SUPREME COURT OF NEVADA

In re: Barry Levinson
Bar No.: 6721
Docket No.: 64974
Filed: September 3, 2015

ORDER OF DISBARMENT BY CONSENT

Attorney consented to disbarment following a plea in United States District Court and an admission of misappropriation of client funds.

The Southern Nevada Disciplinary Board and attorney Barry Levinson, Bar No. 6721, have filed a joint petition for Levinson's disbarment by consent, pursuant to SCR 112. The petition acknowledges that Levinson pleaded guilty to three felony counts in the U.S. District Court, and in his plea memorandum, Levinson agreed to consent to disbarment. The petition is supported by Levinson's affidavit, in which he states that he consents to disbarment and does so freely and voluntarily, that he has not been subjected to any coercion or duress, that he is fully aware of the implications of his consent and that he has had an opportunity to consult with counsel prior to consenting to disbarment. Levinson concedes that the material facts in the state bar's petition for temporary suspension, the supplement to that petition and the formal complaint are true.[1] *See* Docket No. 60530. He submits the affidavit with full knowledge that if the state bar were to prosecute his case, he could not successfully defend against the charges.

Pursuant to SCR 112(1), an attorney who is the subject of an investigation or proceeding involving allegations of misconduct may consent to disbarment by submitting the requisite affidavit. Levinson's affidavit meets the requirements of SCR 112(1). Therefore, the petition for disbarment by consent is granted. SCR 112(2). Barry Levinson is hereby disbarred. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1 regarding notice and publication.

It is so ORDERED.

NORTHERN NEVADA DISCIPLINARY BOARD

LETTER OF REPRIMAND

File Nos. NG11-1190, NG11-0373

Attorney received letter of reprimand for failure to supervise non-lawyer assistants in two loan modifications.

On March 27, 2015, a Formal Hearing Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the panel concluded that Attorney violated the Rules of Professional Conduct and should be issued a Letter of Reprimand.

Attorney met with Client A personally on February 25, 2010, to discuss the possibility of Attorney representing her for the purpose of submitting a loan modification application. On March 11, 2010 Client A returned to Attorney's office and met with a non-lawyer assistant. Client A was presented with, and executed, the Retainer Agreement and paid the requested flat fee of $3,500. Client A also executed a Limited Durable Power of Attorney, authorizing Attorney and one of the non-lawyer assistants to act as her attorney-in-fact during the loan modification process.

Between the March 11, 2010 meeting and December 8, 2010, Client A communicated only with non-lawyer assistants in Attorney's office regarding her loan modification application, except for one e-mail exchange. Her communication with the non-lawyer assistants included their requests for information and documentation, and analysis of documentation that she received directly from her lenders. All of Attorney's office's communication with Client A's lenders was done by non-lawyer assistants. On December 8, 2010, Attorney personally told Client A that her request for a loan modification had been denied.

Attorney met personally with Client B, on or about February 26, 2010, to discuss the potential of Attorney's representation for the purpose of submitting a loan modification application. On or about February 26, 2010, Client B executed the Retainer Agreement and a Limited Durable Power of Attorney authorizing Attorney and three of the non-lawyer assistants to act as Client B's attorneys-in-fact in the loan modification process.

On or about April 23, 2010, Client B paid Attorney's office $1280 of the requested $3,500 flat fee for the representation. On or about April 26, 2010, Client B paid Attorney's office an additional $480 towards Attorney's fee. Between February, 2010, and January 18, 2011, Client B communicated only with non-lawyer assistant from Attorney's office regarding their loan modification application; this included requests to Client B for information and documentation, and analysis of documentation that the Client B was receiving directly from his lender. All communication from Attorney's office with Client B's lender was handled by non-lawyer assistants. On January 18, 2011, Attorney personally met with Client B and told him that his request for a loan modification had been denied.

RPC 5.3 states that, with respect to a non-lawyer employed by a lawyer, the lawyer is responsible for any of the non-lawyer's conduct that violates the Rules of Professional Conduct, if the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved.

In this case, Attorney's non-lawyer assistants applied law to fact and provided legal advice to two of Attorney's clients during the course of their representation by Attorney in their respective loan modification processes. These actions are considered "the practice of law." It is a violation of RPC 5.5 for a non-lawyer to practice law. Attorney either ordered the non-lawyers to act in violation of RPC 5.5 and/or were aware of the non-lawyers' activities and ratified their actions.

Accordingly, Attorney violated RPC 5.3 and is hereby **REPRIMANDED**.

SOUTHERN NEVADA DISCIPLINARY BOARD

File Nos. SG13-1578, SG14-0259, SG14-0566, SG14-0565

Attorney received letter of reprimand after failing to communicate with four clients regarding the status of their case.

