

2011

In the Matter of the Discipline of Thomas V. Rasmussen : Brief of Appellee

Utah Supreme Court

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Office of Professional Conduct; Utah State Bar; Todd Wahlquist; Billy L. Walker; Counsel for Appellee.

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IN THE SUPREME COURT OF UTAH

**In the Matter of the
Discipline of:**

Thomas V. Rasmussen, #2693

Respondent/Appellant

Appellate Case No. 20110696

BRIEF OF THE APPELLEE

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JURISDICTIONAL STATEMENT

Thomas Rasmussen appeals from the district court's Findings of Fact, Conclusions of Law, and Order of Disbarment in the underlying attorney discipline case. The Utah Supreme Court has jurisdiction over attorney discipline matters pursuant to Utah Constitution article VIII, section 4, which provides that "[t]he Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law."

STATEMENT OF ISSUES

ISSUE I: The trial court did not exceed its jurisdiction by entertaining the OPC's objection to Rasmussen's reinstatement that was filed more than ten days after Rasmussen's petition because the reinstatement was not governed by Rule 14-524 of the Rules of Lawyer Discipline and Disability.

Preservation: This issue was preserved in *The Office of Professional Conduct's Reply to Reply to its Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen*. (R. at 216).

Standard of Review. In attorney discipline cases, the trial court's interpretation of rules is reviewed for correctness. In re Discipline of Schwenke, 89 P.3d 117, 120 (Utah 2004). Additionally, whether a trial court has subject matter jurisdiction is a question of law which is reviewed "under a correction of error standard." Xiao Yang Li v. University of Utah, 2006 UT 57 ¶ 7, 144 P.3d 1142.

ISSUE II: The trial court had discretion to consider the OPC's *Opposition to Order of Reinstatement of Thomas V. Rasmussen* as a post-judgment motion pursuant to rule 60(b) of the Utah Rules of Civil Procedure.

Preservation: Notwithstanding the fact the trial court did not state it was viewing the OPC's objection as a rule 60(b) post-judgment motion, it entertained the motion, and in its March 29, 2011, *Order* granted, in part, the relief requested by the OPC in its motion. (R. at 262).

Standard of Review: Trial courts have broad discretion in ruling on relief from a judgment and the decision is reviewed for an abuse of discretion. Russell v. Martell, 681 P.2d 1193, 1194 (Utah 1984).

ISSUE III: The trial court correctly weighed any aggravating and mitigating circumstances, and properly ruled that the appropriate sanction for Rasmussen's violation of the terms of his suspension should be more severe than the original sanction.

Preservation and Standard of Review: A trial court's findings of fact are reviewed under a clearly erroneous standard. In re Discipline of Crawley, 2007 UT 44 ¶ 17, 164 P.3d 1232. The Supreme Court makes its own independent determination as to the appropriate sanction in attorney discipline cases. In re Discipline of Ennenga, 2001 UT 111, ¶ 9-10, 37 P.3d 1150.

DETERMINATIVE LAW

The following rules are fully set forth in the Addendum to Brief of Appellee, submitted herewith:

- A. Rule 14-6. Standards for Imposing Lawyer Sanctions.
- B. Rules 14-501, 14-509, 14-511, 14-512, 14-524, 14-525, and 14-526 of the Utah Rules of Lawyer Discipline and Disability ("RLDD").
- C. Rule 60 of the Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings Below: This is an appeal in an attorney discipline case of an Order of the Third Judicial District Court, Salt Lake County, Honorable Judge Dever, disbaring attorney Thomas V. Rasmussen from the practice of law for violating the terms of an order of suspension.

STATEMENT OF RELEVANT FACTS

On July 21, 2010, the Honorable Judge Dever entered an *Order of Sanctions* suspending Rasmussen from the practice of law for one year, staying all but 181 days, for violating Rules 8.4(a) and 8.4(d) of the Utah Rules of Professional Conduct. (R. at 145-169). On January 24, 2011, Rasmussen filed a *Verified Petition for Reinstatement of Thomas V. Rasmussen*. (R. at 204-206). On January 24, 2011, Rasmussen also filed an *Affidavit of Thomas V. Rasmussen* attesting to the court that he had not practiced law for a total of 181 days up to the time of his anticipated reinstatement. (R. at 207-208).

