

bar counsel report

SUPREME COURT OF NEVADA

In re: Gerry G. Zobrist
Bar No.: 7223
Docket No.: 64416
Filed: January 27, 2014

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney convicted of felony bank and wire fraud temporarily suspended pending resolution of formal disciplinary proceedings.

This is a joint petition, pursuant to SCR 111 (4), by bar counsel and attorney Gerry G. Zobrist requesting that this court enter an order temporarily suspending Zobrist from the practice of law and referring him to the appropriate board for discipline. The petition is supported by certified copies of documents evidencing Zobrist's conviction in the United States District Court, District of Nevada, pursuant to a guilty plea, of one count of conspiracy to commit bank and wire fraud in violation of 18 USC §§ 1343, 1344 and 1349, a felony. See SCR 111(1).

Pursuant to SCR 111, temporary suspension and referral to the appropriate disciplinary board are mandatory when an attorney has been convicted of a "serious" crime, which includes a felony. SCR 111(6) (8). Having reviewed the petition and the supporting documentation submitted by the parties, we conclude that the petition conclusively establishes Zobrist's conviction of a serious crime. Accordingly, we temporarily suspend Zobrist 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.

NORTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Brian Hunt
Bar No.: 11163
File No.: NG12-0883, NG12-0374, NG12-0373, NG12-1247
Filed: April 17, 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.

Attorney had the misfortune of accepting employment as a lawyer with an entity called the Public Interest Law

Firm (PILF), founded and run by Alaska-licensed attorney William Breck. Initially unknown to Attorney, PILF attempted to capitalize on the misfortune of financially distressed homeowners by promising to join them in a non-existent mass-joinder lawsuit for a fee.

PILF 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.

By Attorney's conduct, Attorney assisted the out-of-state attorney in engaging in the unauthorized practice of law in Nevada. Attorney failed to conduct an adequate inquiry into the legal status of the out-of-state attorney or the activities of the law firm. Therefore, Attorney has violated Nevada Rules of Professional Conduct 5.5(a)(2) which states, "A lawyer shall not ... assist another person in the unauthorized practice of law." For this violation, Attorney has accepted responsibility.

In mitigation, it is understood that the out-of-state attorney, with the aid of his non-attorney associates, created a false appearance of legitimacy. The state bar's investigation did not produce evidence that Attorney profited from the activities of the out-of-state attorney or the law firm. Attorney has 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 of 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, Attorney has violated Nevada Rules of Professional Conduct 5.5(a)(2) (assisting in the unauthorized practice of law) and is hereby **PUBLICLY REPRIMANDED**.

LETTER OF REPRIMAND File No. NG12-0493

Attorney reprimanded after failure to maintain original document relevant to court proceeding.

Attorney was involved in a complex, high-stakes trial in state court. During the trial, a dispute arose regarding whether or not a document had been previously served upon opposing counsel. Attorney was unable to find the

original document and so advised the court. The court ultimately refused to admit evidence dependent upon the questioned document.

After the trial, opposing counsel filed a grievance with the State Bar of Nevada. Attorney denies any personal wrongdoing with regard to the preparation or presentation of the questioned proof of service, but acknowledges that, as a supervising lawyer in his firm, he must make reasonable efforts to ensure that subordinate lawyers conform to the Rules of Professional Conduct and that the conduct of staff members he supervises is compatible with these rules. Attorney has since adopted new office protocols so that prior to a document being filed and served, it must be reviewed by the drafter, who must also verify the signature on the proof of service and that a copy will be properly maintained in the file.

Attorney acknowledges that in this instance the measures in effect, as applied to the questioned document and proof of service, were not adequate. The State Bar of Nevada believes that the new protocols adopted by Attorney are appropriate remedial measures.

Accordingly, Attorney is hereby reprimanded for violating RPC 5.1(b) and RPC 5.3(b) with regard to the failure to maintain a true copy of the questioned document.

SOUTHERN NEVADA DISCIPLINARY BOARD

LETTER OF REPRIMAND

File Nos. SG10-0955, SG11-0093, SG11-0112

Attorney reprimanded after failure to take action to prevent the use of Attorney's name and status of a lawyer by two non-lawyers who engaged in a fraudulent loan modification scheme.

Attorney met with two non-lawyer individuals, in or around April 2010, and discussed engaging them to assist him in developing a mortgage loan modification service. Attorney explained that he ultimately decided not to employ, or otherwise work with, them.

