

bar counsel report

SUPREME COURT OF NEVADA

In re: Anthony R. Lopez
Bar No.: 5053
Docket No.: 58385
Filed: July 17, 2012

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS

Attorney transferred to disability inactive status and all disciplinary proceedings suspended.

Bar counsel for the State Bar of Nevada and attorney Anthony R. Lopez, Jr., have jointly petitioned this court for an order transferring Lopez to disability inactive status. Lopez and his counsel have signed the joint petition. The parties have stipulated that Lopez is presently incapacitated under the terms of SCR 117 from continuing to practice law.

Having reviewed the petition and its attachments, we conclude that the relief requested in the joint petition is warranted under the circumstances. Accordingly Anthony R. Lopez, Jr. is transferred to disability inactive status. Lopez may resume the active practice of law only after he has complied with SCR 117(4) and (5). In light of this order, any pending disciplinary proceedings against Lopez are suspended.

The state bar shall effect notice of this order as required under SCR 121.1. Bar counsel shall provide this court with proof that notice has been served.

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Charles H. Odgers
Bar No.: 8596
File No.: 10-007-2616, 09-179-2616, SG10-0446,
 SG10-0848, SG10-0908,
 SG11-0895, SG11-1408, SG11-1484
Filed: June 25, 2012

Public Reprimand imposed for entering into a business arrangement with a non-lawyer, engaging in the unauthorized practice of law and failure to communicate with client.

TO: CHARLES H. ODGERS, ESQ.

702-Traffic is now and, at certain times pertinent herein, was, a business owned and operated by a non-lawyer, Mr. Kirk Helmick (Helmick), located at 4086 Spring Leaf Drive, Las Vegas, Nevada.

You did not, at any time herein, maintain your law office at the 702-Traffic address.

At all times pertinent herein, you had a business relationship with 702-Traffic, which included certain protocols and procedures as set forth herein.

702-Traffic provided advertising with respect to legal matters concerning traffic citations, DUIs and related matters. 702-Traffic utilized your name and your law firm in these advertisements.

All potential clients would be met at the 702-Traffic office by administrative, non-lawyer staff employed by 702-Traffic.

Each potential client would be presented with an intake agreement and fee agreement by a non-lawyer. The intake agreement states, in part, that "By signing immediately below, the undersigned prospective client acknowledges that he or she has read and understands this Agreement and Intake Form and the Criminal Misdemeanor Representation and Fee Agreement and agrees to be bound by their terms."

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, pertaining to traffic tickets and DUI cases.

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. The checks paid to you represented only a portion of the monies paid to 702-Traffic for legal fees. You were not a signatory to this account.

Grievance No. 10-007-2616

The advertising, paid for by 702-Traffic, included print and television advertisements.

At least a portion of these advertisements included the names of 702-Traffic and Odgers & Associates in a manner that would mislead the intended audience to view 702-Traffic as being affiliated with, or part of, a law firm.

You filed advertisements with the state bar, pursuant to RPC 7.2A, which you represented to be on behalf of Odgers & Associates when, in reality, they were actually advertising the services of 702-Traffic.

Grievance File No. 09-179-2616

In spring of 2009, in response to an advertisement, John Eikleberry (Eikleberry), visited the premises of 702-Traffic to retain an attorney to assist him in defending a DUI citation he received earlier that month.

Eikleberry was initially met by a non-lawyer employee of 702-Traffic. He was advised to fill out several forms, and signed a retainer agreement with 702-Traffic. All monies were paid directly to 702-Traffic.

You did not adequately communicate with Eikleberry regarding his case and, as a result, Eikleberry chose to retain the services of another attorney.

Grievance File No. SG10-0446

In May of 2010, Thomas McCormick (McCormick) visited the premises of 702-Traffic, in response to an advertisement, to retain an attorney to handle a moving violation received by his minor daughter.

McCormick was met by a non-lawyer employee of 702-Traffic, who explained the legal procedures to him. McCormick was advised to fill out several forms, and signed a retainer agreement with 702-Traffic. All monies were paid directly to 702-Traffic.

On June 24, 2010, McCormick received a letter from you stating that you would be representing his daughter as to her violation and that you would be in touch.

On August 13, 2010, McCormick received a notice to his daughter from Las Vegas Municipal Court regarding a bench

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warrant for failing to appear in court to answer her citation. McCormick paid the citation immediately to dismiss the warrant.

McCormick made several attempts to determine what had happened, but was only able to speak with clerical staff at 702-Traffic. At no time did you ever meet with, or speak to, McCormick regarding the case.

