

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF VICENTA E.  
MONTOKA, ESQ.

No. 58571

**FILED**

DEC 07 2012

TRACEY LINDSEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF INJUNCTION AND GRANTING MOTION TO STRIKE

This is an automatic review, pursuant to SCR 105(3)(b), of the Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Vicenta E. Montoya be enjoined from practicing law in Nevada for five years, including being prohibited from maintaining an office in Nevada, appearing before any court or administrative entity in Nevada, and from holding herself out to the public as someone authorized to practice law in this state. The panel further recommended that Montoya pay restitution in the amount of \$8,000, pay the costs of the disciplinary proceedings, and provide the State Bar with a list of current and past clients from April 13, 2009, to the present.<sup>1</sup>

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<sup>1</sup>Montoya was, at all times pertinent to this matter, licensed to practice law in California. At no time pertinent to this matter was Montoya a licensed attorney in Nevada. This court has jurisdiction to impose discipline upon Montoya, despite the fact that she was, and is not, a member of the State Bar of Nevada. See SCR 99(1); Matter of Discipline of Droz, 123 Nev. 163, 167-68, 160 P.3d 881, 884 (2007).

The panel's recommendation was based on its conclusion that Montoya violated RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 8.1(b) (bar admission and disciplinary matters). Despite receiving proper notice of the complaint and disciplinary hearing below, Montoya neither responded to the complaint nor appeared at the disciplinary hearing.<sup>2</sup> However, Montoya did file an opening brief in this court, as allowed by SCR 105(3)(b). The State Bar moved to strike the brief and Montoya failed to oppose the motion.

Cause appearing, we grant the State Bar's motion to strike Montoya's opening brief. Montoya's opening brief, in large part, failed to comply with the requirements of NRAP 28. See SCR 105(3)(a) ("[A]n appeal from a decision of a hearing panel shall be treated as would an appeal from a civil judgment of a district court and is governed by the Nevada Rules of Appellate Procedure"); NRAP 28(j). Among other deficiencies, Montoya's brief lacks any citation to the record in support of her arguments, as required by NRAP 28(e). See also M.C. Multi-Family Dev. v. Crestdale Assocs., 124 Nev. 901, 908 n.2, 193 P.3d 536, 541 (2008) (arguments in briefs must present appellant's contentions with citations to the parts of the record upon which appellant relied). Further, although Montoya received proper notice of the complaint and the disciplinary hearing, she failed to respond or appear to assert her arguments in the district court. Thus, the arguments Montoya makes in her brief are raised

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<sup>2</sup>As a result of this failure, the hearing panel deemed the allegations in the complaint admitted. See SCR 105(2).

for the first time in this appeal. See In re AMERCO Derivative Litigation, 127 Nev. \_\_\_, \_\_\_ n.6, 252 P.3d 681, 697 n.6 (2011) (declining to address an issue raised for the first time on appeal); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the [district] court . . . is deemed to have been waived and will not be considered on appeal”). Accordingly, we direct the clerk of this court to strike Montoya’s opening brief, entitled “Response Brief,” from the record in this matter.

After reviewing the record related to the instant disciplinary proceedings, we conclude that clear and convincing evidence supports the panel’s findings. See SCR 105(3)(b); Matter of Discipline of Droz, 123 Nev. 163, 168, 160 P.3d 881, 884-85 (2007) (this court’s review of an SCR 105 petition is de novo and a panel’s findings of misconduct must be supported by clear and convincing evidence). The record indicates that Montoya was retained to assist her client, Lisa Bailes, with an immigration matter, wherein Montoya filed incomplete paperwork that was rejected by the immigration court. Montoya then led Bailes to believe that she would be appealing the rejection; however, Montoya missed the appeal deadline which resulted in the lapse of Bailes’s immigration status.<sup>3</sup> Bailes was fired from her job as a registered nurse due to her lack

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<sup>3</sup>Montoya was issued a letter of private reprimand in Nevada in 2004, and assessed a fine of \$500 for violations of former SCR 152 (scope of representation), 153 (diligence), 154 (communication), 187 (responsibilities regarding nonlawyer assistants), and 189 (unauthorized practice of law). In this particular immigration matter, Montoya’s secretary prepared a motion and signed Montoya’s name to it and, after learning of this misconduct, Montoya failed to take action to bring it to the court’s attention. Further, Montoya failed to file the opening brief in an appeal to the Board of Immigration Appeals, resulting in the dismissal of

*continued on next page . . .*

of status. Bailes paid Montoya approximately \$8,000 for her services. Subsequently, the State Bar filed a complaint against Montoya in the instant matter and, despite proper notice, Montoya failed to respond to the complaint or attend the disciplinary hearing.

Accordingly, we approve the panel's recommendation in its entirety. For five years from the date of this order, Montoya is hereby enjoined from: practicing law in Nevada; appearing before any court or administrative entity in this state, including but not limited to, all federal and state courts and administrative agencies; and from holding herself out to the public as someone who is authorized to practice law in this state. Montoya is required to petition this court to lift the injunction after the five-year period has expired. Montoya shall pay restitution to Bailes in the amount of \$8,000. Within 15 days of the date of this order, Montoya shall provide a copy of this order to all of her current and past clients, and certify to bar counsel that she has done so. If the certification is not forthcoming, bar counsel shall notify this court. Finally, Montoya shall

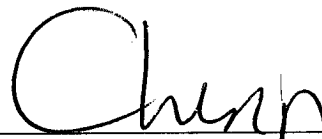
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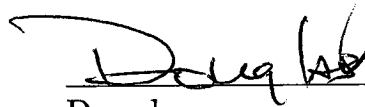
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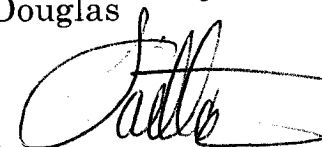
the appeal and the issuance of an order of deportation for her client. Montoya received a public reprimand in California for this same instance of misconduct.


pay the costs of the disciplinary proceedings within 30 days of receipt of the Nevada State Bar's bill of costs. SCR 120.

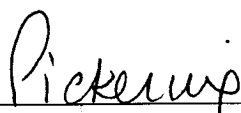
It is so ORDERED.<sup>4</sup>

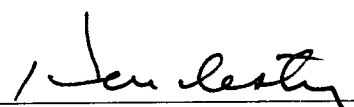
  
\_\_\_\_\_, C.J.  
Cherry

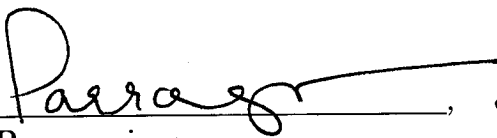
  
\_\_\_\_\_, J.  
Douglas

  
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Saitta

  
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Gibbons

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>This is our final disposition of this matter. Any new proceedings concerning Montoya shall be docketed under a new docket number.

cc: Jeffrey R. Albregts, Chair, Southern Nevada Disciplinary Board  
David A. Clark, Bar Counsel  
Kimberly K. Farmer, Executive Director, State Bar of Nevada  
Vicenta E. Montoya, Esq.  
Perry Thompson, Admissions Office, U.S. Supreme Court