawyer's misconduct; and
4. The existence of aggravating or mitigating circumstances. *In re Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Neither party has filed an opening brief; this matter will, accordingly, be decided on the record, without briefing or oral argument. SCR 105(3)(b).

After reviewing the record, we conclude that clear and convincing evidence supports the panel's findings concerning Floyd's misconduct. In particular, the record demonstrates that Floyd failed to:

1. Properly deposit client funds into her client trust account;
2. File her client's petition for bankruptcy;
3. Timely file an answer to the state bar's complaint or provide documents for these proceedings, as ordered by the panel;
4. Respond to correspondence from the state bar;
5. Timely pay restitution to her client as ordered by the panel;
6. Timely pay costs of the disciplinary proceeding, as ordered by the panel;
7. Provide timely proof of completion of the CLE requirements imposed by the panel;
8. Appear at a hearing in the course of these proceedings; and
9. Provide good cause for her noncompliance with panel orders.

We conclude that a three-month suspension is appropriate, in light of both the aggravating factors (Floyd's pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with orders and indifference to making restitution), and the mitigating factors (the lack of prior public discipline, Floyd's serious illness, and the existence of personal or emotional problems), identified by the panel. SCR 102.5. Accordingly, we suspend Floyd from the practice of law for three months, beginning on the date of this order and subject to the following conditions. Floyd shall:

1. Have a mentor throughout the suspension period and for a period of one year thereafter, and this mentor shall file a report with the state bar every three months;
2. Retake and pass the Multistate Professional Responsibility Exam within one year from the date of this order, and;
3. Complete, within three months from the date of this order, 10 hours of continuing legal education in law office management, in addition to her annual requirements, providing proof of such attendance to the state bar.

Floyd shall pay the costs of the disciplinary proceedings within 30 days of receipt of the state bar's bill of costs. SCR 120(1).

It is so ORDERED.

SAITTA, J., with whom DOUGLAS, J., joins, concurring in part and dissenting in part:

While I concur with the majority in concluding that clear and convincing evidence supports the panel's findings concerning Floyd's misconduct, I dissent from the discipline imposed. Floyd's conduct here violates several rules of professional conduct, including those governing competence, safekeeping property, fairness,

obligations to a tribunal, disciplinary matters and conduct concerning the administration of justice. I believe more severe discipline is appropriate, based on this extensive misconduct. Thus, I would impose a two-year suspension from the practice of law, with one year of that suspension stayed, during which I would require Floyd to submit quarterly reports to the state bar, and complete the other conditions imposed as a result of her professional conduct violations.

Saitta, J.

I concur:  
Douglas, J.

## 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 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. September 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.

1. Sarb was suspended in August 2011, for failure to comply with state bar reporting and dues requirements, see SCR 78.5; SCR 79; SCR 98; NRS 7.034; NRS 425.520; RPC 6.1, and placed on additional suspension in November 2011, for failure to complete required continuing legal education requirements. See *In re Application of Bd. of Continuing Legal Educ.*, Docket No. 58961 (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys, November 9, 2011).
2. Dow and Miller subsequently married, and Dow is now known as Emily Miller. For consistency with the original complaint and other documents filed in this matter, this order will refer to her as Emily Dow.
3. The panel also recommended that, if reinstated, Dow must enter into a mentoring agreement with a state-bar-approved mentor, to continue for one year, with the mentor making quarterly reports to the state bar, and Dow is prohibited from allowing Miller to access her law office, client files and trust accounts. While these conditions appear reasonable, such conditions are more appropriately considered as part of a reinstatement proceeding and, thus, we decline to impose them now.
4. Montelongo was disbarred by consent

- in 2009. See *In re Discipline of Montelongo*, Docket No. 53899 (Order of Disbarment by Consent, September 2, 2009); SCR 112. When the complaint was filed in Montelongo's disbarment proceeding, the Supreme Court Rules permitted a disbarred attorney to petition for reinstatement after three years. See SCR 122 (specifying effective dates for the Supreme Court Rules). Disbarment is now irrevocable. SCR 102(1).
5. Montelongo provided documentation that appears to demonstrate that he has resolved the *Ruiz* grievance and paid the costs of the reinstatement proceedings. To the extent, if any, that these conditions are not fully resolved, Montelongo shall do so within a reasonable amount of time.
  6. The state bar court order recommending that Stuart be disbarred notes that, shortly after default was entered, Stuart made two calls to the state bar, stating his intent to challenge the default, and submitted to the state bar a pleading entitled "Opposition," which contained no proof of service and was not filed with the state bar court. However, Stuart never filed a request to have the default entered against him set aside.
  7. All orders and other documents mailed to Stuart by this court, in both this matter and the related proceeding in Docket No. 60061, have been returned to this court.