These two individuals subsequently utilized Attorney's identity as a lawyer, opened an office, calling it Law Office of Attorney, solicited clients and defrauded already distressed homeowners, charging thousands of dollars for services they never intended to provide. The two individuals Attorney met with were prosecuted and sent to prison for participating in mortgage fraud scams.

Several of the victims filed grievances with the State Bar of Nevada against Attorney, understanding that he was the attorney they retained and paid for the services. The victims provided evidence that they retained Attorney, in the form of business cards with Attorney's name on them,

given to them by the people they met with at the office, letterhead that had Attorney's name at the top and fee retainer agreements identifying Attorney as the attorney for the firm.

Attorney acknowledges that he was contacted by victims after they were defrauded and that he told them he did not represent them, and advised them to contact the Attorney General's and District Attorney's offices.

Attorney claimed his identity was stolen and used by the unscrupulous individuals without his consent. Attorney also explained that he contacted the Attorney General's Office for advice on how to stop them from using his identity.

His identity was used for a period of many months, allowing the unscrupulous individuals to create an appearance of legitimacy and further their fraud and deceit.

Attorney acknowledged that his efforts to prevent the use of his identity was too little too late and that he could have, and should have, taken more proactive steps to stop their use of his name and status as a lawyer. As a consequence of his omission, victims of the perpetrators suffered damage.

Attorney has since identified steps he might have taken, including seeking a court order for an injunction, contacting media and making more vigorous and documented efforts to have the perpetrators cease and desist.

Attorney told Assistant Bar Counsel that he hoped by accepting a Letter of Reprimand, other attorneys would be more aware of the threat of identity theft and would take prompt action to protect the public and the legal profession.

While Attorney provided evidence that supports his position that he was not engaged in a loan modification scheme, Attorney was disciplined for violating RPC 8.4 (d) (Misconduct: engaging in conduct that is prejudicial to the administration of justice).

In mitigation of his actions, Attorney has no prior history of discipline and was candid with Bar Counsel in these proceedings.

Based upon the foregoing, Attorney was
REPRIMANDED.

File No. SG12-1525

Attorney reprimanded after merchant charges for credit card processing were removed from his trust account and Attorney failed to maintain a minimal balance to cover said processing fees, resulting in an overdraft.

On September 26, 2012, the state bar received an overdraft notice from Wells Fargo Bank regarding Attorney's IOLTA trust account. On or around September 18, 2012, check number 5171, in the amount of \$700 (which was dated August 8, 2012), was withdrawn from

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Attorney's account, resulting in an overdraft of \$303.02.

In his response to the state bar, Attorney explained that he had sent a client a check in August 2012, in the amount of \$700, which represented funds that he had collected. Attorney stated that the client did not promptly deposit the check, but that it would not have mattered, as there were sufficient funds in the trust account to honor the check.

Attorney stated it is his practice to have credit card transactions deposited into the trust account and then paid from the trust account to the operating account as the funds are earned. When Attorney first established the credit card processing with Wells Fargo, he asked that the fees be taken from the operating account. However, Wells Fargo informed Attorney that the fees had to be charged to the account that received the credit card deposit. Therefore, Attorney was aware, when he first began taking credit card payments, that the trust account would incur additional bank service fees.

The bank statement for September 8, 2012, to October 1, 2012, provided by Attorney to the state bar does reflect an opening balance of \$700.16, barely sufficient to cover check number 5171. However, on September 13, 2012, Wells Fargo processed the following charges related to the merchant services/credit card processing against the trust account: \$8.84, \$23.83 and \$270.81, for a total of \$303.18. This resulted in the overdraft that Wells Fargo reported to the state bar.

Attorney's failure to maintain a minimal balance to cover the bank charges Attorney knew would be forthcoming constituted a failure to safe keep client monies in violation of RPC 1.15. The panel was further troubled by the fact that RPC 1.15(b) specifically allows for a method to avoid this problem, providing that a lawyer may deposit the lawyer's own funds in a client trust account for the *sole* purpose of paying bank *service* charges on that account, but only in an amount necessary for that purpose.

Accordingly, Attorney was **REPRIMANDED** for violating RPC 1.15 (Safekeeping Property). The panel recommended that Attorney remove all merchant charges to the trust account. However, at the very least, Attorney is required to maintain a sufficient minimum balance in Attorney's trust account to cover anticipated bank charges to avoid putting trust monies at risk. ■

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.