In preparation for its response to Rasmussen's petition, and pursuant to rule 14-525 of the RLDD, the Office of Professional Conduct ("OPC"), served Rasmussen with interrogatories and requests for production on February 1,

2011. (R. at 211). Furthermore, the OPC prepared notice of Rasmussen's petition for reinstatement to be published in the next edition of the Utah Bar Journal as required by rule 14-524(d). (R. at 227).

On February 17, 2011, Rasmussen delivered to the OPC, and submitted to the trial court, a proposed *Order of Reinstatement of Thomas V. Rasmussen*. The trial court signed the Order on the same day. (R. at 213). On the following day, February 18, 2011, not knowing the trial court had already signed the order, the OPC mailed its *Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen*. (R. at 215-218). The opposition was based on the OPC's position that Rasmussen's *Order for Reinstatement* was premature because, pursuant to rule 14-525, the OPC had 60 days in which to object to the petition for reinstatement upon which the order was based. (R. at 215).

In response to the OPC's objection, on February 25, 2011, Rasmussen filed a *Reply to Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen*, in which he asserted, for the first time, that his reinstatement was governed by the provisions of rule 14-524, and as a result, the OPC's objection was filed too late.¹ (R. at 219).

Upon learning that the trial court had already signed the *Order of Reinstatement*, and that Rasmussen was claiming reinstatement under the provisions of rule 14-524, the OPC filed its *Reply to its Memorandum in*

¹ As will be discussed in more detail below, 14-525 allows 60 days for the OPC to object, whereas 14-524 allows only 10 days.

Opposition to Order of Reinstatement of Thomas V. Rasmussen on February 25, 2011, arguing that because the original suspension was for a term of one year, with all but 181 days stayed, Rasmussen's suspension should be categorized as being more than six months, and therefore, his reinstatement should be governed by rule 14-525. The OPC further informed the trial court that it would oppose reinstatement based on information it had received that Rasmussen had continued to practice law while on suspension. (R. at 216-222). In its brief, the OPC asked the trial court to set aside the *Order of Reinstatement* it had signed on February 17, 2011. (R. at 222).

The trial court held a hearing (the "Affirmation Hearing")², on March 8, 2011. (R. at 241). At the hearing the trial court stated it was its original intention that Rasmussen's suspension be for one year, and that his reinstatement "fall underneath 525." (R. at 558 p. 25). However, the trial court acknowledged its original sanctions order was not clear as to the period of suspension and that Rasmussen had relied on his interpretation that he was suspended for less than six months. (R. at 558 p.25-27). In "the interest of fair play and equity," the trial court determined it could not set aside the *Order of Reinstatement*. (*Id.*) With regard to the OPC's request to present evidence that Rasmussen had practiced law while on suspension, the trial court ruled from the bench as follows:

² In the Brief of Appellant, Rasmussen assigns various names to the orders of the trial court (i.e. "Affirmation Order"), and hearings before the trial court (i.e. "Motion Hearing). To avoid confusion before this Court, the OPC will use the same designations assigned by Rasmussen.

THE COURT: I think that if there's any problems with what he's done during that 181 days, certainly the OPC has the right to come back before the Court here and see if he violated the conditions of his suspension; and the Court then can entertain whether or not there should be another charge Mr. Rasmussen [sic] or an additional period of suspension ordered in this case.

(R. at 558 p. 27).

At the conclusion of the Affirmation Hearing, the trial court asked the OPC to prepare a written order. (*Id.*) However, prior to the OPC submitting its proposed Order, Rasmussen submitted to the trial court his own proposed order that read, in part, "In the interest of fair play and equity, the Court will not set aside its Order of Reinstatement dated February 17, 2011, as it was signed consistent with Rule 14-524, of the Rules of Lawyer Discipline and Disability." (R. at 265-266). The OPC objected to the language in the proposed order because the trial court had made no findings with regard to rule 14-524. (R. at 242-243). The Order ("Affirmation Order") ultimately issued by the trial court on March 30, 2011, read:

The Court will not set aside its Order of reinstatement dated February 17, 2011. Thus, said Order will remain in full force and effect. However, the OPC may bring any information to the Court that it might have that Mr. Rasmussen acted in violation of its Order of Sanctions in this case dated July 20, 2010.