The state bar sent you several letters via certified mail, forwarding a copy of the grievance and demanding a written response to the specific issues raised by McCormick. You failed to respond to these letters.

Grievance File No. SG10-0848

In April of 2010, Sally Taylor (Taylor) went to 702-Traffic for the purpose of retaining your services to handle a traffic ticket. Taylor was told by the non-lawyer staff that the fee for handling her case would be \$375. She paid the fee directly to 702-Traffic and signed the forms that were provided to her.

Taylor subsequently received a letter from you stating that you would be representing her. On June 28, 2010, Taylor received a notice from the City of Las Vegas regarding a bench warrant for failing to appear in court to answer her citation. Taylor contacted 702-Traffic, which she understood to be your law office, and was told by an assistant not to worry and that everything would be handled.

On September 30, 2010, Taylor received another notice from the City of Las Vegas stating that her ticket had not been paid. She contacted 702-Traffic and was told by an assistant that the office had sent her a letter saying that she had to pay the ticket separately. Taylor believed the \$375 charge had included payment of the fine as well as attorney fees.

At no point during her representation, did Taylor ever speak to you, or any other attorney employed by you, regarding her case.

The state bar sent you several letters via certified mail, forwarding a copy of the grievance and demanding a written response to the specific issues raised by Taylor. You failed to respond to these letters.

Grievance File No. SG11-0895

In December 2009, Ashley Lombard (Lombard) went to 702-Traffic to consult an attorney about a moving violation that she had received. Lombard met with a non-lawyer who explained the legal procedures regarding the ticket process to her.

Based on the non-lawyer's representations, Lombard paid a fee of \$350 to 702-Traffic. She was advised that you would represent her and that she would be hearing from a representative of 702-Traffic regarding the disposition of the citation and the fine involved.

After the initial consultation, Lombard received no response regarding the status of her ticket. At no time did you ever meet with, or speak to, Lombard regarding her case.

Lombard was subsequently pulled over for a broken tail light. When the officer pulled her record, he found a bench warrant for her arrest arising out of the moving violation you were supposed to be handling on her behalf.

The state bar sent you several letters via certified mail, forwarding a copy of the grievance and demanding a written response to the specific issues raised by Lombard. You failed to respond to these letters.

Grievance File No. SG10-0908

Teresa Stelmaszczyk (Stelmaszczyk) retained your services directly, instead of through 702-Traffic, to seal her record on March 16, 2010. She paid you a retainer of \$400 for those services.

Stelmaszczyk contacted your office in August 2010, to ascertain the status of her case and was told by you that everything was going well. Stelmaszczyk subsequently determined, in November 2010, through her own independent investigation, that no paperwork had been filed to begin the process of sealing her record. Her subsequent calls you went unreturned.

The state bar sent you several letters via certified mail, forwarding a copy of the grievance and demanding a written response to the specific issues raised. You failed to respond to these letters.

Grievance File No. SG11-1408

Marta Bauer (Bauer) retained your services to represent her in a divorce matter. After your retention, you filed a Complaint for Divorce on behalf of Bauer, on October 17, 2008, *Bauer v. Bauer, Case No. D-08-401541-D*.

A non-jury bench trial was held before the Honorable Judge Cynthia Giuliani on January 14, 2010. The parties were awarded joint physical and legal custody and Bauer's husband was ordered to pay the sum of \$141,333, as her half-share of the community assets, and \$5,000 in attorney fees. Minimal child support was awarded due to Bauer's husband's lack of employment. You were responsible for preparing the Divorce Decree.

A few months after the trial, Bauer's ex-husband moved back to New York and got a job. Bauer attempted to contact you to discuss the change and find out how to proceed. At this point, a final Divorce Decree had not been filed.

After several attempts to contact you, Bauer was finally able to meet with you in February of 2011. You advised her that she would need to go back to court to request a revision to the terms of custody and child support and to alert the court regarding the non-payment by the ex-husband of the ordered joint assets.

Bauer heard nothing from you after that meeting. She attempted to reach you via phone and e-mail with no success. After being unable to reach you regarding the status of her case, she went to the courthouse to obtain a copy of her divorce paperwork. Bauer was advised by court personnel that a Divorce Decree had never been entered by the court and that her case was still pending.

After being advised by court personnel that her case was still unresolved, Bauer went to your office and found your office space vacant. Bauer, having no forwarding address information, requested the assistance of a friend who was an attorney, to see if he could locate you.

This attorney was able to locate and contact you, and you advised him that you would be returning to Las Vegas in September of 2011, to file Bauer's divorce papers. On November 8, 2011, the court prepared and filed a Decree of Divorce due to the failure of the parties to submit one as directed. The decree was signed by Judge T. Arthur Ritchie, Jr.

