

FILED
OCT 04 2010
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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IN THE MATTER OF A SUSPENDED MEMBER) No. 10-4005
OF THE STATE BAR OF ARIZONA)
)
ANTHONY R. LOPEZ, JR.,)
Bar No. 015880) **DISCIPLINARY COMMISSION**
) **REPORT**
)
RESPONDENT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2010, pursuant to Rule 53(i), Ariz.R.Sup.Ct., for its consideration of whether to impose the reciprocal discipline of public reprimand (censure in Arizona) upon Respondent as imposed by the Supreme Court of Arizona on April 29, 2010. No claim of exception, as set forth in Rule 53(i)(3), was filed by Respondent or the State Bar of Arizona.

Decision

Upon consideration, the seven members¹ of the Disciplinary Commission unanimously recommend imposing reciprocal discipline of censure. The Disciplinary Commission further incorporates by reference the State of Nevada's Order Imposing Public Reprimand.²

RESPECTFULLY SUBMITTED this 4 day of October, 2010.

Pamela M. Katzenberg
Pamela M. Katzenberg, Chair
Disciplinary Commission

¹ Commissioners Houle and Horsley did not participate in these proceedings.
² A copy of the Order is attached as Exhibit A.

Original filed with the Disciplinary Clerk
this 4th day of October, 2010.

Copy of the foregoing mailed
this 5th day of October, 2010, to:

Anthony R. Lopez, Jr.
Respondent
15400 Sherman Way, Suite 105
Van Nuys, CA 91406-0001

Maret Vessella
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Loretta Diaz

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EXHIBIT

A

10-9322

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
ANTHONY R. LOPEZ, JR., BAR NO.
5053

No. 53493

FILED

APR 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER IMPOSING PUBLIC REPRIMAND

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Anthony R. Lopez, Jr., receive a public reprimand for violations of RPC 7.1 and 7.2A. We conclude that the recommended discipline is appropriate and that a public reprimand is warranted in this case.

FACTS

The facts in this case are undisputed. Around January 7, 2008, Lopez ran a 10-second Spanish-language radio advertisement, prepared by his office manager Gelly Valero, on two radio stations in Las Vegas and one in Reno. Valero modeled the advertisement after a similar advertisement he heard aired in California, although he could not remember the name of the California law firm that ran the advertisement. According to Lopez, the advertisement ran several times a day from early January to late April 2008. The advertisement cost approximately \$19,500. The English translation of this advertisement stated, "[i]f you have had an auto accident, by law you have the right to receive at least 15 thousand dollars for your case, call the offices of Tony the Tiger Lopez at 366-1966." Lopez reviewed the Spanish advertisement before it was

Effective Date: April 9, 2010
Bar Number: 5053

disseminated, but did not review the English translation, and indicated that he had "some understanding of Spanish" but was not "fluent like a native."

On January 22, 2008, attorney Liborius Agwara complained to the State Bar that Lopez was running a Spanish-language radio advertisement that stated that "if you get involved in an accident, by law you are entitled to receive Fifteen Thousand Dollars." Agwara complained that his former clients were contacting him and inquiring as to why they had not received the \$15,000 guaranteed to them under the law. Lopez received a copy of Agwara's letter and copied the State Bar on a letter he sent in response to Agwara on January 30, 2008. In the letter, Lopez denied that the advertisement promised a \$15,000 recovery and contended that the purpose of the advertisement was to "inform potential clients that Nevada Law gives automobile accident victims the right to receive a minimum of fifteen thousand dollars for their injuries. This figure is based upon the minimum automobile insurance liability policy in Nevada."

Along with the letter, Lopez included a copy of the advertisement but failed to include either a mandatory filing form or a translation of the advertisement as required pursuant to RPC 7.2A. On January 31, 2008, the State Bar sent Lopez a letter reminding him of his obligation to file advertisements within 15 days of dissemination, and requesting that he provide copies of both the filing form and an English translation of the advertisement pursuant to RPC 7.2A within two weeks of the date of the letter. On February 20, 2008, the State Bar again notified Lopez that his submission of the advertisement failed to meet the requirements of RPC 7.2A because he failed to complete the mandatory advertising filing form and provide an English translation of the

advertisement. The State Bar gave Lopez 15 days from the date of the letter to submit the required information and notified Lopez that his failure to file the advertisement pursuant to RPC 7.2A was grounds for disciplinary action. Lopez filed the mandatory advertising filing form and an English translation of the advertisement on March 4, 2008.