(R. at 262-263).

Accordingly, on March 17, 2011, the OPC filed with the trial court its *Motion for the Court to Consider Evidence of Thomas v. Rasmussen's Failure to Comply with its Sanctions Order*. (R. at 245-259). The OPC submitted evidence

to the trial court that, during the term of his suspension, Rasmussen had “made 36 appearances on cases [and] filed 17 pleadings in cases.” (R. at 251, 258-259).

In his response to the motion, Rasmussen asserted that for the cases in which he appeared or filed pleadings during his suspension, he was either, 1) withdrawing as required by rule 36 of the Rules of Criminal Procedure; 2) performing work “in an effort to not leave [his] pre-suspension clients with the feeling of abandonment and also to avoid any potential complaints” to the OPC; or 3) postponing completion of the case until after being reinstated. (R. at 269-270). Rasmussen also stated that in contrast to the approximately twenty cases he worked on during his suspension, he would typically be retained on 108 new cases during a six month period of time. Thus, Rasmussen viewed his conduct as constituting “substantial compliance” with the trial court’s order that he not practice law for 181 days. (R. at 270).

Furthermore, Rasmussen stated during the term of his suspension it was necessary for him to incur, on average, \$11,000 a month in office expenses in order to maintain a continuing presence in the community. (R. at 270).

The trial court held a hearing (the “Motions Hearing”) on May 19, 2011. (R. at 521). At the hearing, the trial court questioned Rasmussen about his appearances in court:

THE COURT: When was that appearance with Judge Trease?

MR. RASMUSSEN: December 17th. So Dec - -

THE COURT: How can you argue that you have a right to go to Court on December 17th when you're suspended on August until February?

MR. RASMUSSEN: I should not have done that. I should not have done that. There's no question that I made judgment calls that were probably, in hindsight, errant judgment calls to try to facilitate clients. Mr. Walker does not know what conversations I did or did not have with those clients.

THE COURT: Well, how could you take on new cases and enter appearances of Counsel in cases during the period of time when you're suspended by me?

MR. RASMUSSEN: There were a couple where I did that, Judge, and I'm - -

THE COURT: Well, he says there's seven of them.

MR. RASMUSSEN: Well, I was going to lose my house. I was going to lose everything that I've worked 30 years for. I've had other attorneys come up to me after the fact and say, "Boy, if you'd have just asked we would have taken over your practice and helped you out."

Well, my mind doesn't think that way. I'm not scheming for ways to intentionally deceive; but Judge, this has been devastating to me. I have incurred over \$100,000 in debt, used up my savings. I have a house that is almost paid that was at risk. I have the - - kind of the infrastructure of a law practice I was desiring to return to and did return to that was at risk.

.....

I was hoping not to lose everything in life, and I definitely, definitely, definitely curtailed my efforts except when it became life or death, if you will, in terms of my complete and utter financial ruin.

(R. at 557 p. 15-16).

After taking the matter under advisement, the trial court issued an *Order* (the "Disbarment Order"), on July 19, 2011, finding that Rasmussen had

continued to practice law while on suspension, and concluding that the appropriate sanction for his conduct was disbarment. (R. at 522-526). Rasmussen is appealing that order.

SUMMARY OF THE ARGUMENT

I. It was the intent of the trial court, and the understanding of the OPC, that Rasmussen's original suspension was for a period of one year, and that his reinstatement would be governed by the provisions of rule 14-525. Thus, the OPC would have 60 days in which to oppose reinstatement, rather than the 10 days allowed under rule 14-524 for a suspension lasting six months or less. Because the OPC's opposition was filed within 60 days of Rasmussen's verified petition for reinstatement, it was timely and the trial court did not err in considering the motion.

II. The trial court has broad discretion in considering whether to consider a post-judgment motion, and whether to view an inadequately captioned motion as a rule 60(b) motion for post-judgment relief. In the present case the trial court did not abuse its discretion in viewing the OPC's objection to the order of reinstatement as a post-judgment motion or in allowing the OPC to present evidence that Rasmussen violated the terms of his suspension. The doctrine of *res judicata* did not bar the trial court's consideration of Rasmussen's conduct because the issue was not, and could not have been, litigated in the OPC's original objection to the proposed order of reinstatement.

