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01/21/2010

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Recording requested By
JANELLE DIETRICH

Eureka County - NV

Mike Rebaleati - Recorder

Fee: \$25.00

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RPTT.

Recorded By: FES

Book- 497 Page- 0130

APN# _____

Recording Requested by:

Name Janelle Dietrich

Address 362 Elges Way

City/State/Zip Sparks, NV 89431



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ORDER

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2.
(Additional recording fee applies)

This cover page must be typed or printed.



NO.

FILED

FEB 29 2008

Eureka County Clerk

BY [Signature] Deputy

Case No. CV-0606-077

Dept No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

WALTER G. FISK and EDITH L. FISK,

Plaintiffs,

-VS-

JERRY L. ANDERSON; EDWARD B.
ANDERSON; ALICE FLORIO SMITH;
JANELLE G. DIETRICH; all other
unknown persons, spouses, heirs,
devisees of the above-named persons,
partnerships, corporations or other
entitles claiming any right, title, estate,
lien or an interest in the real property
described in the Complaint adverse to
Plaintiffs' ownership or any cloud upon
Plaintiffs' title thereto; and DOES 1-10,

Defendants.

ORDER GRANTING MOTION
TO SET ASIDE JUDGMENT AND
STAY OF NOVEMBER 27, 2007
AS TO JANELLE DIETRICH

On June 19, 2006, Plaintiffs filed a Complaint for Quiet Title. On August 17, 2006 Defendants, by and through their counsel, Stanley Steiber, filed an Answer and Counterclaim. A 16.1 early case conference was held and a conference report was filed by Plaintiffs because counsel for Defendants would not respond.

On October 26, 2006 Plaintiffs filed a Motion to File First Amended

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EUREKA COUNTY CLERK
AND TREASURER



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1 Complaint, which Defendants did not oppose. The motion was granted, and on
2 December 11, 2006 a First Amended Complaint was filed. A copy of the First Amended
3 Complaint was mailed to Defendants' counsel on December 7, 2006.

4 Defendants did not respond to the First Amended Complaint and on
5 January 10, 2007 Plaintiffs applied for an Entry of Default Pursuant to NRCp 55(a). The
6 Clerk of the Court entered a Default the same day.

7 Plaintiffs filed a notice setting a hearing on February 2, 2007 to allow
8 Defendants to show cause why judgment should not be entered against them. This
9 notice was served on Mr. Steiber. Pursuant to a request by Mr. Steiber, the hearing was
10 continued to February 16, 2007. The hearing was then continued to March 2, 2007.

11 On March 2, 2007 a hearing was held. Counsel for Plaintiffs was present
12 and counsel for Defendants was present. Defendants were not present. Plaintiffs
13 presented evidence and both counsel were given an opportunity to argue. The Court
14 dismissed Defendants' counterclaim and entered a Judgment and Decree in favor of
15 Plaintiffs.
16

17 The Judgment and Decree was filed on March 15, 2007 and a Notice of
18 Entry was filed on March 23, 2007 and served on Mr. Steiber. A Motion for Attorney Fees
19 was filed by Plaintiffs on March 23, 2007. The motion was not opposed and on June 5,
20 2007 the Court granted the motion.
21

22 On January 10, 2008, Defendant Janelle Dietrich filed a Motion to Set
23 Aside Default Judgment and Decree and Application for Stay. Plaintiffs filed an
24
25
26



1 Opposition and a Request for Review has been filed.¹

2 The Court has reviewed the file and finds that additional briefing or
3 argument is not necessary.

4 **DISCUSSION**

5 Ms. Dietrich seeks to set aside the judgment based on the neglect of her
6 counsel, Mr. Steiber. According to her affidavit she was unaware of the judgment until
7 late July or August when the Anderson Defendant's bank account was executed upon.
8 Dietrich then contacted new counsel who filed the motion 4-5 months later.

9 In opposition, Plaintiffs argue that Dietrich has not shown excusable neglect
10 because she did not promptly seek to have the judgment removed, and once she sought
11 new counsel there is insufficient explanation as to why the motion was not filed until
12 January 2008. Plaintiffs also argue that the motion is time barred by NRCP 60(b) and
13 that the judgment was not a default judgment which could be set aside by NRCP
14 60(b)(1).
15

16 Ms. Dietrich's explanation as to why it took so long to get the motion filed is
17 perplexing: it was not necessary to have photographs of the property to file a motion to
18 set aside based on attorney neglect or misconduct. The Nevada Supreme Court has
19 long done away with the requirement that a meritorious defense be shown in order to set
20 aside a default judgment.²
21

22 It is undisputed that Dietrich's counsel, Mr. Steiber did not answer the
23

24

¹Dietrich also filed an untimely Reply to which Plaintiffs have filed a Motion to Strike.

25 ²See Epstein v. Epstein, 113 Nev. 1401 (1997).
26



1 amended complaint and therefore a default was entered. No motion to set aside the
2 entry of default was ever filed. At the hearing, Plaintiffs presented their proof upon which
3 the Court made findings. Although not styled as a default judgment, the effect was the
4 same and the Court did not decide the case on the merits because Mr. Steiber did not
5 offer anything. NRS 40.110(1) precludes the court from entering a default judgment in a
6 quiet title action, and consistent with the statute, Plaintiffs presented evidence to support
7 their claims.

