

bar counsel report

SUPREME COURT OF NEVADA

In re: Don F. Shreve, Jr.
Bar No.: 4382
Docket No.: 59634
Filed: October 10, 2013

ORDER OF TEMPORARY SUSPENSION

Attorney temporarily suspended pending resolution of formal disciplinary proceedings. Attorney's handling of funds is also restricted.

This is a petition by the state bar, through the Southern Nevada Disciplinary Board, for an order temporarily suspending attorney Don F. Shreve, Jr., from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation demonstrate that Shreve misappropriated client funds from his law firm's client trust account.¹

SCR 102(4)(a) provides, in pertinent part:

On the petition of a disciplinary board, signed by its chair or vice chair, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the Supreme Court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

In addition, SCR 102(4)(b) provides that we may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Shreve poses a substantial threat of serious harm to the public, and that his immediate temporary suspension is warranted under SCR 102(4)(a). Accordingly, we hereby order attorney Don Shreve, Jr., temporarily suspended from the practice of law pending the resolution of formal disciplinary proceedings against him.²

We further conclude that Shreve's handling of funds should be restricted. Accordingly, pursuant to SCR 102(4)(a), (b) and (c), we impose upon Shreve the following conditions:

1. Shreve is precluded from accepting new cases and is precluded from continuing to represent existing clients, effective immediately upon service of this order;
2. All proceeds from Shreve's practice of law and all fees and other funds received from or on behalf of his clients shall, from the date of service of this order, be deposited into a trust

account from which no withdrawals may be made by Shreve except upon written approval of bar counsel; and

3. Shreve is prohibited from withdrawing any funds from any and all accounts in any way relating to his law practice, including but not limited to his general and trust accounts, except upon written approval of bar counsel.

The state bar shall immediately serve Shreve with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Shreve's place of employment or residence, or by publication.³ Shreve shall comply with the provisions of SCR 115.

It is so ORDERED.

In re: Matthew Poage Shelton
Bar No.: 8889
Docket No.: 62140
Filed: September 25, 2013

ORDER GRANTING PETITION

Reciprocal discipline of one year suspension stayed and a 30-day actual suspension and one year probation imposed on California attorney who engaged in unauthorized practice of law while on administrative suspension.

This is a petition under SCR 114 to reciprocally discipline attorney Matthew P. Shelton, based on discipline imposed upon him in California. Shelton did not file a response to the petition.

Shelton was disciplined in California for practicing law for approximately one month after being placed on administrative inactive status for failure to fulfill Continuing Legal Education requirements. Shelton was found to have violated state of California Business and Professions Code sections 6125, 6126, and 6068(a).⁴

The California Supreme Court, in an order dated May 22, 2012, suspended Shelton for one year, with that suspension stayed and an actual suspension of 30 days imposed, and placed Shelton on probation with conditions for one year. Shelton did not self-report this discipline to the Nevada state bar as required by SCR 114(1).

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, that one of four exceptions applies. None of the exceptions are present in this case.

Accordingly, we grant the petition for reciprocal discipline. Attorney Matthew P. Shelton is hereby

suspended from the practice of law for one year, with that suspension stayed and a 30-day actual suspension imposed, and placed on probation for one year. The discipline shall begin retroactively on May 22, 2012. Shelton shall provide to the state bar proof that he has complied with the conditions of probation imposed on him by California. Shelton and the state bar shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Adam M. Vander Heyden

Bar No.: 10462

File No.: SG11-1557, SG11-1060, SG11-1848,
SG112-0661 & SG12-1119

Filed: September 16, 2013

Public Reprimand appropriate when attorney had a business relationship with a non-lawyer.

TO: ADAM M. VANDER HEYDEN, ESQ.

702-Traffic is now and, at all times pertinent herein, was a business owned and operated by a non-lawyer, Mr. Kirk Helmick, and located at 4086 Spring Leaf Drive, Las Vegas, Nevada 89147. You had a business relationship with 702-Traffic, which included certain protocols and procedures as set forth herein.

702-Traffic provided advertising services with respect to legal matters concerning traffic citations and related matters. All potential clients would be met at the 702-Traffic office by administrative, non-lawyer staff employed by 702-Traffic. A non-lawyer would present each potential client with a Fee Agreement at this initial meeting. The non-lawyer staff from 702-Traffic would also collect a retainer fee from each client who signed a fee agreement.