III. Consistent with case law from this Court, the trial court correctly determined that Rasmussen's sanction for continuing to practice law while on suspension should be more severe than the original term of suspension. Furthermore, the trial court properly found that Rasmussen's need for money was not a mitigating circumstance, and that, considering the aggravating factors, disbarment was the appropriate sanction.

ARGUMENT

I. THE REINSTATEMENT PROCEEDINGS WERE NOT CONDUCTED PURSUANT TO RLDD 14-524, THEREFORE NEITHER THE TRIAL COURT NOR THE OPC WERE CONSTRAINED BY THE TEN-DAY OBJECTION PERIOD.

Depending on the length of the suspension, reinstatements are governed by either RLDD Rule 14-524 or 14-525. Rule 14-524 provides, in its entirety, that:

A respondent who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order and that the respondent has fully reimbursed the Bar's Lawyer's Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ten days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

(Emphasis added). In contrast, RLDD 14-525 provide, in part, that:

(a) Generally. A respondent suspended for more than six months or a disbarred respondent shall be reinstated or readmitted only upon order of the district court. No respondent may petition for reinstatement until three months before the period for suspension has expired....

(b) Petition. A petition for reinstatement or readmission shall be verified, filed with the district court...

.....
(d) Publication of notice of petition. At the time respondent files a petition for reinstatement or readmission, OPC counsel shall publish notice of the petition in the Utah Bar Journal....

.....
(f) Review of petition. Within 60 days after receiving a respondent's petition for reinstatement or readmission, OPC counsel shall either: (f)(1) advise the respondent and the district court that OPC counsel will not object to the respondent's reinstatement or readmission; or (f)(2) file a written objection to the petition.

(g) Hearing; report. If an objection is filed by OPC counsel, the district court, as soon as reasonably practicable and within a target date of 90 days of the filing of the petition, shall conduct a hearing...

(Emphasis added). The issue of whether Rasmussen's suspension and reinstatement were governed by the provisions of 14-524 or 14-525 is not directly before this Court. While Rasmussen has maintained the provisions of 14-524 are applicable, the OPC has urged the application of 14-525. Although the trial court stated it was its original intent that 14-525 would govern, it never specifically ruled under which provision it was reinstating Rasmussen, and neither party has specifically appealed this issue. In fact, because the trial court signed the order reinstating Rasmussen, the procedural question of whether it was pursuant to 14-524 or 14-525 is likely moot.

However, whereas Rasmussen is arguing the trial court exceeded its jurisdiction by not enforcing the time limits imposed by 14-524, and whereas the OPC maintains that the proceedings were not conducted pursuant to 14-524, a

brief discussion of this issue may be necessary to permit this Court to properly consider Rasmussen's argument.

The question of whether 14-524 or 14-525 applies comes down to a determination of whether Rasmussen was suspended for a period greater than, or less than, six months.

A. The Conduct of the Parties Evidenced an Understanding that Rasmussen's Suspension was Governed by 14-525, Rather than 14-524.

In its original *Order of Sanction*, the trial court imposed "a suspension of one year in this matter but will stay all but 181 days." (R. at 169). Near the end of the 181 days, Rasmussen submitted to the trial court a *Verified Petition for Reinstatement*. (R. at 204). Such a petition is required by 14-525, not by 14-524. In his petition, Rasmussen petitioned the court to "please reinstate me at the earliest possible time." *Id.* Whereas, absent an objection from the OPC, reinstatement under 14-524 is automatic upon expiration of the period of suspension, a request to be reinstated "at the earliest possible time" is more consistent with a petition filed pursuant to 14-525, where the trial court must take specific action before reinstatement can occur.

On the same day as he filed his verified petition, Rasmussen filed an *Affidavit of Thomas V. Rasmussen*, the only substantive averment of which was, "I have not practiced law for a total of 181 days up to the time of my anticipated reinstatement in this matter." (R. at 208). The affidavit made no mention as to his compliance with the other requirements of his suspension or reimbursement

to the Bar's Lawyer Fund for Client Protection, as would be required of an affidavit filed under 14-524.

