

## SUPREME COURT OF NEVADA

**In re: Brandon B. Smith**  
**Bar No.: 7916**  
**Docket No.: 68168**  
**Filed: July 21, 2015**

### ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

*Attorney temporarily suspended following numerous criminal convictions, and referred to the disciplinary board for formal disciplinary proceedings.*

The state bar has filed a petition under SCR 111(4) seeking the temporary suspension of attorney Brandon B. Smith. The petition is based on Smith's conviction in the Eighth Judicial District Court, pursuant to a guilty plea, of battery by strangulation, a felony.<sup>1</sup> Smith failed to inform 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, regardless of whether or not a sentence is suspended or deferred. SCR 111(1), (6). Smith pleaded guilty to a felony count and has therefore been convicted of a serious crime for purposes of SCR 111.

Accordingly, we temporarily suspend Smith 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: Keith B. Gregory**  
**Bar No.: 232**  
**Docket No.: 67744**  
**Filed: July 21, 2015**

### ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

*Attorney temporarily suspended following federal conviction of conspiracy to commit wire fraud and two counts of wire of fraud. Attorney was referred to the disciplinary board for formal disciplinary proceedings.*

The state bar has filed a petition under SCR 111(4) seeking the temporary suspension of attorney Keith E. Gregory. The petition is based on Gregory's conviction in the United States District Court, District of Nevada, of conspiracy to commit wire and mail fraud and two counts of wire fraud, all felonies. Gregory timely 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(6). Gregory was convicted of a felony and has therefore been convicted of a serious crime for purposes of SCR 111.

Accordingly, we temporarily suspend Gregory 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.

## NORTHERN NEVADA DISCIPLINARY BOARD

### LETTER OF REPRIMAND

**File No. NG14-0368**

*Attorney received letter of reprimand for failure to timely respond to the state bar.*

The Office of Bar Counsel received a grievance from Client, an inmate at a correctional center, concerning his court-appointed attorney (Attorney).

Client alleged that the post-trial Judgment of Conviction contained an error, that was brought to his attention by a caseworker at the correctional center. According to Client, the error would have resulted in his serving an additional two years on his sentence. Client claims that he and his family both attempted to contact Attorney after discovering the error contained in the judgment, but to no avail. Client's family ultimately paid another lawyer \$750 to get the conviction amended. An Amended Judgment of Conviction was issued on February 18, 2014.

On March 26, 2014, the State Bar of Nevada Office of Bar Counsel opened a grievance file and Attorney was asked to respond to Client's allegations. No response was forthcoming.

On May 12, 2014, a follow-up letter was sent to Attorney, via certified mail, return receipt requested, again asking Attorney to respond and putting Attorney on notice that, absent a response, the grievance file would be presented to a screening panel. The panel would be asked to consider all allegations contained in the grievance deemed admitted. Further the failure to respond to the bar would be treated as a separate violation of RPC 8.1(b) (bar admissions and discipline matters). The item was returned unclaimed. The letter was also sent via regular U.S. Mail, and that letter was not returned to the state bar. No response was received from Attorney.

On July 7, 2014, a staff member of the Office of Bar Counsel e-mailed Attorney, attaching a copy of the grievance. Again, Attorney was told that the grievance file would be presented to a screening panel and the grievance may be deemed admitted absent a response from Attorney. The staff member received no response.

On November 26, 2014 and December 5, 2014, a staff member of the Office of Bar Counsel e-mailed Attorney again, attaching the prior July 7, 2014 email, and requesting Attorney's response. No response arrived until January 8, 2015, at which time Attorney sent a list

## SOUTHERN NEVADA DISCIPLINARY BOARD

of documents related to Client's case along with the documents themselves. Attorney did not provide a narrative response to Client's allegations or an explanation for Attorney's prior failure to respond to the state bar. The combined case-related documents provided by Client and Attorney indicated that the error in Client's Judgment on Conviction was a clerical error and not a legal one.

RPC 8.1 requires that a lawyer "respond to a lawful demand for information from a ... disciplinary authority." In this case, Attorney violated this rule by failing to respond to four of the Office of Bar Counsel's requests for information. After the Office of Bar Counsel's fifth request for information related to the Client's grievance, Attorney responded by forwarding only pleading documents, omitting a narrative of the defense to the claim. This belated, minimal response does not mitigate Attorney's prior failures.

