

bar counsel report

SUPREME COURT OF NEVADA

In re: Barry Levinson
Bar No.: 6721
Docket No.: 60350
Filed: September 6, 2012

ORDER OF TEMPORARY SUSPENSION

Attorney temporarily suspended from the practice of law pending the resolution of formal disciplinary proceedings for alleged misappropriation and commingling of funds.

This is a petition by the Southern Nevada Disciplinary Board Chair for an order temporarily suspending attorney Barry Levinson from the practice of law, pending the resolution of formal disciplinary proceedings against him. The petition and supporting documentation allege that Levinson misappropriated funds, commingled funds, failed to report multiple trust accounts to the state bar, failed to report to the state bar when he overdrew various accounts, failed to pay settlements to clients, failed to pay money due to lienholders and showed dishonesty to the state bar and other parties in his responses.

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) and (c) provide that we may place restrictions on an attorney's handling of funds and on an attorney's acceptance and representation of clients.

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

In addition, pursuant to SCR 102(4)(a), (b) and (c), we impose upon Levinson the following conditions:

1. Levinson is precluded from accepting new cases and must cease representing existing clients within 15 days of the date of this order;
2. All proceeds from Levinson's practice of law and all fees and other funds received from or on behalf of clients shall, from the date of service of this order, be deposited into a trust account from which no withdrawals may be made by Levinson except upon written approval of bar counsel or by order of a court of competent jurisdiction; and

3. Levinson 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 or by order of a court of competent jurisdiction.

The state bar shall immediately serve Levinson with a copy of this order. Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Levinson's law office or residence or by publication. When served on either Levinson 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).

Levinson shall comply with SCR 115. Bar counsel shall comply with SCR 121.1.

It is so ORDERED.

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Mark P. Chaksupa, Esq.
Bar No.: 10537
File No.: SG11-1033
Filed: August 14, 2012

Public Reprimand imposed for failure to comply with Supreme Court orders to file a fast track statement and appendix in a criminal appeal.

TO: MARK P. CHAKSUPA, ESQ.

In a criminal case which underlies the above-referenced disciplinary matter, you represented a client in the Eighth Judicial District Court whose conviction ultimately was appealed to the Nevada Supreme Court, which subsequently referred the instant matter to the State Bar of Nevada pursuant to Supreme Court Rule (SCR) 105.

You initially represented Elante Hines in a criminal case, *State of Nevada vs. Elante Hines*, wherein Hines was charged with five felony counts: conspiracy to commit robbery; robbery with use of a deadly weapon; first-degree kidnapping with use of a deadly weapon; coercion with force or threat of force; and possession of a stolen vehicle.

The prosecution of Hines, who was a teenager when the crimes allegedly occurred in 2010, originated in Juvenile Court. You negotiated a plea bargain in which Hines would waive certification proceedings, submit to adult prosecution and plead guilty to one count of robbery with use of a deadly weapon.

Hines subsequently pleaded guilty in the Eighth Judicial District Court. In November 2010, Hines was sentenced to five years in prison for the robbery conviction, plus a consecutive five years for the deadly weapon enhancement. In exchange for his plea, the remaining charges were dismissed.

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On December 14, 2010, according to court records, Hines filed a *pro per* fast track appeal with the Supreme Court. Apparently on the same day, the Supreme Court sent a notice to you informing you that (1) the appeal had been docketed; (2) the appeal was subject to Nevada Rule of Appellate Procedure (NRAP) 3C; and (3) the fast track statement and appendix had to be filed within 40 days.

The Supreme Court's notice also directed you to file a rough draft transcript request form within ten days. However, the court's docket indicated that its letter was returned because you were not at that address. The court then updated your address and re-mailed its previous order.

You did not file a rough draft transcript form and, therefore, the Supreme Court entered an Order on January 18, 2011, which imposed a "conditional sanction" of \$500 upon you and again directed you to file the rough draft transcript form.

On February 9, 2011, you filed a rough draft transcript form with the Supreme Court and paid the \$500 "conditional sanction." However, by early March 2011, you had not yet filed a fast track statement and appendix. Therefore, in an Order filed on March 3, 2011, the Supreme Court directed you to file the required documents within 10 days. The order also cautioned you that failure to comply could result in imposition of further sanctions.

On March 29, 2011, because you still had not filed documents as directed by the March 3 Order, the Supreme Court entered an Order which again imposed "conditional sanctions" of \$500. The Order explained that if you filed the fast track statement and appendix within 10 days, the sanctions would automatically be vacated.

You did not file the required documents as ordered, so the Supreme Court imposed an additional \$1,000 sanction on May 4, 2011, and directed you to (1) pay the entire \$1,500 to the Supreme Court Law Library within 15 days, and (2) file the fast track statement and appendix within ten days.