After receiving the verified petition, OPC counsel prepared a notice of the proposed reinstatement to be printed in the Utah Bar Journal. (R. at 227). This notice is required by 14-525, not 14-524. Shortly after filing his verified petition Rasmussen submitted to the trial court a proposed *Order of Reinstatement*. (R. at 213). Again, such an order is required by 14-525, not 14-524.

It is apparent from the conduct of the parties that it was understood Rasmussen's reinstatement was governed by the provisions of 14-525 rather than 14-524. Thus, it was reasonable for the OPC to conclude it had 60 days in which to file its objection, rather than the 10 days sought to be imposed by Rasmussen after the fact.

B. It Was the Intent of the Trial Court that Rasmussen's Reinstatement be Governed by 14-525, Not 14-524.

Though not binding on an appellate court, the trial court's interpretation of its own order should be given great weight. See, Tucker v. State of Kansas, 711 P.2d 1343, 1344 (Kan. App. 1986) ("we are constrained to give great weight to the trial court's interpretation of its own judgment."); Auer v. Scott, 494 N.W.2d 54, 58 (Minn. App. 1992) ("generally a trial court's construction of its own decree is accorded great weight on appeal."); Kostelecky v. Kostolechy, 537 N.W.2d 551, 553 (N.D. 1995) ("construction of its own decree by the trial court must be given great weight in determining the intent of the trial court.")(citations omitted);

See also, Baculis v. Baculis, 430 N.W.2d 399, 404 (Iowa Sup. 1998); Wilde v. Wilde, 326 P.2d 415, 416 (Nev. 1958). However, a trial court's interpretation of its own orders is reviewed for correctness. Stevensen v. Goodson, 924 P.2d 339, 346 (Utah 1996).

The trial court's original *Order of Sanction* imposed "a suspension of one year in this matter but will stay all but 181 days." (R. at 169). At the Affirmation Hearing to consider the OPC's request to set aside the reinstatement order, the trial court stated:

THE COURT: In this matter I - - when I entered this order, the suspension in this case, it was my intention that the suspension be for one year and I was staying all but the time. So the suspension would fall underneath 525. It was my intention that all but six months - - you would be suspended for six months and a day, and rather than saying that, I said 181 days, thinking in error that that was the same thing.

(R. at 558 p.25) The trial court left little doubt that, in its mind, the suspension and reinstatement should be carried out pursuant to the requirements of 14-525.

Furthermore, following the Affirmation Hearing the trial court rejected a proposed order submitted by Rasmussen that included language that the reinstatement order "was signed consistent with Rule 14-524." (R. at 265). The March 29, 2011 Affirmation Order ultimately signed by the trial court was noticeably devoid of any reference to rule 14-524. (R. at 262).

Given the expressed intent of the trial court, as well as the conduct of the parties in seeking and opposing reinstatement, this Court, if necessary, should

find that Rasmussen's reinstatement was governed by the provisions of 14-525, not 14-524.

C. Because Rasmussen's Reinstatement was Not Governed by 14-524, His Proposed Order of Reinstatement was Premature and the OPC's Objection was Timely.

Rasmussen filed his *Verified Petition for Reinstatement* on January 24, 2011. At that point the OPC immediately began the process of publishing notice in the Utah Bar Journal, as required by 14-525, conducting discovery, and preparing its opposition to the reinstatement based upon information it had received that Rasmussen had been practicing law while on suspension. However, prior to the expiration of the 60 days allowed under the rules for the OPC to object, Rasmussen filed a proposed *Order of Reinstatement* that was received by the OPC after the order had already been signed. (R. at 558 p.8). Noticeably absent from the filing was a *Notice to Submit for Decision* or any certification that the OPC had been given the opportunity to review the proposed order. However, the filing did include a certificate of mailing stating it had been mailed to the OPC on February 17, 2011, the same day it was delivered to, and signed by, the trial court. (R. at 213-214).

