

# bar counsel report

## SOUTHERN NEVADA DISCIPLINARY BOARD

### LETTER OF REPRIMAND

#### File No. SG11-1034

*Letter of Reprimand appropriate when lawyer that is not licensed in Nevada failed to comply with advertising rules.*

In or about June 2011, the State Bar of Nevada became aware of an advertisement that Attorney had mailed to a potential Nevada client regarding property located in Nevada. Attorney's advertisement indicated that the recipient might be a potential plaintiff in a national lawsuit aimed at the lender of the mortgage on the Nevada property.

On July 20, 2011, the state bar sent Attorney a letter asking him why the advertisement had not been filed pursuant to RPC 7.2A (Advertising Filing Requirements), and explained that the advertisement did not comply with RPC 7.3 (Communication with Prospective Clients) and RPC 1.4(c)(3) (Communication; Lawyer's Biographical Data Form). It further asked Attorney to explain how he could offer legal services in regard to property located in Nevada without being licensed in Nevada and not be in violation of RPC 5.5 (Unauthorized Practice of Law) and asked Attorney to identify any litigation that had commenced.

Attorney's response to the state bar was signed by Non-Lawyer who was Director of Operations of Attorney's law firm. It explained that the law firm was an association between another California based law firm and Attorney's law firm and Attorney was currently involved with litigation against many lenders.

According to Non-Lawyer, the advertisement in question had not been authorized by Attorney's law firm. Non-Lawyer attached what he identified as "the authorized version of the advertising letter" to his letter, but it was not materially different to the mailer that had originally come to the state bar's attention. Attorney's response did not address the reasons for the advertisement's failure to comply with the Nevada Rules of Professional Conduct regarding advertising, referenced in the state bar's July 20, 2011, letter.

Attorney was REPRIMANDED for violations of RPC 5.5 (Unauthorized Practice of Law), RPC 7.2(A) (Advertising Filing Requirements), RPC 7.3 (Communication with Prospective Clients) and RPC 1.4(c)(3) (Communication; Lawyer's Biographical Data Form).

#### File No. SG11-1270

*Letter of Reprimand appropriate when lawyer failed to maintain money in his trust account to cover recurring service charge, resulting in the account being overdrawn.*

On August 22, 2011, Nevada State Bank notified the State Bar of Nevada that as of the close of business on August 19, 2011, Attorney's trust account had an overdrawn balance of -\$4.01.

Attorney attributed the overdrawn account to a recurrent "bill pay" service charge that Attorney claimed he did not consent to, and of which he was purportedly unaware. Attorney added that there were no client funds in the account at the time it was overdrawn, but this recurring service charge of \$9.95 had used up the \$100 cushion he usually maintained in the account in case of accounting errors.

Attorney further stated that he discovered the bank had taken hundreds of dollars from him for a service he was unaware of and didn't use. However, Attorney acknowledged that previous statements had reflected the service charge, but claimed he did not understand what it was.

The Nevada Supreme Court and disciplinary boards of the state bar are very concerned that client funds be handled appropriately. Accordingly, attorneys must ensure that their trust accounts are properly maintained. A negative balance almost always amounts to a per se violation of ethics rules. While in this instance there were no client funds involved, Attorney should have taken more affirmative steps to address the unknown service charge when it first came to his attention. The panel noted that, at a rate of \$9.95 per month, at least 10 months must have passed before the overdraft occurred.

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

#### File No. SG10-0901

*Attorney received a Letter of Reprimand when law suit was filed against a third party who was known to be deceased.*

Law Firm was retained by Business to collect a debt from Defendant and Company Defendant. Attorney A and Attorney B are licensed Nevada attorneys who are associated with Law Firm as part of a multi-jurisdictional law firm with Attorney C.

On February 25, 2010, Attorney A and Attorney B filed an Application for Entry of Default Judgment with Justice Court against both entities. The Application contained an affidavit of attempted service on Defendant dated December 9, 2009. The Defendant died on December 3, 2009. The affidavit stated that service was attempted, but that the process server was notified of the death. However, despite information in the Affidavit, the Motion was granted by the court. The grievant in this matter, reported Attorney C to the state bar for obtaining a Default Judgment against her deceased father.

In response to the grievance, dated July 26, 2010, Attorney A filed a response on Attorney C's behalf stating that Attorney C realized that the Default Judgment was inappropriate and that Attorney C subsequently filed a Motion to Strike the Default Judgment as to Defendant, which was granted by the court.

