

SUPREME COURT OF NEVADA

In re: Harvey
Whittemore
Bar No.: 1089
Docket No.: 66350
Filed: March 20, 2015

ORDER OF SUSPENSION

Attorney suspended for four years retroactive to the date of his temporary suspension for criminal conviction of three felonies in violation of 2 U.S.C. § 441a(a)(1) (making excessive campaign contributions), 2 U.S.C. § 441f (making campaign contributions in the name of another), and 18 U.S.C. § 1001(a)(1) and (2) (false statement to a federal agency).

This is an automatic de novo review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's recommendation for attorney discipline arising from attorney Harvey Whittemore's conviction of three felonies in the United States District Court, District of Nevada.¹ The panel recommended that Whittemore be suspended from the practice of law for 18 months, retroactive to the date of his temporary suspension.² The panel stated that, should the suspension expire during Whittemore's incarceration, then the suspension should continue until the date of his release from incarceration. Finally, the panel recommended that Whittemore pay the costs of the disciplinary proceedings.³ This court's automatic review of a disciplinary panel's findings and recommendations is de novo. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment." *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The state bar has the burden of showing by clear and convincing evidence that Whittemore committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

While we conclude that clear and convincing evidence supports the panel's findings of misconduct, we do not agree that the panel's recommended discipline is commensurate with the criminal

conduct that Whittemore was convicted of engaging in. Accordingly, we suspend Whittemore from the practice of law for four years, retroactive to November 13, 2013, the date of this temporary suspension. Whittemore shall pay the costs of the disciplinary proceedings within 30 days of receipt of the state bar's bill of costs. Because the imposed suspension is longer than six months, Whittemore must petition the state bar for reinstatement to the practice of law. SCR 116. The state bar shall comply with SCR 121.1.

It is so ORDERED.⁴

In re: Raymond
Duensing
Bar No.: 9385
Docket No.: 67375
Filed: March 27, 2015

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney temporarily suspended pursuant to SCR 111 for his felony convictions in violation of NRS 199.280 (resisting public officer), NRS 202.360 (unlawful possession of firearm) and NRS 202.350(1)(d) (3) (carrying concealed weapon). He was also referred to the Southern Nevada Disciplinary Board for formal disciplinary proceedings.

Bar Counsel for the State Bar of Nevada has petitioned this court, pursuant to SCR 111, to enter an order temporarily suspending attorney Raymond Duensing from the practice of law and referring him to the appropriate board for discipline. The petition is supported by certified copies of documents indicating that Duensing was found guilty, following a jury trial in the Eighth Judicial District Court, of violating NRS 199.280 (resisting public officer), NRS 202.360 (unlawful possession of firearm) and NRS 202.350(1)(d)(3) (carrying a concealed weapon), all felonies.

Pursuant to SCR 111, temporary suspension and referral to the appropriate disciplinary board are mandatory when an attorney has been convicted of a serious crime, which includes a felony. SCR 111(6)(8). Having reviewed the petition and the supporting documentation submitted by bar counsel, we conclude that the petition conclusively establishes

Duensing's conviction of a serious crime. Accordingly, we temporarily suspend Duensing from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined is the extent of discipline to be imposed. SCR 111(7), (8).

It is so ORDERED.

In re: Charles M.
Pollock
Bar No.: 9450
Docket No.: 67376
Filed: March 27, 2015

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney temporarily suspended pursuant to SCR 111 for his felony conviction in the United States District Court of travel with intent to engage in criminal sexual activity and his conviction in Nevada for luring children or mentally ill persons with use of technology with the intent to engage in sexual conduct, a felony. He was also referred to the Southern Nevada Disciplinary Board for formal disciplinary proceedings.

The state bar has filed a petition under SCR 111(4) seeking the temporary suspension of attorney Charles M. Pollock. The petition is based on Pollock's conviction in the United States District Court for the Eastern District of California, pursuant to a guilty plea, of travel with intent to engage in criminal sexual activity, a felony. Pollock was also convicted in Nevada, pursuant to a guilty plea, of luring children or mentally ill persons with use of technology, with the intent to engage in sexual conduct, a felony. Pollock untimely informed the state bar of his conviction. See SCR 111(2).