Aware that by rule it only had five days in which to object to the proposed order, the OPC mailed its *Objection to Order of Reinstatement* on February 18, 2011. (R. at 215-218). The objection informed the trial court of the OPC's intent to more fully oppose Rasmussen's reinstatement within the 60 days allowed by

14-525. The OPC later learned the trial court signed the Order on February 17, 2011, the same day it received it.³

In his response to the OPC's objection, a pleading captioned *Reply to Memorandum In Opposition to Order of Reinstatement of Thomas V. Rasmussen*, Rasmussen asserted for the very first time that he was pursuing reinstatement based on the requirements outlined in 14-524 rather than 14-525. (R. at 219)⁴.

Upon learning that the *Order of Reinstatement* had already been signed, and that Rasmussen was claiming reinstatement based on 14-524, the OPC in its reply memorandum asked the trial court to set aside the *Order of Reinstatement* and allow it to proceed under 14-525. (R. at 216)⁵.

Because the OPC had no indication prior to Rasmussen's "Reply" brief that he was seeking reinstatement based on 14-524, the ten-day objection period allowed under the rule should not be a bar to the consideration of the OPC's objection, which was originally filed under 14-525, and the trial court did not

³ The OPC recognizes that Rule 7(f)(2) of the Utah Rules of Civil Procedure allowing a party five days within which to object to a proposed Order is binding only on the litigants and does not require the trial court to wait for the expiration of the objection period before signing the order. See, Henshaw v. Estate of King, 2007 UT App. 378 ¶ 25, 173 P.3d 876.

⁴ The Record prepared by the trial court assigns numbers 219 – 225 to Rasmussen's *Reply to Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen*. The OPC's reply to this memorandum, which follows in the Record, and which is titled *The Office of Professional Conduct's Reply to Reply to Its Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen*, is assigned numbers 216 – 227, resulting in partial duplication.

⁵ See Note 4.

exceed its jurisdiction when it entertained the motion and granted relief accordingly.

II. THE TRIAL COURT PROPERLY CONSIDERED THE OPC'S OPPOSITION AS A RULE 60(b) POST-JUDGMENT MOTION.

Rule 60(b) of the Utah Rules of Civil Procedure provides that:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:...(6) any other reason justifying relief from the operation of the judgment.

The rule is designed to protect against orders and judgments which, in consideration of numerous, oft times unarticulated, reasons, would bring about the wrong result.

The allowance of a vacation of judgment is a creature of equity designed to relieve against the harshness of enforcing a judgment, which may occur through procedural difficulties, the wrongs of the opposing party, or misfortunes which prevent the presentation of a claim or defense. An equity court may exercise wide judicial discretion in weighing the factors of fairness and public convenience, and this court on appeal will reverse the trial court only where an abuse of this discretion is clearly shown.

Boyce v. Boyce, 609 P.2d 928, 931 (Utah 1980) (internal citations omitted).

A. The Trial Court had Discretion to Consider the OPC's Opposition to the Order of Reinstatement.

In Darrington v. Wade, 812 P.2d 452 (Utah App. 1991), the Court of Appeals reviewed a trial court's decision to set aside a judgment where the impetus was not a properly styled rule 60(b) motion but, as in the present case,

an objection to a proposed order of judgment. In Darrington, the defendant had repeatedly failed to cooperate in discovery, resulting in the plaintiff moving for sanctions to strike the answer and enter a default judgment. The trial court granted the motion and entered a default. However, the default signed by the judge, which was to be for liability only, included an amount for damages contrary to the trial court's instructions. Upon motion from the defendant, the trial court set aside the default and reopened discovery. After additional failures on the part of the defendant to cooperate, the plaintiff again moved to strike the answer and have the court enter a default judgment.

The trial court again granted the motion for default on liability only. However, when the plaintiff submitted the proposed order it again included an amount for damages. The defendant filed an objection to the proposed order, but as in the present case, the court signed the order without seeing the objection. In supplemental memoranda the defendant argued that the proposed order went beyond the scope of the court's oral order and also argued that his conduct did not warrant entry of a default judgment. Persuaded by the arguments, the trial court again set aside the judgment.

On appeal the plaintiff argued it was improper for the trial court to set aside the judgment because the defendant never filed a proper rule 60(b) motion asking it to do so. The appellate court found that "although [Defendant] never filed a formal motion asking the court to set aside the default judgment, as required by Rule 60(b), they did file a timely objection to the proposed order

prepared by [Plaintiff's] counsel.” Id. at 457. Additionally, the appellate court found that defendant’s objection, “though clearly mislabeled, was the functional equivalent of a Rule 60(b) motion to set aside the judgment.” And, “most importantly, the trial court treated it as such a motion.” Id. Accordingly, the Court of Appeals found no abuse of discretion on the part of the trial court for considering the motion.