The daughter submitted a reply to the state bar on January 13, 2010, enclosing a collection demand letter to Defendant dated December 8, 2010, which still threatened legal action. Attorney C personally responded upon being provided with a copy of this demand stating it was simply a clerical error.

Attorney C was **REPRIMANDED** for having violated RPC 4.4 (Respect for Rights of Third Persons).

#### File No. 10-083-1271

*Attorney received a Letter of Reprimand when he entered into a business arrangement with a nonlawyer.*

In the beginning of 2007, Attorney was experiencing financial difficulties after he learned that his office manager had been providing him with false financial information regarding cash flow. The office manager had also failed to pay the payroll taxes that were withheld from the employees' pay. As a result, the Internal Revenue Service claimed that Attorney owed them approximately \$500,000 in payroll taxes, fines and interest. Additionally, Attorney was facing a contempt action from his ex-wife for failing to pay the yearly divorce settlement payment.

As a result of his financial situation, Attorney entered into an agreement with Nonlawyer wherein he purchased the service mark from Attorney and established an LLC that he incorporated in the State of Washington. LLC was registered as a foreign LLC in Nevada. Attorney had no ownership interest in LLC. Nonlawyer and Attorney's wife were the only officers of LLC. LLC then provided Attorney with bundled operational support to include offices: front desk support, operational staff, and accounting, banking, internet and computer services.

During its investigation of this matter, the state bar learned that between December 2008, and December 2009, when Attorney's relationship with Nonlawyer deteriorated, LLC maintained the trust and operating account and paid Attorney twice monthly from any collected funds, less LLC's fee and other expenses. Attorney was not a signatory on the LLC's bank accounts. Nonlawyer also advised Attorney on what fees he should charge, participated in some initial client consultations and directed the actions of the LLC support staff so as to deny Attorney supervisory control over staff that assisted him with your cases.

While Attorney and Nonlawyer deny that they engaged in fee splitting, the panel felt strongly that Attorney's conduct in this matter violated RPC 5.4 (Professional Independence of a Lawyer). The panel further felt that Attorney's failure to supervise the office manager that led to the financial difficulties in 2007, violated RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants).

Attorney was REPRIMANDED for violations of RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants).

## File No. 10-149-0777

*Letter of Reprimand appropriate when lawyer failed to communicate with his client and expedite litigation.*

Client hired Attorney in April of 2008, to represent his interests in a foreclosure action brought against his home by Bank. Client paid Attorney more than \$3,500 to oppose the foreclosure and sue Bank. Client claimed he attempted to contact Attorney on numerous occasions with no success. Client also stated he received no status reports or copies of any pleadings. After a period of time, he contacted his brother, who is an attorney, for assistance.

On January 22, 2009, Client's brother forwarded a letter to Attorney requesting to see the pertinent documents in the file so he could communicate the status of the proceedings to his brother. Attorney did not comply with this request. The brother then did a Blackstone case inquiry and determined that Attorney had filed a complaint against Bank on July 29, 2008, and an amended complaint on December 16, 2008. Bank had not responded and no attempts to default were made.

The brother finally spoke with Attorney on February 11, 2009. Attorney confirmed that he had not obtained any paperwork from Bank concerning the foreclosure proceedings. Attorney also confirmed that no demands were made. The brother then informed Attorney that he needed to immediately file pleadings with the court informing them of the pending foreclosure action in an effort to halt the eviction process and that Attorney needed to follow-up with Bank.

After failing to receive any of the pleadings he requested and hearing no word from Attorney, the brother checked Blackstone again and concluded nothing had been done on the case and Attorney had not appeared at two hearings.

In Attorney's response to the state bar, he stated that he had not realized Client's brother needed the file immediately and that he would have it forwarded with Client's permission. Attorney also claimed that he had "pleadings slated for receipt and review" on the case. Attorney also denied failing to appear in court and indicated that there were stipulated agreements to continue both hearings. Attorney subsequently provided corroborating evidence to support the hearings were continued by agreement.

The brother finally received the file, and after review, determined that the complaint was without merit. He subsequently negotiated a dismissal for Client, avoiding attorney fees and costs. The brother also arranged for Client to stay in his home.

Attorney sent a follow-up response indicating that he had health problems during this time period that should be considered as a mitigating factor and that he filed the complaint because he was instructed to by Client.

Attorney was REPRIMANDED for having violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property) and RPC 3.2 (Expediting Litigation).

## 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. 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.