

bar counsel report

SUPREME COURT OF NEVADA

In re: Randolph H. Goldberg

Docket No.: 62947

Filed: April 25, 2013

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney suspended from the practice of law following criminal conviction on charges of attempting to evade or defeat federal income taxes.

This is a joint petition pursuant to SCR 111(4) by bar counsel and attorney Randolph H. Goldberg based on Goldberg's conviction, pursuant to a guilty plea, of one count of attempting to evade or defeat federal income taxes, a felony. See 26 USC § 7201. Goldberg timely informed bar counsel of his conviction. See SCR 111(2).

When an attorney has been convicted of a serious crime, SCR 111 provides that this court shall enter an order suspending that attorney. SCR 111(7). A felony is explicitly a "serious crime" under SCR 111, and a guilty plea constitutes a "conviction." SCR 111(1),(6). Goldberg pleaded guilty to a felony and has therefore been convicted of a serious crime for purposes of SCR 111.

Accordingly, we temporarily suspend Goldberg from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings, in which the sole issue to be determined is the extent of discipline to be imposed. See SCR 111(7), (8).

It is so ORDERED.

In re: Mark A. Kemp

Docket No.: 59029

Filed: April 18, 2013

ORDER OF SUSPENSION

Attorney suspended from the practice of law for two years, subject to conditions after misappropriating client funds.

This is an automatic review, pursuant to SCR 105(3)(b), of a disciplinary board hearing panel's recommendation that attorney Mark A. Kemp be suspended from the practice of law for six months and one day, subject to conditions.

The instant matter arises from Kemp's misappropriation of client funds. After a hearing on the matter, the disciplinary panel found that Kemp violated

RPC 1.4 (communication); RPC 1.15 (safekeeping property); RPC 8.1(b) (bar admission and disciplinary matters); and RPC 84 (misconduct).

The panel recommended suspension for six months and one day, with the conditions that Kemp:

1. Take CLE totaling 12 hours as a condition precedent to reinstatement, with that CLE consisting of three hours of ethics CLE, three hours regarding law office management and six general CLE hours;
2. Pay restitution within 24 months of reinstatement in the amount of \$47,478.83 plus 5.25 percent interest accruing from January 2008, to the heirs of the estate of Marco E. Monteverdi; and
3. Be mentored by an attorney and a CPA for 24 months after reinstatement. The state bar argued for a four-year suspension, with the above conditions.

Having reviewed the record, we approve the panel's recommendation that Kemp be suspended subject to conditions. However, based on Kemp's misappropriation of client funds and initial failure to cooperate with the state bar in its investigation, we determine that a longer suspension is appropriate. We also determine that payment of restitution should be a condition precedent to Kemp's reinstatement. We therefore reject the recommended suspension term of six months and one day and instead direct that Kemp be suspended for two years. We further direct that Kemp pay restitution as set forth above before petitioning for reinstatement.

Accordingly, we hereby suspend Mark A. Kemp from the practice of law for two years. In addition, Kemp must pay restitution before petitioning for reinstatement, and must comply with the other conditions listed above. Kemp shall pay the costs of the disciplinary proceedings within 30 days of receipt of the state bar's bill of costs in this matter. See SCR 120.

It is so ORDERED.

GIBBONS, J., dissenting:

I would impose the discipline recommended by the disciplinary panel.

In re: Kenneth Long

Docket No.: 60026

Filed: April 17, 2013

ORDER OF REINSTATEMENT

Attorney reinstated after 32 month suspension, with conditions to include probation, mentor, no solo

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practice while on probation, employer providing quarterly reports, taking continuing legal education courses and paying costs.

This is a petition for reinstatement to the practice of law by suspended attorney Kenneth Long. On September 20, 2011, this court suspended Long from the practice of law for 32 months, retroactive to March 7, 2008. *In re: Discipline of Long*, Docket No. 56461 (Order Approving Revised Conditional Guilty Plea Agreement, September, 20, 2011). Long has filed, with the state bar, a petition for reinstatement pursuant to SCR 116. On November 7, 2011, a hearing was held before a Southern Nevada Disciplinary Board reinstatement hearing panel, which subsequently issued its findings of fact, conclusions of law and recommendation.

The panel found that Long had complied with the prior disciplinary panel's recommendations and concluded that he had demonstrated by clear and convincing evidence that he possesses the moral qualifications, competency and learning in law required for admission to practice, and that his 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. The panel recommended that Long's petition be granted, subject to the conditions that:

1. He be placed on probation for 32 months;
2. He obtain a neutral mentor acceptable to bar counsel; the mentor must not be Long's employer or colleague;
3. The mentor shall submit monthly reports to the state bar, detailing his or her contact with Long, his or her impressions of Long and other pertinent observations;
4. He not act as a solo practitioner while on probation;
5. Long's employers must provide quarterly reports to the state bar and to the mentor regarding any issues pertinent to Long's practice of law; and
6. He pay the costs of the reinstatement proceedings.

