

SUPREME COURT OF NEVADA

In Re: Allen D. Gibson
Bar No. 2001
Docket No. 68767
Filed November 6, 2015

ORDER OF SUSPENSION

Attorney ordered suspended for six months and one day following findings that he violated rules regarding competence, diligence, communication, safekeeping property, declining or terminating representation and discipline.

The Northern Nevada Disciplinary Board's hearing panel recommended attorney Allen Gibson be suspended from the practice of law for six months and one day following findings of multiple rule violations, including RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation) and RPC 8.1(b) (disciplinary matters).

The Nevada Supreme Court deemed the violations admitted after a de novo review, because Gibson failed to respond to the complaint or appear for the formal hearing. He also did not file an opening brief with the court.

The court approved the recommendation for discipline. Gibson is suspended from the practice of law in Nevada for a period of six months and one day commencing November 6, 2015. Additionally, Gibson shall pay the cost of the disciplinary proceeding (excluding bar counsel and staff salaries) within 30 days of receipt of the state bar's bill of costs. Based on the length of the suspension, Gibson will be required to comply with SCR 116 and petition for reinstatement.

For more information about this order, visit: https://www.nvbar.org/sites/default/files/Notice%20to%20Courts_14-0208.pdf

In Re: Thomas D. Pilkington
Bar No. 12472
Docket Nos. 67706
and 67969
Filed: November 6, 2015

ORDER OF SUSPENSION

Attorney ordered suspended five years and one day after multiple violations, including not filing client's divorce documents and ceasing contact with her, as well as failing to complete TIP mentoring program and pay bar dues.

The Southern Nevada Disciplinary Board's hearing panel recommended attorney Thomas D. Pilkington be suspended from the practice of law for five years and one day following findings of multiple rule violations, including RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 1.16 (declining or terminating representation), RPC 8.1 (b) (bar admission and disciplinary matters) and RPC 8.4(c), (d) (misconduct).

The hearing panel alleged that Pilkington accepted and cashed a check from a client to handle a joint petition for divorce. Pilkington prepared divorce documents, and the client and her estranged spouse executed the paperwork; however, Pilkington never filed the paperwork or contacted the client again.

The state bar attempted on numerous occasions to contact Pilkington at the addresses and phone numbers he had provided pursuant to SCR 79. The information was no longer current and/or any messages left were never returned. Pilkington, who was admitted to practice in 2011, also failed to complete his required TIP mentoring program or pay his 2012 bar dues. Pilkington is currently administratively suspended from the practice law for these failures. He is also currently suspended for failing to comply with CLE requirements.

Pilkington did not respond to the complaint against him and did not appear at the disciplinary panel's hearing on the matter, and the case

proceeded on a default basis. The hearing panel recommended that Pilkington be suspended from the practice of law for five years and one day, that he be required to pay restitution to the client whose divorce paperwork he never filed and that he be required to pay the costs of the disciplinary proceedings.

The court conducted a de novo review and concluded that the panel's recommendation is appropriate. Accordingly, Pilkington is suspended from the practice of law in Nevada for five years and one day commencing November 6, 2015. To be reinstated to the practice of law, Pilkington must successfully petition for reinstatement, SCR 102(2), successfully complete the bar examination, SCR 116(5), and pay the restitution set forth above. Pilkington shall pay the costs of the disciplinary proceedings, excluding bar counsel and staff salaries, within 30 days of receipt of the state bar's bill of costs.

For more information about this order, visit: <https://www.nvbar.org/sites/default/files/11-19-15%20Not%20of%20Serv%20to%20Cts%20Re%20Order%20of%20Suspension%20-%20Pilkington.pdf>

In Re: Steven A. Stefani
Bar No. 10509
Docket No. 66607
Filed: October 22, 2015

ORDER IMPOSING PUBLIC REPRIMAND

Attorney publicly reprimanded for practicing outside scope of practice limits and for failing to state practice limitations on business card.

The Southern Nevada Disciplinary Board's hearing panel found that Stefani violated RPC 5.5 (unauthorized practice of law), RPC 8.1 (bar admission and disciplinary matters) and RPC 8.4 (misconduct) for practicing outside the scope of SCR 49.10 (limited practice of attorneys employed in government or as in-house counsel) by filing motions, appearing in court and failing to state practice

limitations on his business card and correspondence.