On June 2, 2015, a Formal Hearing Panel of the Southern

Nevada Disciplinary Board considered the above-referenced grievances. Pursuant to a Conditional Guilty Plea entered into between Attorney D and the State Bar of Nevada, the panel concluded that Attorney D violated the Rules of Professional Conduct and should be issued a Letter of Reprimand.

SG12-1578/Client C

On or about April 4, 2013, Client C retained Law Firm for assistance filing an injunction against her Homeowners Association for violations concerning placement of a spa and solar panels. Client C paid the firm a retainer fee and was initially assigned to Attorney M. On or about March 4, 2013, Attorney M. filed a complaint.

Client C stated that she began having significant communication problems with Attorney M. She contacted Attorney R, who advised her that Attorney M had become unstable and that he was reassigning her case to Attorney D, because Attorney D knew a great deal about HOA work.

Client C stated that Attorney D contacted her and informed her that Attorney D would be the primary attorney handling her matter. Client C stated that, once assigned to the case, Attorney D advised her to withdraw the filed complaint and pursue a claim with the State of Nevada Real Estate Division instead. On or about May 30, 2013, a Notice of Voluntary Dismissal without Prejudice was filed with the court. Client C assumed the case was back on track, until September 13, 2013, when she received a call from the Office of the Ombudsman. The office advised her that it had received no reply after repeated attempts to contact her attorney, and asked her if she was withdrawing her complaint.

When Client C called and emailed Attorney D, he blamed the arbitrator for not communicating with him, and the Law Firm due to a recent move. Client C stated that Attorney D reassured her that he would get things back on track, and later advised her that he had scheduled the arbitration for December.

Client C's last contact with the firm was October 3, 2013. After that date, she was unable to contact Attorney D or anyone from the Law Firm. After several weeks she became very concerned, filed a bar complaint and contacted the arbitrator's office. The arbitrator's office informed her that an arbitration brief was never filed on her behalf. Client C was forced to file the pre-arbitration brief herself. Client C stated that Attorney D contacted the arbitrator and opposing counsel via email, days before the December hearing, requesting a postponement. Client C did not receive the email and was contacted by the arbitrator's office to confirm she wished to continue the matter, as she had been proceeding on her own behalf.

On November 15, 2013, the state bar sent Attorney D correspondence, requesting that Attorney D provide a response to the allegations contained in the grievance along with a copy of the client file, including any retainer agreement and receipts for client payments. Attorney D did not respond.

On January 22, 2014, the state bar sent follow-up correspondence to Attorney D at his home address. In Attorney D's response to the state bar, Attorney D stated that Attorney R was responsible for the file, and that Attorney D was just an independent contractor. Attorney D claimed that he was paid specific amounts of money to accomplish specific tasks. Attorney D confirmed that he performed some tasks on Client C's case, but claimed that in October of 2013, the office closed and that Attorney D didn't have contact or calendaring information on the file.

SG14-0259/Client D

Client D retained Law Firm to file a complaint for damages against Dollar Tree Loan Center. Attorney D was assigned to handle her file. Client D made numerous attempts to contact Attorney D to determine the status of her case and got no response. Initially, Client D stated she dealt with an office assistant who was very pleasant and would apologize for Attorney D's failure to return her calls.

On October 3, 2013, Client D spoke with non-lawyer, who she described as rude. Client D stated non-lawyer yelled at her, told her she was too busy to take a message and told her that if she really wanted someone to call her back, she should file a grievance with the state bar.

Client D subsequently emailed Attorney R directly, telling him what happened and stating that if she didn't get a call back, she would file a bar complaint as advised by non-lawyer. Attorney D then called her back, apologized for not getting back to her and for non-lawyer's behavior, and promised to continue working on her file.

When Client D failed to hear anything more from Attorney D, she tried calling the offices again and was advised via message that the office had closed. She subsequently filed her bar complaint.

On May 28, 2014, Attorney D sent a response to the state bar stating that Client D had retained the Law Firm to represent her interests, and that Attorney D was never an employee of the firm. Attorney D stated that his involvement was limited to that of an independent contractor, assigned specific tasks.

Attorney D did confirm that Attorney D performed work for Client D and confirmed that he was in possession of her original file, which Attorney D later turned over to the state bar. Attorney D claimed that he had explained to Client D that Attorney D did not think she could prevail on a civil rights violation because she did not have any witnesses or evidence to establish her claim. Attorney D stated that he asked her to meet with him further, but claimed she was unwilling or unable to do so.

SG14-0566 /Client E

Client E retained Law Firm on July 26, 2012, to handle a dispute with his homeowners association concerning the election of board members. He paid $2,500 to the law firm over a period of three months. Once the election process began, Client E attempted to contact Attorney R's office to determine the progress made on his case. He received no response. After several more calls, Client E drove to the offices and was told by the receptionist that Attorney R would be informed of his visit and that someone would get back to him shortly.

After several more telephone calls, Client E was informed that Attorney D would be handling his case. However, the election came and went without any work being done for Client E.