Accordingly, Attorney violated RPC 8.1 and is hereby **REPRIMANDED**.

### File No. NG14-0164

*Attorney received letter of reprimand for filing a complaint in district court while suspended for failure to maintain Continuing Legal Education requirements.*

Attorney was suspended by the Supreme Court of Nevada in November 2011, for failing to complete his Continuing Legal Education (CLE) requirements.

Although Attorney attempted to be reinstated in late 2011, he was unsuccessful. Attorney did not attempt to be reinstated thereafter and continued on CLE suspension.

In January, 2014, Attorney agreed to represent someone in a legal matter. To that end, Attorney filed a complaint in district court.

Attorney did not deny knowing that he had been CLE suspended since November 2011, but told the court and Office of Bar Counsel that he had forgotten about the suspension and asked for the court's indulgence on behalf of his client.

In light of the foregoing, Attorney violated Supreme Court Rule 212(5), RPC 5.5(d)(1)(i) (unauthorized

practice of law: limitations), and RPC 8.4(a) and (d) (misconduct).

Supreme Court Rule 212(5) provides that an attorney suspended for noncompliance with the minimum continuing legal education requirements, "is not entitled to engage in the practice of law in the State of Nevada until such time as the attorney is reinstated under Rule 213." In this case, while Attorney was suspended for noncompliance with the CLE requirements, Attorney engaged in the practice of law in the state of Nevada by filing a complaint in district court.

RPC 5.5(d)(1)(i) states that "no lawyer is authorized to provide legal services under this rule if the lawyer is an inactive or suspended member of the State Bar of Nevada." In this case, Attorney was suspended from the practice of law in the Nevada due to failing to meet the CLE requirements in 2011, and Attorney practiced law by filing a complaint in district court.

Rules 8.4(a) states that it is professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct." In this case, by filing a complaint on behalf of another while suspended from the practice of law Attorney violated a separate Rule of Professional Conduct.

Rule 8.4(d) states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." In this case, Attorney initiated a legal proceeding while suspended. This was prejudicial to the administration of justice, because the matter cannot proceed with Attorney's involvement.

Pursuant to Rule 102.5 of the Supreme Court Rules, the panel also considered the mitigating factors that Attorney had no prior discipline in 35 years of law practice, and that Attorney agreed to (i) withdraw from the district court action, and was, in fact, removed from the matter by the court's own action, and (ii) refund any funds/retainers that he received as payment for the representation in that action.

Accordingly, Attorney violated SCR 212(5), RPC 5.5(d)(1)(i), and RPC 8.4(a) and (d), and is hereby **REPRIMANDED**.

### File No. SG14-0793

*Attorney received letter of reprimand for issuing a trust account check for a property damage claim that was not deposited into the trust account, resulting in an overdraft.*

On or about June 16, 2014, Chase Bank notified the State Bar of Nevada that Attorney's trust account had become overdrawn on June 9, 2014, when a check for \$500 was presented for payment. The check was returned unpaid.

On June 25, 2014, the state bar opened a grievance file and sent Attorney a letter requesting that Attorney explain the reason for the overdraft and provide sufficient documentation to support the response.

In Attorney's response to the state bar, Attorney explained that the check in question had been issued on February 7, 2014, and left in the file for the client to pick up, but that the client never appeared to collect the check. Thereafter, the client appeared in Attorney's office on May 9, 2014, and received the check, which he was not able to cash as the check was no longer valid. The client immediately returned to Attorney's office and was provided with a replacement check, which he couldn't cash due to an insufficiency of funds in the account.

Upon further review, Attorney determined that the \$500 payment was for the client's property damage claim. Attorney claimed that he generally kept property damage checks received directly from the insurance carrier in a separate file, as they are made out directly to the client. As such, Attorney stated, there should have never been a check written from his trust account with which to pay the client the \$500, as the funds were not in the account; Attorney has since provided the client with the check from the insurance carrier.

Attorney stated that he met with his staff to ensure that trust account

continued on page 50 »

«continued from page 49

checks would not be written by anyone except the Attorney, and he now keeps the trust account checks locked up. Attorney added that he holds monthly staff meetings to review office policies and ensure that he has no further issues regarding his trust account.

The panel noted that Attorney had been reprimanded in June 2014 for concerns regarding his trust account.

