

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2 SEP 22 2016

3 In the matter of Amendments to Court }
4 Rules regarding attorney discipline, }
5 specifically, SCR 121.1 }

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
CHIEF DEPUTY CLERK

ADKT NO.: 0518

6 PETITION

7 The Board of Governors of the State Bar of Nevada (State Bar) hereby
8 petitions this Court to amend its Rules regarding publication of attorney discipline
9 as set forth in **Exhibit A**.

10 Effective March 2007, pursuant to ADKT 392, Supreme Court Rule
11 (“SCR”) 121 was amended to make public all proceedings involving allegations of
12 attorney misconduct after either a formal complaint has been filed (SCR 121(1)),
13 or in the event no formal complaint is filed, upon the conclusion of the disciplinary
14 proceeding (SCR 121(2)). **Exhibit B**.

15 In July 2008, Rule of Professional Conduct 1.4(c)(1)(vi) was amended by
16 ADKT 428 to require that private reprimands issued after March 2007 be disclosed
17 as a disciplinary sanction on the Lawyer’s Biographical Data Form, which the rule
18 requires be provided to a client or prospective client upon request. **Exhibit C**.

19 In September 2015, with the approval of ADKT 0506, the Supreme Court
20 amended SCR 105 to eliminate “private reprimand” as a form of attorney
21 discipline, re-naming this lowest form of discipline as a “letter of reprimand.” This
22 amendment acknowledges the intent of SCR 121 as amended in March 2007, to
23 make public all forms of attorney discipline. **Exhibit D**.

24 These amendments to SCR 121, RPC 1.4, and SCR 105 effectively
25 eliminated private discipline for attorney misconduct in Nevada. Consistent

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

1 or prior to dismissal. SCR 121 lifts the veil of confidentiality once a grievance is
2 either concluded by dismissal, or a formal disciplinary complaint is filed. The fact
3 of the proceeding then becomes public as does any form of discipline imposed.

4 However, the Supreme Court Rules do not provide for affirmative
5 publication of all public information held by the State Bar. SCR 121.1
6 (Dissemination of Discipline Information) and SCR 113 (Discipline by Consent)
7 mandate that certain discipline be affirmatively disseminated – published – to the
8 public. This affirmative publication occurs after a disciplinary proceeding has
9 been fully adjudicated and final, formal discipline imposed. Until a final order is
10 either entered by the Supreme Court, or signed by a Disciplinary Panel Chair when
11 there is no Supreme Court review required, and any available appeal time has
12 expired, publication is not mandated by SCR.

13 More specifically, SCR 121.1(2) requires publication of orders that subject
14 an attorney to disbarment, suspension, transfer to or from disability inactive status,
15 reinstatement, resignation, or public reprimand.² Currently, the State Bar complies
16 with SCR 121.1(2) through publication in the Nevada Lawyer, and additionally
17 through posting on the State Bar website under the “discipline” link associated with
18 the impacted attorney’s name. Publication notices required by SCR 121.1 must
19 also be made “available to a newspaper of general circulation in each judicial
20 district of this state in which the attorney maintained an office for the practice of
21 law or carried on a substantial portion of his or her practice.” SCR 121.1(2)

22 SCR 121.1(2) does not direct that a letter of reprimand be published as are
23 other forms of attorney discipline, perhaps because until September 2015, the level
24

25 ² Notice of a public reprimand by consent is required to be published in the state bar publication pursuant to SCR
113(4) & 121.1(6).

1 of discipline now represented by a letter of reprimand was delineated as a "private
2 reprimand." As a consequence, letters of reprimand are not published in the
3 Nevada Lawyer and are not posted on the State Bar website. As noted above,
4 however, they are public by virtue of SCR 121 because the underlying charge has
5 been fully adjudicated to formal discipline.

6 **II. Recommendation**

7 As currently written, there is inconsistency in the SCR's concerning the
8 letter of reprimand, which is a public form of attorney discipline that is not made
9 affirmatively known to the public through publication. The purpose of attorney
10 discipline is to protect the public, the courts, and the legal profession. *State Bar of*
11 *Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). The mandate
12 of SCR 121 making public the fact of the disciplinary proceeding, the nature of the
13 proceeding and the outcome, acknowledges this public purpose.