The Supreme Court's Order of May 4, 2011, also cautioned you that continued failure to comply with its Orders would result in the imposition of additional sanctions, including referral to the state bar for investigation.

On July 14, 2011, the state bar received a referral from the Nevada Supreme Court for an investigation of you pursuant to Supreme Court Rule 105 (Procedure on receipt of complaint).

In its July 14, 2011, referral of this matter to the state bar, the Supreme Court stated that "[t]o date, Mr. Chaksupa has not complied or otherwise responded to our orders." Therefore, the Supreme Court imposed an additional \$1,000 sanction, and directed you to pay the entire \$2,500 in sanctions within ten days to the Supreme Court Law Library. The court also removed you as counsel-of-record for Hines and remanded the case back to District Court for the limited purpose of securing appellant counsel for Hines.

The Supreme Court docket in the *Hines* matter indicates that you paid the sanctions on or about August 1, 2011.

On July 19, 2011, the state bar sent you a Letter of Investigation.

In your response to the state bar, you acknowledged that you failed to follow the Supreme Court's directives and, in part, placed some of the blame on your now-terminated office

assistant. You stated, "I must concede that, aside from paying the Court-ordered sanctions, I have not complied with the Nevada Supreme Court's directives regarding the filing of Mr. Hines' fast track appeal."

You have acknowledged that in retrospect, you did not adequately supervise your office assistant, whom apparently incorrectly told you in or about February 2011 that the Supreme Court had relieved you as counsel-of-record in the *Hines* appeal. You currently believe that your now-former office assistant lied and, in fact, destroyed your office file regarding the *Hines* matter.

Since initiation of the instant disciplinary matter, you looked for, but have been unable to locate, the file for the *Hines* appeal.

In August 2011, a District Court Judge appointed substitute appellate counsel to Hines' matter.

Failure to comply, or at least properly reply, to any court orders, especially from the Nevada Supreme Court, is inappropriate and unacceptable.

In mitigation, you ultimately cooperated with the state bar's investigation and accepted responsibility for your action. You also have paid the sanctions imposed by the Supreme Court. The panel expects that there will be no replication of this behavior. For these reasons, the panel is issuing only a Public Reprimand rather than recommending more severe discipline.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.3 (Diligence), RPC 3.4(c) (Fairness to Opposing Party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) and RPC 8.4(d) (Misconduct: Engaging in conduct that is prejudicial to the administration of justice), and are hereby PUBLICLY REPRIMANDED.

LETTER OF REPRIMAND

File No. 10-145-0137

Letter of Reprimand appropriate when lawyers failed to supervise nonlawyer assistants.

On February 4, 2009, Attorney and his law partner opened an IOLTA account at Nevada State Bank under the name of Loan Modification Company (Company). Attorney and his partner were authorized signers on the account.

On February 18, 2009, the law partner opened a checking account at Nevada State Bank under the name of debt counseling company (Company #2). The partner was the sole signatory on the account.

On February 20, 2009, Company received its business license from the City of Las Vegas. The license stated Attorney was the owner.

On March 24, 2009, the partner opened a payroll account at Nevada State Bank under the name Company #2. The partner was the sole signatory on the account.

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On April 24, 2009, Client went to Company for assistance in getting a loan modification for his home. Client signed a retainer agreement with Company. The retainer agreement specified that Attorney was Company's manager. Further, the signature block for Company contained Attorney's name.

Client paid a retainer fee of \$4,500 to Company. Client filled out the paperwork and met with a nonlawyer. The retainer agreement appears to be countersigned by the nonlawyer with the handwritten note, "If we do not save a min of \$25,000 first five years, no modification." Client claimed he never met with an attorney.

On May 1, 2009, Attorney and his law partner opened a silver money market business account with Nevada State Bank. Attorney and the law partner were signatories on the account.

On May 7, 2009, Company #2 received its business license from the City of Las Vegas. The license stated Attorney was the owner.

Nonlawyer was an employee of Company which was a licensed coverage provider with the Department of Mortgage and Lending (DML). At the time, nonlawyer was not licensed with DML.

Over the course of a year, Client asserts he made 83 telephone calls and numerous written attempts to contact Company regarding the status of his loan modification but received limited responses from Company's staff. Company did not provide Client with a loan modification.

On June 6, 2011, the state bar personally served Attorney with copies of the correspondence previously sent.

In Attorney's response to the state bar, he stated that he was a mere figurehead for the Company and that the law partner was the main person involved in the Company.

Client filed a complaint with the State Bar Fee Dispute Committee. On August 6, 2010, he was awarded a refund of \$3,000.

Attorney was **REPRIMANDED** for violating Rules of Professional Conduct (RPC) 1.3 (Diligence), RPC 1.4 (Communication), RPC 5.3 (Responsibilities regarding Nonlawyer Assistants) and RPC 5.5 (Unauthorized Practice of Law). ■

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.

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