On March 27, 2008, attorney Eric Palacios telephoned the State Bar and complained that his former clients were calling and complaining because they did not receive the \$15,000 promised in Lopez's advertisement.

On April 18, 2008, the State Bar informed Lopez that a grievance file had been opened regarding his radio advertisement and Lopez informed the State Bar that the advertisement would be pulled by April 30, 2008.

At the panel's hearing on the grievance, Lopez admitted that the advertisement contained "an incomplete wording of the law" and "an incomplete wording of the minimum insurance requirements of Nevada." Lopez expressed his apologies to anyone confused by the advertisement. Lopez contended, however, that "derecho," the Spanish word for "right," "has various meanings depending on the country and some places it can be interpreted as, basically, just something—a right to pursue something as opposed to a guarantee." Lopez further rejected the notion that the advertisement could cause people to file frivolous lawsuits or maintain frivolous claims.

A majority of the panel found that Lopez violated RPC 7.1 and 7.2A. The panel concluded that the advertisement contained false information and was misleading and determined that these misrepresentations harmed the public by "fostering unnecessary and

unwarranted litigation by people who were not necessarily entitled to any recovery.” The panel rejected Lopez’s contention that the advertisement was intended to inform the public regarding the minimum liability insurance requirements. The panel further concluded that Lopez’s misconduct here was aggravated by Lopez’s instances of prior discipline¹ and by his failure to pull the advertisement after he received both Agwara’s complaint and the Letter of Investigation from the State Bar. As to the recommended discipline, the panel recommended that Lopez: (1) be issued a public reprimand for violating RPC 7.1 and 7.2A; (2) be required for two years to pre-submit any and all advertisements prior to dissemination pursuant to RPC 7.2B and pay any costs associated with seeking pre-approval; (3) be required to run a Spanish-language public service announcement campaign, equal to the \$19,500 Lopez spent in promoting the misleading advertisement, informing the public that drivers have a responsibility under Nevada law to maintain liability insurance with minimum limits of \$15,000; (4) seek pre-approval for the public service advertisement and may spend less than \$19,500 so long as the duration and length of the campaign are pre-approved by Bar Counsel;

¹Lopez received a public reprimand on October 27, 2003, as reciprocal discipline for violating Arizona’s equivalents of former SCR 165 (safekeeping property) and former SCR 200(2) (bar admission and disciplinary matters—failing to respond to disciplinary authority). In re Discipline of Anthony R. Lopez, Docket No. 41356 (Order Imposing Reciprocal Discipline, October 27, 2003). Lopez also received a private reprimand on August 30, 2007, for violating former SCR 158 (conflict of interest: prohibited transactions).

and (5) be required to pay all the costs of the proceedings. This automatic review followed. Both Lopez and the State Bar filed briefs in the matter.

DISCUSSION

Lopez concedes that he violated RPC 7.1 and 7.2A but contends that the panel erred when it (1) found the misrepresentations in the advertisement harmed the public by fostering unnecessary and unwarranted litigation by people who were not necessarily entitled to any recovery and (2) recommended a public reprimand. We disagree with both contentions.

This court automatically reviews a decision recommending public reprimand. SCR 105(3)(b); In re Lerner, 124 Nev. ___, ___, 197 P.3d 1067, 1069 (2008). In In re Stuhff, this court recognized that while the disciplinary panel's findings and recommendations are not binding, they are persuasive. 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). To support the imposition of discipline, the panel's findings must be supported by clear and convincing evidence. SCR 105(2)(e); In re Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

Lopez first complains that the panel erred when it found the misrepresentations in the advertisement harmed the public by fostering unnecessary and unwarranted litigation by people who were not necessarily entitled to any recovery. Lopez argues that there is no evidence in the record to support this finding and that the panel erroneously based its finding upon the following exchange between himself and the chair of the panel:

Q: You realize, of course, that the damage that you could cause with an ad like this, you could cause people, for instance, to want to file frivolous lawsuits and pursue frivolous claims?