14 The Board of Governors, therefore, recommends that the letter of reprimand,
15 representing an initial level of public discipline for an attorney, be included in SCR
16 121.1 as discipline which must be published by the State Bar, consistent with other
17 forms of attorney discipline. SCR 121.1 containing the proposed amendment, is
18 attached as **Exhibit A**.

19 RESPECTFULLY SUBMITTED this 12th day of September 2016.

20 STATE BAR OF NEVADA
21 BOARD OF GOVERNORS

22 

23 BRYAN K. SCOTT, President
24 Nevada Bar No. 4381
25 State Bar of Nevada
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A

1 **EXHIBIT A**

2 **Rule 121.1. Dissemination of license status, discipline and disability information.**

3 ...

4 **2. Public notice of change in license status and discipline imposed.** The entity
5 responsible under Rule 121.1(1) shall cause notices of orders that subject an attorney to
6 disbarment or any form of suspension, including suspension under Rule 98 or Rule 212,
7 that transfer an attorney to or from disability inactive status, that reinstate an attorney to
8 the practice of law, or that approve an attorney's resignation, with or without discipline
9 pending, to be published in the state bar publication. The responsible entity also shall
10 make these notices available to a newspaper of general circulation in each judicial
11 district of this state in which the attorney maintained an office for the practice of law or
12 carried on a substantial portion of his or her practice.

13 The responsible entity shall also cause a notice of a public reprimand issued by the
14 supreme court, or a letter of reprimand issued either the supreme court or a disciplinary
15 panel of the State Bar of Nevada, to be published in the state bar publication.

16 ...

17 **5. Publication of supreme court orders.** The clerk of the supreme court shall
18 cause any order issued by the supreme court that subjects an attorney to any form of
19 public discipline including a letter of reprimand, public reprimand, suspension or
20 disbarment, that transfers an attorney to or from disability inactive status, that approves
21 an attorney's resignation, or that reinstates an attorney to the practice of law to be
22 published in pamphlet form and disseminated to all subscribers of the advance sheets of
23 the Nevada Reports and to all persons and agencies listed in NRS 2.345.

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EXHIBIT A

Rule 121.1. Dissemination of license status, discipline and disability information.

1. Entity responsible. If the attorney's suspension was imposed under Rule 98 for failure to pay state bar dues or under Rule 214(1) for failure to timely complete TIP, then the state bar shall be responsible for issuing the notices required by Rule 121.1(2) and (3). If the attorney's suspension was imposed under Rule 212 for failure to comply with continuing legal education requirements, then the board of continuing legal education shall be responsible for issuing the notices required by Rule 121.1(2) and (3). In all other cases, bar counsel shall be responsible for issuing the notices required by Rule 121.1(2) and (3).

2. Public notice of change in license status and discipline imposed. The entity responsible under Rule 121.1(1) shall cause notices of orders that subject an attorney to disbarment or any form of suspension, including suspension under Rule 98 or Rule 212, that transfer an attorney to or from disability inactive status, that reinstate an attorney to the practice of law, or that approve an attorney's resignation, with or without discipline pending, to be published in the state bar publication. The responsible entity also shall make these notices available to a newspaper of general circulation in each judicial district of this state in which the attorney maintained an office for the practice of law or carried on a substantial portion of his or her practice.

The responsible entity shall also cause a notice of a public reprimand issued by the supreme court, or a letter of reprimand issued either by the supreme court or a disciplinary panel of the State Bar of Nevada, to be published in the state bar publication.

The entity responsible for compliance with this provision has discretion in drafting public notices required by this rule, which may consist simply of the orders themselves. However, notices of orders that impose discipline should include sufficient information to adequately inform the public and members of the bar about the misconduct found, the rules violated, and the discipline imposed.

3. Notice to courts. The entity responsible under Rule 121.1(1) shall promptly advise all courts in this state of orders that suspend or disbar an attorney, that transfer an attorney to or from disability inactive status, that approve an attorney's resignation, or that reinstate an attorney to the practice of law.

4. Disclosure to National Discipline Data Bank. Bar counsel shall notify the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline of all public discipline imposed by the supreme court on an attorney, transfers to or from disability inactive status, reinstatements to the practice of law, and resignations with discipline pending.