The hearing panel found that Stefani, while representing Bigelow Management, exceeded the scope of his practice and failed to state the limitations of his practice on his business card and in correspondence. Stefani also failed to respond to the inquiries of the disciplinary panel regarding the allegations concerning his card and correspondence. The Southern Nevada Disciplinary Board recommended Stefani be publicly reprimanded and compelled to pay the costs of the disciplinary action against him.

After a de novo review, the court concluded that clear and convincing evidence supports the panel's findings as to the rule violations by Stefani. The court also concluded that, based on the evidence, the panel's recommended discipline is appropriate. It publicly reprimanded attorney Steven A. Stefani for violations of RPC 5.5, 8.1 and 8.4. Additionally, Stefani shall pay the costs of the disciplinary proceeding.

For more information about this order, visit: <https://www.nvbar.org/sites/default/files/11-04-15%20Notice%20to%20Courts%20-%20Stefani.pdf>

In Re: James R. Rosenberger
Bar No. 1047
Docket No. 67396
Filed: September 29, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA

Attorney ordered suspended for six months and one day, stayed, with one-year probation, following admission of multiple rules violations.

The Southern Nevada Disciplinary Board's hearing panel recommended approving, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney James R. Rosenberger. Under the agreement, Rosenberger admitted to violations of RPC 1.3 (diligence),

RPC 1.4 (communication), RPC 3.2 (expediting litigation), RPC 8.1 (bar admission and disciplinary matters) and RPC 8.4 (misconduct).

The agreement provides for a six-month-and-one-day stayed suspension and a one-year probation with the following conditions: (a) Rosenberger shall pay or otherwise resolve any judgement still owing in *Marvin Cutler v. Royal and Sun Alliance, et al.*, within six months of the court order, and shall, to the extent Marvin Cutler made any payments towards the judgment, reimburse Cutler during the six-month period; Rosenberger shall not receive any grievances that result in the imposition of discipline for conduct that occurs between the date of the conditional guilty plea hearing through the end of the probationary period; (c) Rosenberger shall pay the actual costs of the disciplinary proceeding, excluding bar counsel and staff salaries, within 30 days of a receipt of billing from the state bar, or on a payment plan approved by the state bar; and (d) Rosenberger shall resolve to the satisfaction of the state bar any issues regarding Cutler's credit that were caused by the entry of the judgment.

Based on a review of the record, the court concluded that the guilty plea agreement should be approved and imposed a six-month-and-one-day stayed suspension and a one-year probation commencing from September 29, 2015. Rosenberger must comply with the terms of the plea agreement as outlined above.

Chief Justice Hardesty, Justice Douglas and Justice Saitta dissented: "We would reject the conditional guilty plea agreement, because the agreed-upon suspension is insufficient in relation to Rosenberger's conduct. A one-year actual suspension would be more appropriate. We therefore dissent."

For more information about this order, visit: <https://www.nvbar.org/sites/default/files/10-15-15%20Not%20of%20Serv%20to%20Cts%20re%20Order%20App%20CGP%20Agmt%20Rosenberger.pdf>

In Re: Lawrence J. Semenza, II
Bar No. 789
Docket No. 68201
Filed: November 6, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA

Attorney suspended for one year, retroactive to March 27, 2015, following misdemeanor convictions in federal court for willful failure to file a tax return.

The Southern Nevada Disciplinary Board's hearing panel recommended that the court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Lawrence J. Semenza, II. Under the agreement, Semenza admitted to a violation of RPC 8.4(b) (misconduct: criminal act that reflects adversely on the lawyer's honesty, or fitness as a lawyer in other respects) based on convictions in federal court on three misdemeanor counts of willful failure to file a tax return.

The agreement provides for a one-year suspension from the practice of law retroactive to the date that the court temporarily suspended Semenza pursuant to SCR 111, March 27, 2015. Additionally, Semenza agreed to pay the actual costs of the disciplinary proceeding, excluding bar counsel and staff salaries. The agreed-upon discipline takes into account two aggravating factors (substantial experience in the practice of law and illegal conduct) and five mitigating factors (absence of prior disciplinary record, full and free disclosure and cooperative attitude, character or reputation, imposition of other penalties or sanctions, and remorse).