After the election, Client E stated that he was still experiencing harassment from his homeowners association (HOA) board and still needed help. Attorney D and Attorney R informed Client E that it would be necessary to sue the HOA, and stated that another $5000 would be necessary to fund the lawsuit. Client E pointed out that he had

continued on page 42 »

« continued from page 41

already paid $2,500 and that nothing had been done on his case.

Client E ultimately paid another $2,000 and was promised that a lawsuit would be filed on his behalf. He paid the additional $2,000 on February 5, 2013. After paying the additional funds, Client E stated that he had several unproductive conversations with Attorney D about the status of his lawsuit, and that he was told on numerous occasions that Attorney D was busy with other cases.

Client E was supposed to meet with Attorney D in June of 2013, but Attorney D didn't show up to the appointment. Client E then began requesting his money back and received no response.

Attorney D sent a short response to the state bar stating that Attorney R was responsible for the file, and that Attorney D was just an independent contractor. Although Attorney D admitted he'd been assigned to "handle the file", Attorney D stated that he was told to cease all work until more money was paid, so Attorney D did as instructed. Attorney D stated that in all the confusion of Law Firm closing, Attorney D had no idea what happened to the file.

SG14-0565 /Client F

On October 25, 2012, Client F hired Attorney R to pursue litigation for breach of a lease/option purchase agreement. Client F signed a retainer agreement, and were instructed to pay a retainer fee of $5,000. This retainer fee was paid in $500 installments over a period of several months to the Accounting Manager.

Client F, from the beginning of their representation, experienced communication issues and changes in handling of their file. Client F made a number of telephone calls to Attorney R to find out what was going on with their case, and to find out why the file kept changing hands. They finally reached Attorney R and were subsequently introduced to Attorney D, the fourth attorney on the file.

Attorney D informed Client F that they had a strong case, but that they would need to pay another $5,000 because the case was going into the discovery phase. Client F refused to pay the full additional $5,000 because they had seen no evidence of work done, but paid another $1,666 directly to Attorney R's Chase Bank account.

Client F became concerned when they did not receive promised documents from Attorney D or any further word regarding the arbitration. Client F had to hire another lawyer to complete their case, and never got their money back.

Attorney D sent a short response to the State Bar stating that Attorney R was responsible for the file, and that Attorney D was just an independent contractor. Although Attorney D admitted to being assigned to "handle the file", Attorney D stated that Attorney D were told to cease all work until more money was paid, so Attorney D did. Attorney D stated that when the Law Firm closed, Attorney D still had Client F's file so Attorney D turned it over to their new attorney.

Based on the foregoing Attorney D is hereby **REPRIMANDED** for violating RPC 1.3 (Diligence) and RPC 1.4 (Communication).

File No. SG14-0490

Attorney received letter of reprimand for following trust account overdraft.

On April 14, 2014, the State Bar received an overdraft notice from Nevada State Bank regarding Attorney's attorney-client trust account.

On or about April 11, 2014, according to bank records, a check for $450 was negotiated which exceeded the amount of funds in Attorney's trust account. The bank, however, honored the check, which left your account with a negative balance of $116.26. The overdraft prompted the automatic notice to the State Bar.

In Attorney's response to the State Bar, you explained that the check in question was a fee for a preemptory challenge in a matter for a client. Attorney stated at the time the check was written, his client's father paid $500 toward the bill, with $450 designated for the challenge.

Attorney indicated that his assistant does all credit card transactions, so she just had the deposit go into Attorney's general account as payment on the bill, verses into the trust account. Attorney stated he thought the money had gone into the trust account, so he wrote the check to the court from that account instead of the general account. Once Attorney realized the mistake, he remitted the funds to cover the check in the trust account.

Attorney provided documentation to support his version of events. Attorney stated that to prevent issues in the future, he asked his assistant to confirm with him when she runs a credit card to verify which account to deposit the funds into. Attorney also asked her to provide him with the "batch-out" paperwork when a credit card is run and that Attorney now checks it off and returns it to her upon seeing the deposit postings.

The Panel was concerned that Attorney still seem to be having issues adequately supervising his staff as to matters concerning your bank accounts. Although in this specific instance there was no client harm, the event is an indication of a lack of established procedures for checks and balances.

Rule of Professional Conduct ("RPC") 1.15 (Safekeeping Property) requires an attorney shall safeguard all client funds. In this case, Attorney's failure to implement appropriate checks and balances resulted in the overdraft to the trust account.

Accordingly, Attorney violated RPC 1.15 (Safekeeping Property) and was **REPRIMANDED**.

1. In the instant petition, Levinson concedes that he repeatedly and intentionally violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 3.4(c) (fairness to opposing party and counsel: knowingly disobeying an obligation under the rules of a tribunal), 8.1 (bar admission and disciplinary matters), and 8.4 (misconduct) in the course of misappropriating hundreds of thousands of dollars in client funds.

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.