5. Publication of supreme court orders. The clerk of the supreme court shall cause any order issued by the supreme court that subjects an attorney to any form of public discipline including a letter of reprimand, public reprimand, suspension or disbarment, that transfers an attorney to or from disability inactive status, that approves an attorney's resignation, or that reinstates an attorney to the practice of law to be published in pamphlet form and disseminated to all subscribers of the advance sheets of the Nevada Reports and to all persons and agencies listed in NRS 2.345.

6. Publication of public reprimand issued by state bar. Bar counsel shall cause a public reprimand issued by the state bar under Rule 113 to be published in the state bar publication.

B

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS TO
PROCEDURAL RULES GOVERNING
PROFESSIONAL MISCONDUCT.

ADKT No. 392

FILED

DEC 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Blaha*
CHIEF DEPUTY CLERK

ORDER AMENDING NEVADA SUPREME COURT RULES 98-123,
AMENDING RULES 212-213 AND ADOPTING RULE 102.5

WHEREAS, the State Bar of Nevada has filed a petition on the administrative docket seeking amendments to the Supreme Court Rules governing procedure in professional discipline matters, and

WHEREAS, this court solicited and considered public comment on the recommended amendments and held a public hearing on the proposed amendments, and

WHEREAS, this court has considered the Supreme Court Rules concerning suspension for failure to pay dues and transfer to inactive status for failure to comply with Continuing Legal Education requirements and has determined that changes are warranted, and


WHEREAS, this court has concluded that amendment of the Nevada Supreme Court Rules governing procedure in professional discipline matters is warranted, accordingly,


IT IS HEREBY ORDERED that Supreme Court Rules 98-123 and Rules 212-213 are amended to read as set forth in Exhibit A.


IT IS FURTHER ORDERED that Supreme Court Rule 102.5 is adopted as set forth in Exhibit B.


IT IS FURTHER ORDERED that these rule amendments shall become effective on March 1, 2007. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court that she has accomplished the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.


Dated this 29th day of December, 2006.

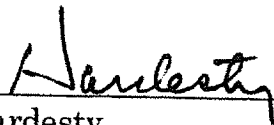
 _____, C.J.
Rose

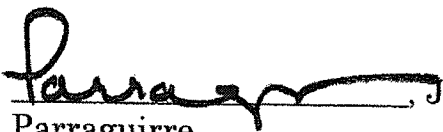
 _____, J.
Becker

 _____, J.
Maupin

 _____, J.
Gibbons

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Rew Goodenow, President, State Bar of Nevada
Wayne Blevins, Executive Director, State Bar of Nevada
Rob W. Bare, Bar Counsel, State Bar of Nevada
Dan Polsenberg, Chair, Board of Continuing Legal Education
Toni Sarocka, Executive Director, Board of Continuing Legal Education

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUL 31 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE MATTER OF THE AMENDMENT TO)
RPC 1.4 REGARDING THE LAWYER'S BIOGRAPHICAL)
DATA FORM)

ADKT NO. 428

In accordance with Nevada Rule on the Administrative Docket (NRAD) 3.2, the Board of Governors of the State Bar of Nevada hereby petitions this Honorable Court to amend Rule of Professional Conduct (RPC) 1.4 (Communication) regarding the duty imposed upon lawyers to have a Lawyer's Biographical Data Form available in written form to be provided upon request and what information shall be contained in the form.

It is proposed that RPC 1.4(c)(1) and RPC 1.4(c)(3) be amended as follows. The proposed rule amendment is attached hereto in its entirety as Exhibit 1.

1. Add a new subsection (c)(1)(vi) requiring lawyers to disclose any and all public discipline that they have received.
2. Add a new subsection (c)(1)(vii) requiring lawyers engaged in private practice to disclose whether they maintain professional liability insurance, and, if the lawyer maintains a policy, the name and address of the carrier.
3. Modify RPC 1.4(c)(3) to specify what information from the Lawyer's Biographical Data Form shall be included in written advertising and communication as described in RPC 7.3.