The panel also recommended that Long take continuing legal education (CLE) courses in any area of law new to him before performing any legal work in that area, but did not make this a condition of Long's probation.

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

While a disciplinary panel's recommendation is persuasive, we review a petition for reinstatement de novo. See *In re Nubar Wright*, 75 Nev. 111, 335 P2d 609 (1959). 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; however, we conclude that some of the conditions require modification and that the panel's recommendation regarding CLE should be a formal condition.

Accordingly, the conditions of Long's reinstatement are as follows:

1. Long is placed on probation for 36 months from the date of this order;
2. Long must obtain a neutral mentor acceptable to bar counsel, not an employer or someone that he practices law with; Long's longtime personal friend, attorney Afshin Tadayon, may not act as such a mentor;
3. The mentor shall submit monthly reports to the state bar detailing his or her contacts with Long, his or her impressions of Long and other pertinent observations;
4. Long may not act as a solo practitioner while on probation;
5. Long's employers must provide quarterly reports to the state bar and to the mentor regarding any issues pertinent to Long's practice of law, including the areas of law involved in his current caseload;
6. Long must take continuing legal education courses in any area of law new to him before performing any legal work in that area and be prepared to show his mentor and the state bar proof of said CLE completion, should one of his employer's reports detail that Long is handling a case outside of his normal experience; and
7. Long must pay the costs of the reinstatement proceedings within 30 days from the date of this order.

Accordingly, Kenneth Long is hereby reinstated to the practice of law, subject to the conditions set forth above.

It is so ORDERED.¹

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CHERRY, J., dissenting:

I would deny reinstatement at this time. Still glaring is that Long does not appear to accept full responsibility and accountability for what he has done, by refusing to admit his dishonesty or that the senior citizen involved was in fact victimized by him.

I am also disappointed that Long's conditions of reinstatement do not exclude him from representing elderly clients and do not mandate that he take continuing legal education in the area of elderly law.

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTERS OF REPRIMAND

File No. SG11-0829

Letter of Reprimand appropriate when an attorney (Attorney) who was suspended for not complying with continuing legal education requirements engaged in the practice of law while on suspension.

Attorney's license to practice law in Nevada was suspended on July 21, 2010, for failure to complete mandatory CLE requirements. Attorney's file shows that there were several notices forwarded to the SCR 79 address advising Attorney that Attorney was not in compliance and warning that failure to rectify the delinquency in the CLE credits would result in suspension. These notices included a certified letter mailed to an address in Utah, which was signed for on June 3, 2010. There were other certified mail receipts in Attorney's file.

While suspended from the practice of law, on or about February 2, 2011, Attorney filed a Complaint in the United States District Court for the District of Nevada. This was a clear violation of Rule of Professional Conduct (RPC) 5.5 (Unauthorized Practice of Law).

In Attorney's response to the state bar, he claimed to be unaware that his license had been suspended and that this was due to his failure to update the state bar with the current address, as required pursuant to Supreme Court Rule 79.

Accordingly, Attorney was hereby **REPRIMANDED** for having violated RPC 5.5 (Unauthorized Practice of Law). Additionally, in the future, the panel instructed Attorney to strictly comply with the requirements of Supreme Court Rule 79.

File No. SG11-1319

Letter of Reprimand appropriate following trust account overdraft.

On September 7, 2011, Bank of America forwarded a notice to the state bar that Attorney's trust account had been overdrawn on September 2, 2011, in the amount of \$7,170.14. In Attorney's response to the state bar, she

confirmed that the overdraft had occurred, and determined that it had happened because Attorney failed to deposit a check in the amount of \$52,205.50, received on August 29, 2011. However, the check that resulted in the overdraft was in the amount of \$15,000, and dated August 11, 2011. Attorney indicated that she had spoken with a representative at the bank who informed Attorney that the check would clear, but it did not.

Rule of Professional Conduct (RPC) 1.15 (Safekeeping Property) requires an attorney shall safeguard all client funds. In this case, Attorney wrote a check from the trust account on behalf of a client without ensuring that the client's funds were properly deposited in the trust account first.

Accordingly, Attorney was **REPRIMANDED** for having violated RPC 1.15 (Safekeeping Property).

1. The Honorable Nancy Saitta, Justice, did not participate in the decision 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.