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JAN 31 2014

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STATE BAR OF NEVADA

1 CASE NO. NG13-1474

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4 STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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6 STATE BAR OF NEVADA,
7 Complainant

RECOMMENDATION AND DECISION
OF HEARING PANEL

8 Vs.

9 HARVEY WHITTEMORE, ESQ.
10 Nevada Bar No. 1089 /

11 This matter comes before this panel as a consequence of Supreme Court Rule 111, which provides
12 that upon proof of an attorney's conviction of a serious crime, the Supreme Court shall suspend the
13 attorney from practice of law and refer the matter to the appropriate disciplinary board for determination
14 of the discipline to be imposed. The hearing panel in this matter consists of Douglas R. Rands, Esq.,
15 Chairman, J. Thomas Susich, Esq., Mary Kandaras, Esq., Kathleen Breckenridge, Esq., and Jodi Travis,
16 lay member. Evidence was taken and arguments heard from the State Bar, represented by Patrick O.
17 King, Esq., Assistant Bar Counsel, and the Respondent, Harvey Whittemore, Esq., represented by John
18 Echeverria, Esq., and Bill Bradley, Esq. Based upon the evidence presented and the argument heard, the
19 following is the unanimous decision and recommendation of this hearing panel.

20 This case is unique. The infraction giving rise to the request for discipline is the conviction of
21 Mr. Whittemore on three felony counts in the United States District Court. Based upon these convictions
22 Mr. Whittemore was sentenced by Judge Larry Hicks to serve two years in federal prison, as well as
23 paying a fine and completing community service. Mr. Whittemore filed a "Motion for Release Pending
24 Appeal" in the Federal District Court. In an order dated December 31, 2013, Judge Hicks wrote as
25 follows:
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1 "Although the court is of the view that Whittemore's appeal will be
2 unsuccessful, it still must concede that his appeal, considered in the
3 aggregate with the challenges which have been raised, does raise a
substantial question of law which could result in either an order for a new
trial or reversal on appeal."

4 Judge Hicks found that Mr. Whittemore posed no threat to the community and was not a flight
5 risk. Judge Hicks therefore granted the motion and has stayed the imposition of the sentence until Mr.
6 Whittemore's appeal has been decided or the Federal District Court orders otherwise.

7 The Panel is mindful that it is very unusual for a Federal District Judge to stay the imposition of a
8 prison sentence. Further, Judge Hicks stated in his order that Mr. Whittemore's appeal has raised
9 "substantial question(s) of law" which could result in the reversal of the convictions. These questions
10 concern not only the interpretation of the principal statute upon which Mr. Whittemore's convictions were
11 based, but also the constitutionality of that statute.

12 These observations, however, in no way minimize the concern regarding the seriousness of the
13 criminal verdicts in this case. As the Nevada Supreme Court pointed out in its Order Denying Petition for
14 Reinstatement:

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16 "The elements of at least two of the crimes for which Whittemore was
17 convicted involve a 'criminal act that reflects adversely on [his] honesty,
18 trustworthiness or fitness as a lawyer.'" The Nevada Supreme Court went
on to state that: ". . . Whittemore involved employees and family
members [in his criminal conduct] who presumably relied on his counsel
and encouragement."

19 If the convictions are upheld on appeal then Mr. Whittemore's conduct may warrant appropriate
20 discipline. If, however, the convictions are overturned the disciplinary panel will have to look at all of the
21 circumstances to determine if any discipline is warranted at all. The Nevada Supreme Court, in State Bar
22 of Nevada vs. Claiborne, 104 Nev. 115, 756 P.2d 464(1998) stated " The paramount objective of bar
23 disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from
24 persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole." It is the
25 position of this panel that Mr. Whittemore does not pose a threat to his clients or the public. However, in
26 light of the possibility of pending criminal discipline, it is the opinion of this panel that it is not possible to
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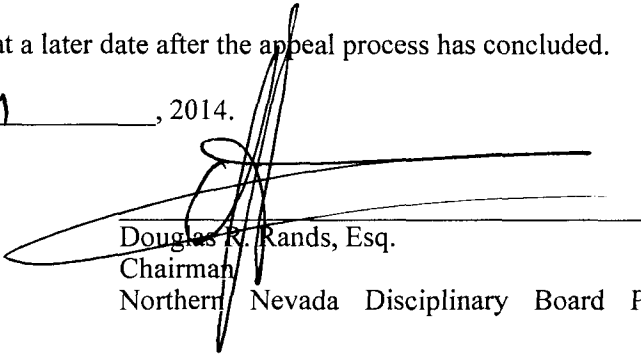
1 adequately determine what discipline is appropriate, if any, until Mr. Whittemore's appeal is finally
2 decided. Discipline of a person who is later determined to be innocent is an injustice.

3 In this case the sentencing judge has stated that there is at least a reasonable possibility that Mr.
4 Whittemore's criminal case will be remanded for new trial or his convictions may be reversed in their
5 entirety. As a result of that finding the sentencing judge has stayed any punishment under the criminal
6 proceedings until Mr. Whittemore's appeal is decided. Even though Mr. Whittemore has not asked this
7 panel to stay the imposition of discipline, it is within the Panel's authority to do so under Supreme Court
8 Rule 111(8). Supreme Court Rule 111(8) provides "... The panel may, for good cause, postpone the
9 proceeding until all appeals from the conviction have been concluded." It is the Panel's decision that the
10 District Court's order for release, pending appeal, represents the good cause required under the Supreme
11 Court Rule.

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13 The evidence presented at the hearing has convinced the Panel that Mr. Whittemore does not pose
14 a threat to his clients or the public pending the resolution of his criminal appeal. We therefore believe that
15 a suspension pending the resolution of his appeal is unnecessary.

16 It is therefore the recommendation of the Panel, to the Supreme Court, that the temporary
17 suspension be dissolved; that the matter of the discipline of Mr. Whittemore be stayed; and that
18 appropriate discipline, if any, be reconsidered at a later date after the appeal process has concluded.

19 DATED this 3/19th day of Jan, 2014.

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22 Douglas R. Rands, Esq.
23 Chairman
24 Northern Nevada Disciplinary Board Panel
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