PROCEDURAL HISTORY

The State Bar of Nevada, the Clark County Bar Association, and the Washoe County Bar Association co-hosted the 4th Annual Professionalism Summit, which was held on April 23, 2008, in Reno, Nevada and on April 24, 2008, in Las Vegas, Nevada. Bar Counsel Rob W. Bares was a panel member. One of the topics discussed was the Lawyer's Biographical Data

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DEPUTY CLERK

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1 Form. Discussion was held as to what a lawyer is required to report to their clients or potential
2 clients on the Lawyer's Biographical Data Form and it was questioned as to why a Nevada
3 lawyer does not have to report any public discipline on that form. This discussion was the
4 genesis of this petition to amend RPC 1.4 to require lawyers to provide their public discipline
5 history to clients and potential clients upon request.

6 As such, this topic was presented to the Board of Governors on May 21, 2008, for
7 consideration of preparing a petition under NRAD 3.2. Upon discussion and deliberation, the
8 Board of Governors agreed that it would be prudent to have lawyers report public discipline on
9 the form, but they took the discussion one step further. The Board of Governors also applied
10 SCR 79 and the reporting requirement of lawyers engaged in private practice to report whether
11 they had professional liability insurance to the State Bar. It was agreed that should Rule 1.4
12 be changed to include the reporting of public discipline, language should also be added to
13 include the reporting of professional liability insurance, including the name and address of the
14 carrier, on the Lawyer's Biographical Data Form as well.

15 A draft of this petition was presented to the Board of Governors on June 18, 2008.
16 Upon discussion and deliberation, the Board of Governors approved the proposal set forth
17 herein.

18 **DISCUSSION**

19 **I.**
20 **Reporting of Discipline**

21 There are two (2) relevant instances when a Nevada lawyer has a requirement to report
22 discipline that they have received. The first instance is pursuant to SCR 114. A Nevada
23 lawyer is under the duty to report the imposition of disciplinary sanctions that the lawyer
24 received in another jurisdiction to the State Bar within thirty days of receipt of the same.

1 The second instance of reporting discipline is directed to the lawyer's current clients
2 pursuant to SCR 115. If an attorney is barred from the active practice of law, whether by
3 disbarment, suspension (discipline suspension or suspension due to failure to pay bar dues or
4 take the required continuing legal education credits), transfer to disability inactive status or
5 resignation with or without charges pending, then that attorney must notify their clients, in
6 writing, of the change of license status.

7
8 However, a Nevada lawyer is not under an affirmative obligation to voluntarily disclose
9 disciplinary sanctions to their clients and in no instance is a Nevada lawyer obliged to provide
10 a disciplinary history to potential clients. While this information is public and one can receive
11 the disciplinary history of a lawyer from the State Bar, the duty, practically speaking, falls upon
12 the client to obtain this information on their own and therefore, it appears the lawyer is lacking
13 in accountability.

14 RPC 1.4(c) (Communication: Lawyer's Biographical Data Form) was created to require
15 lawyers to keep a biographical data form to be provided upon request of the State Bar, a client,
16 or prospective client to (1) aid in advertising prove-up and (2) help the public in selecting the
17 proper lawyer for their needs.

18 The proposed change to RPC 1.4(c)(1)(vi) defines disciplinary sanctions to include all
19 private reprimands imposed after March 1, 2007 and any and all public discipline imposed,
20 regardless of the date of imposition. The reason the date of March 1, 2007, was chosen to
21 delineate private reprimands that were imposed is because that is the date that the new
22 confidentiality rule, SCR 121 (Confidentiality), went into effect making a private reprimand no
23 longer truly private.

24 SCR 121(2) (Confidentiality: When no formal complaint filed) states in pertinent part that
25 "[I]n the event no formal complaint is filed, the disciplinary proceedings shall become public

1 upon its conclusion, whether by dismissal or otherwise.” Private reprimands are essentially
2 part of the Respondent attorney's file and by description of the Rule, become public upon
3 conclusion.

4 Knowing the public discipline of an attorney is another way for a prospective client to
5 evaluate an attorney to determine whether the attorney is the proper attorney for them. By
6 changing Rule 1.4 to include the reporting of all public discipline, the spirit of the Rule will be
7 elevated.