The state bar sent you several letters via certified mail forwarding a copy of the grievance and demanding a written response to the specific issues raised by Bauer. You failed to respond to these letters.

On April 10, 2012, you spoke with Assistant Bar counsel regarding this matter. You acknowledged receipt of the letters from

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the state bar and your failure to respond, stating that you had been experiencing economic and personal problems.

In a subsequent letter to the state bar, you stated "The letters from the bar only contributed to the pressure I felt I was under. Logically my lack of response did nothing to help the situation, but I could not bring myself to address these issues..."

Grievance File No. SG11-1484

On or about January of 2008, Elayne Nelson (Nelson) retained you to represent her in a divorce action filed by Nelson's husband, *Nelson v. Nelson, Case No. D-08-386889-D*. A trial took place on May 22, 2009. For the next year, Nelson attempted to contact you on numerous occasions, with no success, regarding the Divorce Decree, which she was informed you were to prepare. The court docket did not reflect that a Divorce Decree was ever filed with the court.

The state bar sent you several letters via certified mail, forwarding a copy of the grievance and demanding a written response to the specific issues raised by Nelson. You failed to respond to these letters.

On April 10, 2012, Assistant Bar Counsel spoke with you regarding this matter. You acknowledged receipt of the letters from the state bar and your failure to respond.

On May 3, 2012, you finally provided a response to the state bar stating that you had been experiencing economic and personal problems. However, you maintained that you submitted no less than two separate decrees to the court following the May 22, 2009, bench trial. You acknowledged that the court docket does not reflect these submittals.

As to your failure to respond to the state bar, you again stated "The letters from the bar only contributed to the pressure I felt I was under. Logically my lack of response did nothing to help the situation, but I could not bring myself to address these issues..."

In light of the foregoing, you violated the Rules of Professional Conduct (RPC) as follows:

Complaint Filed August 24, 2011

Count 1 - 10-007-2616: RPC 7.1 (Communications Concerning a Lawyer's Services), RPC 7.2 (Advertising), RPC 7.2A (Advertising Filing Requirements) and RPC 8.4(c) (Misconduct).

Count 2 - 09-179-2616: RPC 1.4 (Communication), RPC 5.4 (Professional Independence of a Lawyer) and RPC 5.5 (Unauthorized Practice of Law).

Count 3 - SG10-0446: RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 5.4 (Professional Independence of a Lawyer), RPC 5.5 (Unauthorized Practice of Law) and RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Count 4 - SG10-0848: RPC 1.3 (Diligence), RPC 1.4 (Communication), 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 5 - SG10-0908: RPC 1.3 (Diligence), RPC 1.4 (Communication) and RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Complaint Filed February 17, 2012

Count 1 - SG11-0895: RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 5.4 (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law) and 8.1(b) (Bar Admission and Disciplinary Matters).

Complaint Filed May 15, 2012

Count 1 - SG11-1408: RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.2 (Expediting Litigation) and RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Count 2 - SG11-1484: RPC 1.3 (Diligence), RPC 1.4

(Communication), RPC 3.2 (Expediting Litigation) and RPC 8.1(b) (Bar Admission and Disciplinary Matters).

and are hereby PUBLICLY REPRIMANDED.

NORTHERN NEVADA DISCIPLINARY BOARD

LETTER OF REPRIMAND

File No.: N10-06-993

Letter of Reprimand appropriate when lawyers failed to comply with advertising requirements.

The state bar received a letter that complained, in part, about the advertisement's claim regarding past results achieved by Attorney's firm. A file was opened in regard to that claim, and a letter was sent by the state bar seeking substantiation of the claim. Specifically, Bar Counsel's letter stated the following:

The ad specifically promotes Law Firm as a firm that has collected more than \$100,000,000, presumably for its clients, as the result of accidents. Please address and answer the following with regard to this statement:

- *Is the claim accurate?*
- *Is the \$100,000,000 a combined monetary figure collected from various cases handled by Law Firm?*
- *What time frame does this claim cover?*
- *Were these amounts actually received?*
- *Was this award, or the accumulation thereof, obtained by Nevada lawyers, practicing in Nevada?*
- *Were you affiliated with Law Firm when all the stated recoveries occurred?*

Please provide the state bar with the actual case captions and include as much detail as possible with regard to their outcomes.

The Ad also includes excerpts from what look like newspaper headlines, that announce awards received from clients of Law Firm. Kindly provide the state bar with case numbers and remit documentation that supports these figures.