In the present case, the trial court granted partial relief from the reinstatement order pursuant to a post-judgment motion filed by the OPC styled “Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.” As was the case in Darrington, the order sought to be set aside was signed before the objection came to the attention of the trial court. Therefore, as a practical matter, it would be unreasonable to require the OPC to style its motion as a rule 60(b) post-judgment motion when at the time the motion was filed it did not even know the Order it was opposing had already been signed. And despite the OPC’s failure to caption its motion as a rule 60(b) motion, it was well within the discretion of the trial court to consider it as such.

Of note in the Darrington case is the appellate court’s statement that, “we view [Plaintiff’s] argument largely as an attempt to circumvent the merits of [Defendant’s] assertions by elevating form over substance.” Id. This is strikingly similar to the present case where Rasmussen, who has admitted to practicing law while on suspension, seeks to avoid the consequences of his conduct by attempting to elevate the form of the OPC’s objection over the substance.

Rasmussen cites extensively to this Court's decision in Workers Comp. Fund v. Argonaut Ins. Co., 2011 UT 61, 266 P.3d 792, in support of his argument that the trial court should not have considered the OPC's *Opposition to Order of Reinstatement* as a rule 59 or rule 60(b) post-judgment motion. (Aplt. Br. at 33-34). Rasmussen contends that because the OPC did not caption its motion as such, or specifically cite to either rule in the body of the motion, the trial court should not have entertained it or granted the post-judgment relief. Rasmussen misunderstands the holding in Argonaut.

This Court, in Argonaut, reaffirmed its position as stated in Gillett v. Price, 2006 UT 24, 135 P.3d 861, that for rule 59 motions, "the form of a motion does matter" and that "post judgment motions to reconsider and other similarly titled motions will not toll the time for appeal." Argonaut, ¶ 11. The Court in Argonaut then expanded the Gillett rationale to include rule 60(b) motions and again articulated that "the form of a rule 60(b) motion does matter." *Id.* ¶ 13. Because Argonaut could not have been construed to have filed either a rule 59 or rule 60(b) motion in compliance with the form requirements, this Court refused to consider Argonaut's appeal because it lacked jurisdiction.

What Rasmussen fails to recognize is that the Gillett and Argonaut standards raising form over substance would apply to the present case only if the trial court had refused to entertain the OPC's *Opposition to Order of Reinstatement*, and if the OPC appealed that decision to this Court. This Court would then predictably dismiss the OPC's appeal because its post-judgment

motion was not properly captioned pursuant to Argonaut, and thus unable to confer jurisdiction in the appellate court. However, that is not what occurred. The trial court exercised its discretion to entertain the motion and then granted relief accordingly. Thus, the question of whether the OPC's motion would have extended the time for appeal as a rule 59 motion, or whether denial of the motion would have been appealable as a rule 60(b) motion, is moot and Argonaut is inapplicable.

Rasmussen seeks to expand the holding in Argonaut to not only foreclose appeals based on inadequately captioned post-judgment motions, but to prohibit trial courts from even considering such motions. The Argonaut court specifically declined to adopt such a broad application:

We pause to note that district courts have broad discretion in determining whether to construe a motion under rule 59 or rule 60(b) of the Utah Rules of Civil Procedure and nothing in our decision today precludes a district court from exercising that discretion. However, if a motion is not captioned as a rule 59 or rule 60(b) motion and does not cite to rule 59 or rule 60(b), a district court does not err in failing to construe it as such.

Id. fn 5. Thus, if in exercising its broad discretion, the trial court refused to consider the OPC's post-judgment motion, the OPC would lack sufficient grounds for an appeal. However, Argonaut makes clear it was not improper for the trial court to entertain the motion and, absent an abuse of discretion, the decision to do so will not be upset on appeal.