8 **II.**
9 **Professional Liability Insurance**

10 On November 14, 2005, the most recent version of SCR 79 became effective. The Rule
11 was changed to require members of the State Bar engaged in private practice, to disclose to
12 the State Bar whether they maintain professional liability insurance and if so, the name and
13 address of the carrier. This Rule was changed in part to reduce potential public harm and
14 increase the public trust by allowing the public to make an informed decision when hiring a
15 lawyer, while retaining the lawyer's right to decide whether to carry malpractice coverage.

16 **III.**
17 **Enclosure of Pertinent Part of**
18 **Lawyer's Biographical Data Form in Advertisements**

19 While it is the intention to have public discipline and professional liability insurance listed
20 on the Lawyer's Biographical Data Form to be available to potential clients and/or current
21 clients, it is not the intention to change the spirit of the Rule as it relates to lawyer advertising.

22 The Lawyer's Biographical Data Form is described in two sections. The first section
23 (c)(1)(i) through (v) states that the Lawyer's Biographical Data Form shall contain information
24 about the lawyer such as name, address, date and jurisdiction of each admission, law school
25 and year of graduation, and area of specialization in which the lawyer is entitled to hold
himself/herself out as a specialist under provision of Rule 7.4. This information is to be

1 enclosed in with a lawyer's advertisement or written communication as described in RPC 7.3
2 (Communications With Prospective Clients).

3 The next section of the Lawyer's Biographical Data Form described in section (c)(2)(i)
4 through (viii) states that it shall contain additional information detailing background, training
5 and experience, such as articles, treatises, jury trials, bench trials, administrative hearings,
6 appellate cases, teaching, lecturing, organizations, or committee positions.

7
8 The best place to include the two (2) new requirements of reporting public discipline and
9 professional liability insurance appears to be in sub-section (c)(1) of the Rule. However, by
10 requiring a lawyer to include discipline and insurance information on an advertisement could
11 create a chilling effect on lawyer advertising. Therefore, respectfully, section (c)(3) needs to
12 be amended to state:

13 A lawyer or law firm that advertises or promotes services by written
14 communication not involving solicitation as prohibited by Rule 7.3 shall enclose
15 with each such written communication the information described in paragraph
16 (c)(1)(i) through (v) of this Rule.

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1 CONCLUSION

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3 In order for a member of the public to make an informed decision about the hiring of a
4 lawyer, the lawyer's public discipline and professional liability insurance information should be
5 made available to them. This objective can be enhanced by requiring lawyers to add this
6 information to their Lawyer's Biographical Data Form.

7 Based upon the foregoing, the Board of Governors of the State Bar of Nevada
8 respectfully requests that this Honorable Court adopt new RPC 1.4 as set forth in Exhibit 1.

9 RESPECTFULLY SUBMITTED THIS 23 DAY OF July 2008.

10
11 STATE BAR OF NEVADA
12 BOARD OF GOVERNORS

13 By: Bruce Beesley
14 Bruce Beesley, Esq., President
15 Nevada Bar No. 1164
16 State Bar of Nevada
600 E. Charleston Blvd.
Las Vegas, NV 89104

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO COURT RULES REGARDING
ATTORNEY DISCIPLINE,
SPECIFICALLY, SCR 102, 103, 104, 105,
105.5, 110, 111, 113, 116 AND 117.

ADKT 0506

FILED

SEP 03 2015

ORDER AMENDING SUPREME COURT RULES

TRACY K. LINDEMAN
CLERK OF THE SUPREME COURT
BY *Angela*
CHIEF DEPUTY CLERK

WHEREAS, on March 16, 2015, the Board of Governors of the State Bar of Nevada filed a petition seeking amendments of Supreme Court Rules 102, 103, 104, 105, 105.5, 110, 111, 113, 116, and 117; and

WHEREAS, this court solicited comment from the bench, bar, and public on the proposed changes and conducted a public hearing on July 1, 2015; and

WHEREAS, this court has determined that the proposed amendments are warranted; accordingly,

IT IS HEREBY ORDERED that the Supreme Court Rules shall be amended as set forth in Exhibit A.

IT IS FURTHER ORDERED that these amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and

dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

It is so ORDERED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Laurence P. Digesti, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Administrative Office of the Courts