Based on a review of the record, the court concluded that the agreed-upon discipline is sufficient in relation to Semenza's admitted conduct. In particular, the court found that although his conviction was for a "serious offense," the offense did not involve elements such as intentional interference with

continued on page 38 »

« continued from page 37

the administration of justice, false swearing, misrepresentation or fraud that would warrant a more severe sanction or longer suspension. The court therefore imposed a one-year suspension retroactive to March 27, 2015. Additionally, Semenza shall pay the costs of the disciplinary proceedings, excluding bar counsel and staff salaries, within 30 days of receipt of the state bar's bill of costs.

Justice Saitta dissented: "Taking into consideration the nature of the criminal conduct, and the aggravating and mitigating factors, I am not satisfied that a one-year suspension retroactive to the date of the temporary suspension is sufficient to protect the public. I therefore dissent, as I would reject the conditional guilty plea agreement."

For more information about this order, visit: <https://www.nvbar.org/sites/default/files/11-19-15%20Not%20of%20Serv%20to%20Cts%20re%20Order%20App%20CGP%20Agmt%20-%20Semenza%20II.pdf>

In Re: Patrick E. McDonald
Bar No. 3526
Docket No. 67350
Filed: October 9, 2015

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS

The State Bar of Nevada and attorney Patrick E. McDonald jointly petitioned the court for an order transferring McDonald to disability inactive status. McDonald has been suspended from the practice of law in Nevada since July 2013 pursuant to a court order resulting from the state bar's petition under SCR 102(4) (b) demonstrating that McDonald misappropriated \$75,000 from his law firm's trust account. The parties have stipulated that McDonald is disabled under SCR 117 as a result of a major depressive disorder and physical infirmities including unrelenting nerve pain, and request that, in addition to his transfer to disability inactive status, any disciplinary matters pending against him be suspended.

In addition to the behavior that was the basis for his suspension in July 2013, McDonald is the subject of open state bar grievance files for allegedly misappropriating at least an additional \$480,000 that was being

held in escrow in his trust account and allowing a non-lawyer assistant to enter into a business relationship with an existing client without necessary disclosures and written waivers.

In support of the petition, the parties attached a medical assessment by Dr. Scott A. Rubin, which concludes that McDonald currently lacks the capacity to practice law and defend the disciplinary proceedings pending against him.

Having reviewed the petition and its attachments, including Dr. Rubin's report, the court concluded that the relief requested in the joint petition is warranted under the circumstances. Accordingly, Patrick E. McDonald is transferred to disability inactive status. McDonald may resume the practice of law only after he has complied with SCR 117(4) and (5). In light of this order, any pending disciplinary proceedings against McDonald are suspended.

Justice Saitta dissented.

For more information about this order, visit: <https://www.nvbar.org/sites/default/files/10-15-15%20Not%20of%20Serv%20to%20Cts%20re%20Order%20of%20Transfer%20to%20Dis%20Inactive%20Status%20McDonald.pdf>

RESIGNATIONS (Voluntary, No Discipline Pending)

SCR 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the State Bar of Nevada, accepted by the Board of Governors, and approved by the Nevada Supreme Court.

The following members resigned pursuant to this rule:

Steve Grume Bar No. 235 Order No. 68931 Filed 10/22/15	Sarah Flores Bar No. 10042 Order No. 68930 Filed 10/22/15
--	---

TIPS FROM THE OFFICE OF BAR COUNSEL

SCENARIO:

A family law attorney gets a call from a divorce client. Although he initially agreed to the settlement, the client now refuses to sign it, announces that he hates everybody involved, including the judge, his wife and even his lawyer. He says he is armed and threatens to harm his soon-to-be former wife and her boyfriend.

We all understand that, with a few exceptions, lawyers don't reveal information received from a client. However, Rule of Professional Conduct 1.6(c) (confidentiality) states that an attorney *shall* reveal information that he/she reasonably believes is necessary to prevent a criminal act that would likely result in death or substantial bodily harm. So, the attorney who called the state bar for ethics guidance was told:

- 1. Call opposing counsel** immediately so the wife can be warned.
- If her attorney is not available, **call the wife** directly if possible. No, attorneys aren't supposed to speak with opposing parties. In this case, so what? Tell her to run, and seek a safe location.
- 3. Call the police** and let them know what's going on.
- 4. Call the court chambers** and warn the judge, who the client also referenced.
- 5. Lock your door.** The client also threatened his attorney. Notify your staff and take necessary safety precautions.

Of course, an attorney walks a fine line in such situations. Many clients make scary statements, but that's as far as it goes. However, if a client makes specific threats and you reasonably believe he or she might follow through, err on the side of saving lives. We will sort out any ethical problems later. **NL**