When an attorney has been convicted of a serious crime, SCR 111 provides that this court shall enter an order suspending that attorney. SCR 111(7). A felony is explicitly a serious crime under SCR 111, and a guilty plea constitutes a conviction. SCR 111(1), (6). Pollock pleaded guilty to a felony count and has therefore been convicted of a serious crime for purposes of SCR 111.

Accordingly, we temporarily suspend Pollock from the practice

of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined is the extent of discipline to be imposed. See SCR 111(7), (8).

It is so ORDERED.

In re: Lawrence J. Semenza
Bar No.: 789
Docket No.: 67374
Filed: March 27, 2015

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney temporarily suspended pursuant to SCR 111 for his felony conviction in the United States District Court of three misdemeanor counts of willful failure to file a tax return under 26 U.S.C. §7203. He was also referred to the Southern Nevada Disciplinary Board for formal disciplinary proceedings.

Bar Counsel for the State Bar of Nevada has petitioned this court, pursuant to SCR 111, to enter an order temporarily suspending attorney Lawrence J. Semenza, II, from the practice of law and referring him to the appropriate board for discipline. The petition is supported by copies of documents indicating that Semenza pleaded guilty, in the United States District Court, District of Nevada, to violating three misdemeanor counts of willful failure to file a tax return under 26 U.S.C. §7203.

Pursuant to SCR 111, temporary suspension and referral to the appropriate disciplinary board are mandatory when an attorney has been convicted of a serious crime, which includes “any crime less than a felony a necessary element of which is ... [a] willful failure to file an income tax return.” SCR 111(6)-(8). Having reviewed the petition and the supporting documentation submitted by Bar Counsel, we conclude that the petition conclusively establishes Semenza’s conviction of a serious crime. Accordingly, we temporarily suspend Semenza from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined is the extent of discipline

to be imposed. SCR 111(7), (8). It is so ORDERED.

In re: John S. Rogers
Bar No.: 4730
Docket No.: 66912
Filed: March 20, 2015

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

Attorney conduct of failure to supervise non-lawyer assistants warrants suspension for six months and one day, stayed, with an actual suspension of 90 days. After the term of actual suspension, attorney is on probation for one year.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel’s recommendation that we approve a conditional guilty plea in exchange for a stated form of discipline pursuant to SCR 113 for attorney John Rogers. Under the plea agreement, Rogers admits to one violation each of RPC 1.3 (diligence), RPC 1.16 (declining or terminating representation), RPC 3.1 (meritorious claims and contentions), RPC 4.4 (respect for right of third persons), RPC 5.3 (responsibilities regarding non lawyer assistants) and RPC 5.5 (unauthorized practice of law), and two violations of RPC 8.4 (misconduct).⁵ These violations arise from Rogers’ conduct during representation of three clients.

The agreed-upon discipline provides that Rogers be:

1. Suspended from the practice of law for six months and one day, stayed with 90 days of actual suspension, and a public reprimand at the end of the probationary period;
2. To serve the actual suspension, Rogers will transfer to inactive status and cease practicing law for 90 days; and
3. Rogers will be placed on probation for one year, during which he shall continue attending AA meetings and submit evidence of attendance on a quarterly basis to the Office of Bar Counsel, refrain from engaging in solo practice of law or managing a law practice, cease professional association with Carmela De Vera, promptly and completely

respond to any grievances filed against him or any information requests from the state bar and refrain from engaging in professional misconduct that results in the imposition of disciplinary sanctions.

Any violations of the stated conditions will result in further disciplinary proceedings and a recommendation to the Supreme Court that the stayed suspension be imposed. Further, Rogers shall pay all costs of the disciplinary proceedings (excluding staff salaries), and costs of publication or establish a repayment plan with the state bar within 30 days of the state bar submitting its memorandum of costs in accordance with SCR 120.