8
9 On the other hand, it is clear (and Plaintiffs do not dispute) that Mr.
10 Steiber's representation of Ms. Dietrich was completely inadequate. In fact, it appears
11 from the affidavit that Mr. Steiber in essence abandoned Ms. Dietrich. Such misconduct
12 is excusable as to the client.³

13 In addition, the Court recently received an order from the Nevada Supreme
14 Court which suspends Mr. Steiber from the practice of law.⁴

15 Based on the foregoing, the Court finds that the derelictions of Mr. Steiber
16 should not be imputed to Ms. Dietrich; a prompt application was made to set aside; and
17 Ms. Dietrich's actions are not intended to delay the proceedings. However, Plaintiffs
18 have incurred costs and fees as a result that must be reimbursed. The Court finds that
19 the setting aside of the judgment against Janelle Dietrich on the following terms is just.
20

21 ***

22 ***

23
24 ³See Dagher v. Dagher, 103 Nev. 26 (1987).

25 ⁴

26 See Order of Temporary Suspension, attached hereto and incorporated herein as Exhibit "A".





Good cause appearing,

IT IS HEREBY ORDERED that Janelle Dietrich's motion to Set Aside and For Stay is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that as to Janelle Dietrich, the Judgment and Decree entered on March 15, 2007 is **SET ASIDE**.

IT IS HEREBY FURTHER ORDERED that as to Janelle Dietrich, the Court Order dated November 27, 2007 is **STAYED**.

IT IS HEREBY FURTHER ORDERED that counsel for Plaintiffs shall file and serve an itemized billing which covers the following:

1. Notice of Intent to Take Default Judgment.
2. Notice of Hearing on First Amended Complaint.
3. Application for Entry of Clerk's Default Pursuant to NRCP 55(a).
4. Declaration in Support of Clerk's Default.
5. Entry of Clerk's Default Pursuant to NRCP 55(a).
6. Amended Notice of Hearing on Plaintiffs' Request for Entry of Judgment on First Amended Complaint.
7. Judgment and Decree.
8. Verified Memorandum of Costs.
9. Notice of Entry of Judgment and Decree.
10. Prep time, travel time and court appearances related to the Default hearing.

IT IS HEREBY FURTHER ORDERED that within five (5) business days of receipt of said itemized billing, counsel for Ms. Dietrich may file a response if any part of

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



the bill is disputed. Any part of the bill not disputed shall be paid by Ms. Dietrich within thirty (30) days of the filing of the itemized billing.

DATED this 28TH day of February, 2008.


DISTRICT JUDGE

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA

} SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 21ST day of February, 2010. WITNESS, My Hand and Seal of said

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County Clerk and Ex-Officio Court Clerk

Deputy Clerk



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COPY

EXHIBIT "A"



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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
STANLEY STEIBER, ESQ.

af
No. 50996

FILED

FEB 08 2008

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

ORDER OF TEMPORARY SUSPENSION

This is a petition by the Northern Nevada Disciplinary Board Chair for an order temporarily suspending attorney Stanley Steiber from the practice of law, pending the resolution of formal disciplinary proceedings against him.¹ The petition and supporting documentation demonstrate that Steiber appears to have accepted retainers from several clients without performing the requested services, failed to adequately communicate with his clients, and failed to respond to bar counsel's repeated inquiries.

SCR 102(4)(a) provides, in pertinent part:

On the petition of a disciplinary board, signed by its chair or vice chair, supported by an affidavit alleging facts personally known to the affiant,

¹This matter was originally docketed as confidential because a formal disciplinary complaint had not yet been filed. See SCR 121(5). Since we are granting the petition, this matter is now open to the public. See id.

Effective Date: February 8, 2008
Bar Number: 2795

08-03269

which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice.

In addition, SCR 102(4)(b) provides that this court may place restrictions on an attorney's handling of funds.

We conclude that the documentation before us demonstrates that Steiber poses a substantial threat of serious harm to the public, and that his immediate temporary suspension is warranted.² We further conclude that Steiber's handling of funds should be restricted.³

Accordingly, Steiber is temporarily suspended from the practice of law, pending the resolution of formal disciplinary proceedings against him.⁴ In addition, Steiber is prohibited from withdrawing any funds from his client trust account, or from any other account containing funds belonging to third parties, except upon written approval of bar counsel or by order of a court of competent jurisdiction.⁵ The state bar

²See SCR 102(4)(a).

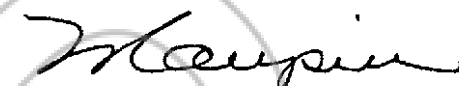
³See SCR 102(4)(b).

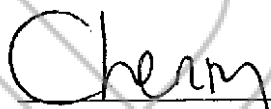
⁴Under SCR 102(4)(c), Steiber is immediately prohibited from accepting new clients. He may continue to represent existing clients for fifteen days. Any fees or other funds received from or on behalf of clients during this fifteen-day period shall be deposited in a trust account, from which no withdrawals may be made except upon written approval of bar counsel or by order of a court of competent jurisdiction. Id.


⁵See SCR 102(4)(b).

shall immediately serve Steiber with a copy of this order.⁶ Such service may be accomplished by personal service, certified mail, delivery to a person of suitable age at Steiber's law office or residence, or by publication. When served on either Steiber or a depository in which he maintains an account, this order shall constitute an injunction against withdrawal of the proceeds except in accordance with the terms of this order.⁷

It is so ORDERED.⁸


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁶Under SCR 102(4)(d), Steiber may request dissolution or amendment of this temporary suspension order by filing a petition with this court, which may be set for immediate hearing before a hearing panel.

⁷See SCR 102(4)(b).

⁸Steiber shall comply with SCR 115.

This is our final disposition of this matter. Any new proceedings concerning Steiber shall be docketed under a new docket number.

cc: John B. Mulligan, Chair, Northern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Kimberly K. Farmer, Executive Director
Stanley Steiber
Perry Thompson, Admission Office, U.S. Supreme Court