You were supposed to act as legal counsel for all clients obtained by 702-Traffic. 702-Traffic deposited the funds - paid by the clients signed up by its non-lawyer staff - into a business account for 702 Traffic, LLC and issued periodic checks to you from this account. You did not have access to this account.

COUNT 1

Case No. SG11-1557

In April 2011, Client was visiting Las Vegas where she received a speeding ticket. Client contacted

702-Traffic and was told the office could represent her for a fee of \$192. After faxing all relevant documents, Client received a document entitled "702-Traffic Agreement and Intake Form for Traffic Ticket." The Agreement stated that you would be acting as her legal counsel.

Client had no further contact with 702-Traffic regarding the status of her traffic matter. On or about October 26, 2011, Client received a Notice of Bench Warrant from the Henderson Justice Court. Client immediately contacted a court clerk at the Henderson Justice Court who told her that when you had appeared in court on Client's behalf, the traffic ticket was reduced to a parking citation and Client was assessed a \$305 fine, which was due on August 29, 2011. The court instructed you to inform Client of the outcome.

Client contacted 702-Traffic and was told by a staff member that a letter had been sent out in June, although there was no actual proof of the mailing. Client demanded to speak with you, but was told by a staff member that "the owner of the building" would not allow her to speak with the attorney on this matter and she would have to deal with any outstanding issues on her own.

In your response to the State Bar of Nevada, you confirmed that you were retained to adjudicate a traffic ticket on Client's behalf and that the speeding ticket was reduced to an illegal parking ticket. You claimed Client was instructed to pay the \$305 fine by August 29, 2011, and provided an unsigned copy of a letter that you claimed was sent from your office on June 20, 2011, advising Client of the status of the traffic matter.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.4 (Communication), RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

COUNT 2

Case No. SG11-1060

In April of 2011, Client paid a visit to 702-Traffic in connection with a moving violation received. Client was met by a non-lawyer employee who explained the procedures to him. Client paid a fee of \$125 for handling the case, and signed a retainer agreement listing you as his counsel.

Client stated that he was promised that unless his fine was between \$50 to \$150, and that he would not have to appear in court or go to traffic school, he would get his money back. Client said that when he asked how he would be notified regarding the outcome, he was told to contact 702-Traffic in three months if he hadn't

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gotten any news from them regarding the disposition of the citation.

Client stated he called back three months later as instructed. He was given another number to call. He called the other number, and said he was kept on hold for 15 minutes and then told a manager would call him back. Client stated that the person who returned his call was the son of Helmick, who he described as rude, dismissive and stonewalling.

Client subsequently called the court and was told that there was a bench warrant for his arrest. Client personally had to go to court to get the bench warrant lifted and the fine – which he said was more than \$300 – paid. Client stated he never met with you once during then entire process.

In response to the State Bar of Nevada, you stated that you adjudicated Client's ticket as agreed in his contract. You also stated you mailed a letter to Client regarding the outcome of the case, and that his issues were the result of his failure to pay the adjudicated fine. You enclosed a copy of 702-Traffic intake form and contract and an unsigned letter to Client from your own law firm dated May 27, 2011.

In light of the foregoing, you violated RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

COUNT 3

Case No. SG11-1848

In November of 2011, Client paid a visit to 702-Traffic in connection with a moving violation she received in Barstow, California. Client was met by a non-lawyer employee who explained the procedures to her. Client paid a fee for \$395 for the handling of her case.

Client stated that she was promised that her fine would likely be non-existent, that she would not have to appear in court and that she would not have to go to traffic school. She stated that the gentlemen helping her told her that in the six months he'd worked at 702-Traffic, only one person had gotten a fine.

Client stated that she paid the high fee so that a speeding ticket would not go on her record, and based on the promise that she would pay no fine. Instead her result was a citation for speeding with a \$347 fine, which she stated she could have gotten on her own by simply handling the matter herself. When she called 702-Traffic back to discuss the matter with you, she was given the run around and nobody would speak with her.