Based on the foregoing, Attorney is hereby **REPRIMANDED** for violating RPC 1.15 (safekeeping property) and RPC 5.3 (responsibilities regarding nonlawyer assistants). Any further overdrafts will likely result in a recommendation for a formal hearing.

#### File No. SG11-0974

*Attorney received letter of reprimand for failure to properly withdraw from representation.*

On July 7, 2008, a complaint was filed against Client by his former business partner for breach of contract and other causes of action arising out of the distribution of corporate funds. On or around July 18, 2008, Client retained Attorney's firm to defend him in this matter. On June 29, 2009, after an arbitration award had been entered against Client for \$20,666.78, Attorney filed a Request for Trial De Novo at Client's specification.

On August 31, 2009, the ADR Commissioner filed a notice that William R. Killip, Jr., Esq. had been selected as the Judge Pro Tempore, and a Short Trial Setting Order scheduled a bench trial for February 25, 2010. The trial was ultimately rescheduled for July 23, 2010, at Attorney's request.

In the interim, Attorney had a disagreement with Client regarding necessary documents and additional retainer fees. In or about May 2010, Client, through his wife, instructed Attorney to stop working on his case. However, Attorney claimed that he did not withdraw immediately because he did not want to do anything to harm his client.

A pre-trial conference was scheduled for July 9, 2010, but

Attorney failed to appear because he claimed that he never received notification of the date. On or about July 13, 2010, Judge Killip issued an Order Striking Defendant's Answer and issued an Entry of Default. The order was issued as a result of Attorney missing the pre-trial conference on July 9, 2010: the third one Attorney had missed during the pendency of the case. The prove-up hearing was scheduled for July 23, 2010.

On July 23, 2010, Attorney filed an Opposition to Motion to Strike, a Motion to Re-consider and a Motion to Vacate the Trial Date, stating that the defendants "did not receive timely or appropriate notice" of the pre-trial conference or Motion to Strike Answer.

Attorney appeared at the prove-up hearing on July 23, 2010, and argued that he had not received proper notice of the July 9, 2010, pre-trial conference, and that the matter should be continued. Killip stated on record that his office had sent a June 2, 2010, letter to Attorney at the address Attorney had previously provided, and that it had not been returned. Killip also stated that opposing counsel confirmed that his office had consulted Attorney's office regarding available dates for the pre-trial conference, but Attorney maintained that he was not consulted regarding a final pre-trial conference date.

During the hearing, Attorney also argued that a default could not be entered because his client had not been served with the necessary 16.1 discovery to proceed with the prove-up hearing. Killip expressed that the opposing counsel, during a break in the proceedings, provided proof to Killip that Attorney's law firm had been served with all proposed exhibits to be used in the proceeding back on November 22, 2008. Killip ruled that the hearing would still proceed on a default basis, but that he would allow Attorney to cross-examine all of the plaintiffs witnesses on the issue of damages; however, Attorney stated that he was unprepared to do so.

Subsequently, Attorney requested that he be allowed to withdraw as counsel for Client due

to a "fee disagreement." Killip advised Attorney that in order for him to properly withdraw as counsel, a Motion to Withdraw would have to be filed and notice provided to his client. Attorney stated that he had intended to withdraw the week before, but that personal issues had prevented him from doing so.

Killip refused to grant Attorney's oral Motion to Withdraw. Attorney stated to the state bar that he had still not filed a formal Motion to Withdraw prior to the July 23, 2010, hearing, because he had hoped that he could buy his client more time and resolve what he believed to be notice issues.

Attorney advised Killip that he would not be participating in the hearing, but took a seat in the court room to observe the prove-up hearing. Killip instructed Attorney to advise his clients of their post-trial remedies, and Attorney indicated that they would be apprised.

The Judgment by Default was entered against Client on April 20, 2011, in the amount of \$20,666.78. In June 2011, \$10,073.44 was removed from Client's bank accounts pursuant to a court-ordered garnishment, and \$150 was removed to pay garnishment fees. On July 1, 2011, Client filed a grievance with the state bar stating that Attorney had never notified him that the judgment against him had been entered.

Based on the foregoing, Attorney is hereby **REPRIMANDED** for violating RPC 1.16 (declining or terminating representation).

1. The state bar's petition also includes details about Smith's multiple prior misdemeanor convictions. Because Smith has been convicted of a felony, which requires an automatic temporary suspension, we need not consider his prior misdemeanor convictions in resolving this petition.



## 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](http://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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