Having reviewed the record, we conclude that the conditional guilty plea agreement should be approved. See SCR 113(1). Accordingly, Rogers is suspended from the practice of law for six months and one day. That suspension is stayed and Rogers shall begin serving a 90-day actual suspension from the date of this order. At the completion of the term of his actual suspension, Rogers shall be placed on probation for one year, subject to the conditions listed above. Rogers shall pay the costs of the disciplinary proceedings (excluding staff salaries), or establish a payment plan with the state bar, within 30 days of receipt of the state bar’s bill of costs. Rogers shall comply with SCR 115 and the state bar shall comply with SCR 121.1.

It is so ORDERED

SAITTA, J., dissenting:

I believe that Rogers’s misconduct warrants more severe punishment than that provided in the conditional guilty plea and would therefore reject the plea and remand to the disciplinary board for further proceedings. Accordingly, I dissent.

RESIGNATIONS (VOLUNTARY, NO DISCIPLINE PENDING)

S.C.R. 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,

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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, accepted by the board of governors, and approved by the supreme court.

The following members resigned pursuant to this Rule:

Jennie L. Bricker
Bar No. 8772 Order 67282
Filed 3/20/15

John B. Pearson
Bar No. 2769 Order 67284
Filed 3/20/15

Alexander E. Drew
Bar No. 11955 Order 67285
Filed 3/20/15

Tudor Chirila
Bar No. 884 Order 67286
Filed 3/20/15

William Jac Shaw
Bar No. 1753 Order 67287
Filed 3/20/15

Johan Schripsema
Bar No. 5765 Order 67288
Filed 3/20/15

SOUTHERN NEVADA DISCIPLINARY BOARD

In re: **David A. Riggi**
Bar No.: **4727**
File Nos.: **SG13-0235,**
 SG13-0624,
 SG13-0684,
 SG13-1123
Filed: **March 27, 2014**

PUBLIC REPRIMAND

Attorney publicly reprimanded for failure to respond to the state bar during its investigation (second violation).

TO: DAVID A. RIGGI, ESQ.

Four different and unrelated bankruptcy law clients each filed separate grievances regarding your services. You were able to resolve their concerns and continued

representing three of the clients. You gave a complete refund to the fourth. There was no finding of misconduct in regard to the grievances.

However, you failed to respond at all to some initial letters of investigation, or failed to timely respond to other letters of investigation, from the state bar in regard to each of these four grievances. Further, during this timeframe, you received a Letter of Reprimand for failing to respond to the state bar, and you were on notice that such conduct was not acceptable.

You acknowledged that your conduct in this instance violated Rule of Professional Conduct 8.1 (b) (bar admission and disciplinary matters). Your failure to respond to the state bar delays the disciplinary process and results in the unnecessary expenditure of limited state bar resources. Given that the prior Letters of Reprimand failed to curb the conduct at issue, you are hereby **PUBLICLY REPRIMANDED**.

Please be advised that if this behavior reoccurs in the future, the state bar is likely to seek the imposition of a harsher sanction.

1. Whittemore has been temporarily suspended from the practice of law, pursuant to SCR 111(7), since November 13, 2013, see *In re Discipline of Whittemore*, Docket No. 64154 (Order Denying Petition for Reinstatement, November 13, 2013), and is currently incarcerated.
2. Although the panel failed to make a specific finding, it is apparent that the panel concluded that Whittemore violated RPC 8.4 (misconduct) as this was the only violation alleged by the state bar in its complaint.
3. One dissenting member of the Northern Nevada Disciplinary Hearing Panel would have recommended that Whittemore be permanently disbarred from the practice of law in this state.
4. The Honorable Ron Parraguirre, Justice, has voluntarily recused himself from participation in this matter.
5. In consideration of the plea, the state bar agreed to dismiss the allegation that Rogers violated RPC 3.4 (fairness to opposing party and counsel).

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.