A: Well, I don't believe that that's the case.

Q: Really? There are people out there right now who stage car accidents. Have you ever seen any of those?

A: I've heard of those.

Q: It happens pretty frequently. Especially there are gangs of people that stage car accidents. When you make an ad that says, You're entitled to \$15,000, that only encourages that kind of misconduct, don't you think?

A: I don't think so.

Q: You don't think it causes any disrepute on the Bar itself when that information gets out?

A: I understand confusion was created by the ad and that could possibly cause disrepute to the Bar, yes.

We disagree with Lopez's argument. Lopez stipulated to the fact that both Agwara and Palacios received telephone calls from former clients complaining that they had not received the \$15,000 the advertisement stated was guaranteed to them by law and that Palacios's current clients were demanding \$15,000 as a minimum settlement. We conclude that this is clear and convincing evidence that the advertisement fostered unnecessary and unwarranted litigation by discouraging any settlements below \$15,000.

Next, Lopez argues that a public reprimand is inappropriate. Lopez argues that the conditions imposed by the panel are not negligible and may therefore be considered a mitigating circumstance pursuant to SCR 102.5(2)(l). Lopez asks this court to consider the following in mitigation: (1) he accepted responsibility for his violations of RPC 7.1 and RPC 7.2A, demonstrating remorse; (2) he agreed to the stipulated

admission of certain facts, demonstrating cooperation with the State Bar and resulting in an abbreviated formal hearing; (3) he has no prior discipline for violating advertising rules; (4) he did not conceive the advertisement himself but modeled it on an advertisement his office manager saw on television in California; (5) the advertisement only ran for just over three months; (6) this matter marks the first time a panel has held a formal hearing concerning RPC 7.2A, a Nevada-specific rule, and there is no precedent discussing appropriate discipline in such matters; and (7) he submitted the advertisement to the State Bar without receiving any request for it, albeit in the wrong format, on January 30, 2008, and then again on March 4, 2008, with the proper paperwork and English translation attached as requested by the State Bar.

In Lerner, this court stated that in determining the proper disciplinary sanction it will consider the following: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's conduct; and (4) the existence of aggravating or mitigating factors. Id. at ___, ___, 197 P.3d at 1077. Applying these factors to the instant case, we conclude that a public reprimand is appropriate. Here, Lopez violated a duty to the public and to the profession by disseminating an advertisement which contained "a material misrepresentation of fact or law." RPC 7.1(a). While Lopez admitted that the advertisement was confusing, he vehemently denied that he intended to mislead the public, insisting instead that he meant to inform the public regarding the minimum insurance liability coverage and their right to pursue litigation if involved in a car accident. Considering the content of the advertisement, we conclude that this contention is meritless and that it evidences Lopez's refusal to take full responsibility for an advertisement that grossly

misstated the law. Further, the record demonstrates that the advertisement misled the public into believing that they had a right to \$15,000 if they were involved in a car accident regardless of the merits of their case. Moreover, as the State bar argues, Lopez's prior instances of misconduct evidence his disregard for the rules of professional conduct.

Further, we reject Lopez's contention that his modeling the advertisement after a similar advertisement aired in California excuses or mitigates his misconduct here. To the contrary, Lopez's assertion that his conduct should be excused because he did not conceive of the advertisement himself demonstrates his reluctance to accept responsibility. Moreover, the fact that RPC 7.2A is a Nevada-specific rule does not support the conclusion that Lopez should receive a private reprimand. Finally, Lopez's initial insufficient submission of copies of the advertisement to the State Bar without request does not mitigate his misconduct here because after the State Bar requested that he provide copies of both the mandatory filing form and an English translation of the advertisement pursuant to RPC 7.2A within two weeks of January 31, 2008, Lopez failed to meet the requests of the State Bar until March 4, 2008.

Accordingly we hereby publicly reprimand attorney Anthony R. Lopez, Jr., for violations of RPC 7.1 and 7.2 A. Lopez shall comply with all of the other conditions recommended by the disciplinary panel.

It is so ORDERED.

Parraguirre, C.J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Jeffrey R. Albregts, Southern Nevada Disciplinary Panel Chair
Olson, Cannon, Gormley & Desruisseaux
Rob Bare, Bar Counsel
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court