Attorney's response to the state bar did not substantiate the claims or respond to the substance of the state bar's letter. Instead, Attorney provided the state bar with a revised version of the advertisement, which deleted the reference to the more than \$100,000,000 collected, along with the purported newspaper clippings.

RPC 7.2(g) (Advertising), states that a "lawyer may make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications. However, such statements are subject to proof of verification, to be provided at the request of the state bar or a client or prospective client."

Given Attorney's failure to substantiate the claims, a screening panel of the Northern Nevada Disciplinary Board determined that a *Stayed Letter of Reprimand* for violations of RPC 7.2(g) and RPC 8.1(b) (Bar Admission and Disciplinary Matters) was appropriate in this instance. Pursuant to the panel's direction, the matter would have been dismissed without prejudice, should you have provided the state bar with the substantiation sought regarding your past results, within 15 days of being notified of the panel's determination.

The panel also determined that, should Attorney fail to respond, in addition to the issuance of a Letter of Reprimand,

Attorney would be directed to remove any claims regarding past results from Attorney's advertisements, until such time as Attorney is able to substantiate those results.

The state bar notified Attorney of the panel's determination in a letter dated June 2010. The state bar's letter noted that Attorney currently had advertisements claiming that Law Firm has collected more than \$100,000,000. As such, the letter indicated that Attorney's response to the state bar should substantiate the entire \$100,000,000 claim.

Attorney failed to respond to the state bar in regard to substantiating the claims concerning past results. Accordingly, Attorney was **REPRIMANDED** for violation of RPC 7.2(g) and RPC 8.1(b) (Bar Admission and Disciplinary Matters). In addition, Attorney was directed to remove any claims regarding past results from any and all advertisements until such time as Attorney is able to substantiate those results.

File No. N11-1265

Letter of Reprimand appropriate where lawyer, as resident member for a multijurisdictional practice firm, failed to properly supervise non-lawyer staff and operations of firm.

The Entity in which Attorney accepted employment, represented to Nevada homeowners that they had a legitimate lawsuit against their lender and that it could prevent foreclosure by including the homeowners in a mass-joinder lawsuit against their lender. Homeowners were induced to pay an upfront fee of \$2,500 along with a monthly fee of approximately \$600. It was explained to the homeowners that the monthly fee was to pay for the ongoing costs and fees associated with the mass-joinder litigations in which the homeowners understood they would be named as a plaintiff.

In fact, the homeowners, including the grievant, were not included as plaintiffs in a mass-joinder or any legitimate lawsuit. Also the money paid by homeowners was not maintained in a trust account, but instead was immediately withdrawn.

The executive director of the Entity was an attorney not licensed to practice law in Nevada, and other directors and managers of the enterprise were not lawyers.

Attorney allowed the Entity to use Attorney's name and status as a Nevada lawyer to obtain a Multijurisdictional Law Firm status pursuant to Rule of Professional Conduct (RPC) 7.5A and to promote the alleged services.

When the State Bar of Nevada contacted Attorney regarding its investigation of the grievance, Attorney informed Bar Counsel that Attorney was resigning from the position with the Entity. Attorney subsequently cooperated with the investigation, including providing an affidavit.

Attorney explained that Attorney was led to believe that the Entity was a legitimate 501(c)(3) nonprofit and that other Nevada attorneys were managing the litigation. Attorney also said that Attorney had no involvement with the money or the Entity's trust accounts.

The evidence supports the assertion that the Entity and money were managed by others. Nonetheless, as a Nevada licensed attorney, and pursuant to RPC 7.5A, Attorney had a responsibility to insure compliance with ethical and court rules. Attorney also had a duty to protect against the unauthorized practice of law. Attorney violated those ethical rules.

RPC 7.5(A)(j) in relevant part states as follows:

- (j) **Responsibilities of Nevada-licensed members.** The members of the firm who are admitted to practice in Nevada shall be responsible for, and actively participate as a principal or lead lawyer in, all work performed for Nevada clients and for compliance with all state and local rules of practice. It is the responsibility of the Nevada-licensed members of the firm to ensure that any proceedings in this jurisdiction are tried and managed in accordance with all applicable procedural and ethical rules and that out-of-state members of the firm comply with Supreme Court Rule 42 before appearing in any proceedings that are subject to that rule.

Attorney's relative inexperience with the practice of law and the apparent skill with which the founders of the enterprise created a patina of legitimacy are mitigating factors in determining not to seek a greater form of discipline.

Accordingly, Attorney was **REPRIMANDED** for violating RPC 7.5(A) (Registration of Multijurisdictional Law Firms and RPC 8.4(d) (Misconduct)(Engage in conduct that is prejudicial to the administration of justice). ■

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.