On February 9, 2012, you called the state bar and spoke with Assistant Bar Counsel Patrick King. You denied being a part of 702-Traffic, and stated you had nothing to do with Client or her case. However, when asked about the address and telephone number on the

paperwork provided by Client, you admitted that they were your address and phone number. At the end of the conversation, you stated that you would respond to the grievance. You later clarified that you meant that you didn't own or operate 702-Traffic, and it was not your intention to mislead King in any way.

On or about February 21, 2012, you provided a written response to the state bar confirming that Client was your client and denying all of her statements regarding what she was promised by the employee of 702-Traffic. You stated that the ticket was referred to a California attorney who did an adequate job handling the case. You also stated Client simply had to complete an 8- hour traffic school class to reduce the citation to a parking violation.

In light of the foregoing, you violated RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer), RPC 5.5 (Unauthorized Practice of Law) and 8.1(b)(Bar Admission and Disciplinary Matters).

COUNT 4

Case No. SG12-0661

Client retained 702-Traffic in connection with a moving violation received in Needles, California. Client paid the fee after being told that 85-90 percent of 702-Traffic's cases result in no points for the client.

Client stated that he paid the fine so that a speeding ticket would not go on his record. However his case still resulted in a citation for speeding with a fine, which Client claimed he could have gotten on his own by simply handling the matter himself. When he called back to 702-Traffic to find out why his case went so badly, he was told that California matters were harder to resolve. He said he was not informed of that until after the fact.

On or about August 6, 2012, you provided a written response to the State Bar of Nevada confirming that Client was a client of 702-Traffic. You stated that the ticket was referred to a California attorney who did an adequate job handling the case. You argued that the reason the charges were not reduced was because the police officer showed up for court. You did not address the representations made by the staff to encourage Client to hire 702-Traffic.

In light of the foregoing, you violated RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

COUNT 5

Case No. SG12-1119

On March 22, 2012, Client and his wife retained the services of you and 702-Traffic in connection with a moving violation she received. The wife paid the fee in full and was told to await further instructions.

On or about May 14, 2012, Client and his wife received a letter from you stating that the ticket had been resolved and providing instructions for payment. Client stated that he and his wife did as instructed.

On or about July 11, 2012, Client received a phone call from a friend in the court system informing him that there was an active bench warrant out on his wife. After looking into the matter, he determined that your May 14 letter had referenced the citation number of a different ticket previously received by his wife for speaking on her cell phone while driving. They had retained different counsel for that matter and it had been resolved previously.

Client and his wife stated that they had to hire another lawyer to fix the mess caused by your mistake. They forwarded a letter demanding a refund and received no response.

In your response to the State Bar of Nevada, you stated that you correctly and adequately resolved the traffic citation you were hired for, which resulted in the matter being reduced to a parking violation and a fine of \$205. You admitted, however, that the May 14 letter had the wrong citation and payment information on it.

You stated that your staff, who prepared the letter, looked Wife up in the court computer, and somehow noted the wrong citation information. You claimed it was an honest mistake and that it was only one out of thousands of successful representations. You agreed that Client and his wife should receive their money back.

In light of the foregoing, you violated RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Non-lawyer Assistants), RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

YOU ARE HEREBY PUBLICLY REPRIMANDED. ■

1. The state bar's SCR 102(4) petition is supported by attached exhibits of Shreve's misconduct. However, it is not supported by an affidavit as required under SCR 102(4)(a). Shreve did not object to this defect and instead filed a nonopposition to the petition. We conclude that the state bar's failure to attach the affidavit is nonprejudicial and that Shreve waived this defect. See, e.g., *Ogle v. Hatto*, 652 N.E.2d 815, 821 (Ill. App. Ct. 1995) (holding that plaintiffs waived the defect to a motion to dismiss which did not contain a statutorily required affidavit because they failed to object to the defect).
2. We note that Shreve is currently suspended in Nevada for failure to comply with CLE requirements and with SCR 78.5. The suspension in the instant matter is separate from and in addition to Shreve's existing suspension.
3. When served on either Shreve or a depository in which he maintains an account, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order. See SCR 102(4)(b).
4. Nevada's counterparts are, respectively, RPC 5.5 (unauthorized practice of law), NRS 7.285 (unauthorized practice of law), and SCR 73 (attorney's oath).

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.