

bar counsel report

SUPREME COURT OF NEVADA

RESIGNATIONS

(VOLUNTARY, NO DISCIPLINE PENDING)

SCR 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this rule:

Peter Niles Fowler	Bar No. 2530	Order 60121	Filed 3/7/12
Andrew H. Berenson	Bar No. 6902	Order 60120	Filed 3/7/12

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No.: 09-281-0587

Letter of Reprimand imposed when attorney engaged in dishonest conduct.

On November 12, 2009, the state bar received a grievance from an Eighth Judicial District Court judge who stated that she was complying with her duty to report Attorney in regard to a lawsuit he filed concerning a home purchase and subsequent refinancing of the property.

Attorney filed a complaint wherein he acknowledged signing documents which falsely verified that his grandmother worked for his law firm, earning more than \$500,000 a year as a consultant. The grandmother had been previously placed on title of the property in conjunction with one of the refinancings of the home.

Attorney acknowledged that at the time Attorney and grandmother signed documents verifying her purported \$500,000 income, grandmother was 85 years old, unemployed with no assets, living on social security income, had ceased working her part-time job in 2006 and did not earn in excess of \$500,000 a year working as a "consultant" at the law office.

Although the panel noted that Attorney did so based upon fear of losing his home, due to alleged misconduct by lenders and brokers involved in the purchase and financing of his home which, as a result, required several refinances, misrepresenting his grandmother's salary in order to obtain a loan was inappropriate and cannot be condoned, especially for an officer of the court.

Attorney was **REPRIMANDED** for violating Rule of Professional Conduct (RPC) 8.4(c) (Misconduct: Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

File No.: 09-149-3302

Letter of Reprimand imposed when attorney failed to supervise nonlawyer processing loan modifications.

Between September 2008 through 2009 Nonlawyer A and Nonlawyer B operated a foreclosure rescue scam (Company). Company charged \$2,500 retainers and misled customers that their service would stop ongoing foreclosures on their homes and/or obtain loan modifications. In most cases, Nonlawyer A and Nonlawyer B required the victims to pay a monthly charge of \$150 for litigation costs in addition to the original retainers of \$2,500 for the duration of the litigation, despite the fact neither were licensed as attorneys in Nevada. Nonlawyer A was indicted and charged with 12 felony counts.

On or about September 2008, Attorney saw an ad on Craigslist. Attorney applied for the job with Company and was hired to prepare oppositions to Motions to Dismiss on behalf of clients and to work with another attorney in the Company. Attorney stated he worked for Company for approximately five to six weeks. Attorney prepared Temporary Restraining Orders, made appearances for clients and would meet with clients who had questions.

Attorney was paid \$500 a day while employed by Company. Attorney also did obtain a client from Company that went with Attorney when he left.

Based upon the foregoing, the Panel of the Southern Nevada Disciplinary Board was concerned with Attorney's association with nonlawyers who were practicing law without a license and fee splitting. Attorney entered into a contract for legal services with nonlawyers when Attorney knew or should have known they would use Attorney's work-product to engage in the unauthorized practice of law.

Attorney was **REPRIMANDED** for violating RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

File No.: SG11-0448

Letter of Reprimand imposed when attorney failed to keep client informed of the status of their case.

On May 22, 2009, Client retained Law Firm to represent him in a DUI matter for a fee of \$2,000. On August 6, 2010, Attorney moved to withdraw as counsel for Client. However, Attorney did not inform Client that the firm had withdrawn from his case. Additionally, Attorney did not inform him that the court had issued a bench warrant for his failure to comply with the terms of his plea. On August 23, 2010, Attorney personally signed a letter to Client informing him that his matter had been closed in Las Vegas Justice Court.

Nevada Rule of Professional Conduct 1.4 (Communication) requires a lawyer to keep the client reasonably informed regarding the status of their case and promptly comply with reasonable requests for information accurately. In this instance, Attorney should have advised Client that there was a warrant out for his arrest. Additionally, Attorney should not have advised him his case was closed in Justice Court when it was not. Additionally, RPC 1.16 sets forth specific rules on withdrawing as counsel which were not followed.

Attorney was **REPRIMANDED** for having violated RPC 1.4 (Communication) and RPC 1.16 (Declining or Terminating Representation).

File No.: SG10-0044

Letter of Reprimand imposed when attorney failed to keep client informed of the status of their case.

Client retained Law Firm to handle a bankruptcy for himself and his wife. A Chapter 13 was filed on their behalf. Client stated that it was his understanding that the terms of the plan required that he and his wife make plan payments to the trustee in the amount of \$185 per month for 36 months.

Approximately a year and a half later, Client received a Notice of Motion to Dismiss for failure to make plan payments. Client prepared a statement of verification of plan payments and submitted it to the trustee. He e-mailed the verification to Law Firm and directly to the trustee.

Client received an e-mail from the legal assistant advising him that the current plan indicated that payments were to be \$185 per month for the first 12 months, and \$471 thereafter. Client and his wife stated that they were never notified by Law Firm that a plan confirmation hearing had occurred changing the terms as stated above. They also stated that they would not have consented to such a change because the amount was too high to pay on a monthly basis.

Client sent several e-mails back to legal assistant asking how the plan was changed with no verbal or written consent from them. Legal Assistant responded stating that pursuant to the disclosures signed by Client and his wife, Law Firm was not required to seek their consent to change the terms of the plan.

The letter provided by Attorney in response to the claims made by Client did not provide any documentation indicating that Clients were kept apprised of the status of their case or consulted regarding change in the terms of the plan.

Nevada Rule of Professional Conduct 1.4 (Communication) requires a lawyer to keep the client reasonably informed regarding the status of their case and promptly comply with reasonable requests for information. In this instance, Attorney should have provided periodic verbal or written communications to Client regarding the status of their bankruptcy, especially in the event of substantial changes thereto.

Attorney was **REPRIMANDED** for having violated RPC 1.4 (Communication).

File No.: SG10-0897

Letter of Reprimand imposed when attorney failed to safe keep property.

Company filed a grievance with the state bar regarding Attorney. Company represented a third-party provider of workers compensation benefits received by Attorney's client whom Attorney represented in a legal action after he was injured in a traffic accident.

Although Attorney received notice of Company's interest in any funds received from Client's matter, Attorney disbursed the settlement funds without paying any money to Company. In mitigation, Attorney cooperated with the state bar's investigation and acknowledged that Company's lien was "missed" when the funds were disbursed, and Attorney accepted responsibility for his mistake.

Attorney was **REPRIMANDED** for violating RPC 1.15 (Safekeeping Property). ■

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.