B. The Trial Court Did Not Abuse its Discretion in Considering the OPC's Opposition to the Order of Reinstatement.

This Court has made it clear that, "broad discretion is accorded the trial court in ruling on relief from a judgment; and, this Court will reverse that ruling only if it is clear the trial court abused its discretion." Russell v. Martell, 681 P.2d 1193, 1194 (Utah 1984). See also, Katz v. Pierce, 732 P.2d 92 (Utah 1986) ("the district court judge is vested with considerable discretion under Rule 60(b) in granting or denying a motion to set aside a judgment").

"Rule 60(b) is an equitable rule that allows courts to balance the competing concerns that final judgments should not be lightly disturbed and that unjust judgments should not be allowed to stand." Robinson v. Baggett, 2011 UT App. 250, ¶ 24, 263 P.3d 411 (citing Laub v. South Cent. Tel. Ass'n, 657 P.2d 1304, 1306 (Utah 1982)).

This is not a situation where the trial court ruled against the OPC and the OPC filed a motion requesting the trial court to reconsider its ruling, hoping this time a decision would come down in its favor. The OPC mailed its *Opposition to Order of Reinstatement* on February 18, 2011, the day after Rasmussen provided it with a copy of the proposed Order. At that time the OPC did not know that the trial court had already signed the Order.

Thus, the OPC's opposition to what it believed was a proposed order, necessarily converted to a post-judgment motion to have the order set aside. At that point, it was logical for the trial court to consider the merits of the arguments

made in the opposition brief and determine whether they justified setting aside or otherwise modifying the order. This is the very purpose of a rule 60(b) motion.

In evaluating whether to entertain the OPC's motion to set aside the reinstatement order and permit a hearing on Rasmussen's alleged violation of the suspension, the trial court likely considered: (1) the circumstances under which the *Order of Reinstatement* was signed; (2) whether the reinstatement was governed by 14-524 or 14-525; (3) whether it was reasonable for Rasmussen to assume the original suspension was for less than six months; (4) whether it was reasonable for the OPC to conclude the original suspension was for more than six months; and (5) whether its original *Order of Sanctions* included errors that led to the confusion among the parties.

Clearly, after considering the issues before it the trial court determined, in its discretion, that it would be proper to entertain the merits of the OPC's motion and, notwithstanding its prior order that Rasmussen be reinstated, hear evidence that he had violated the terms of his suspension.

Rasmussen argues that the OPC was not entitled to post-judgment relief under rule 59 or rule 60 because the evidence the OPC presented regarding Rasmussen's practice of law while on suspension did not meet the criteria of "newly discovered" evidence under either subsection (a)(4) of rule 59 or subsection (b)(2) of rule 60. (Appt. Br. at 36-37). However, Rasmussen fails to recognize the broad discretion inherent in subsection (b)(6) of rule 60 that allows a trial court to relieve a party for "any other reason justifying relief from the

operation of the judgment.” The trial court signed the *Order of Reinstatement* prior to receiving the OPC’s objection. Upon receiving the objection, the trial court learned for the first time that Rasmussen may have violated the terms of his suspension by continuing to practice law. The trial court properly exercised its discretion in finding that this information justified partial relief from the operation of the order.

C. The Signing of the Reinstatement Order was the Result of Mistakes, Assumptions and Miscommunications.

“The provisions of Rule 60(b)(7) are sufficiently broad to permit the court to set aside its former order which appeared to have been entered upon an erroneous assumption and to enter a new order based upon the record before it.” Stewart v. Sullivan, 506 P.2d 74, 76 (Utah 1973).

The trial court’s signing of the *Order of Reinstatement* was the culmination of several mistakes, assumptions and miscommunications by all the parties involved. These circumstances provide the context as to why it was appropriate for the trial court to exercise its broad discretion in construing the OPC’s objection as a post-judgment motion, addressing the merits of the motion, and in allowing the OPC to present evidence of Rasmussen’s violation of his suspension order in a subsequent hearing.

The mistakes leading up to the signing of the *Order of Reinstatement* can be briefly summarized as follows: First, the trial court mistakenly stated in its original *Order of Sanctions* that the length of the un-stayed portion of

Rasmussen's suspension was for 181 days, rather than stating it was for six months and a day, which was the court's intent. Second, Rasmussen mistakenly assumed his suspension was for less than six months, and therefore that his reinstatement was governed by 14-524. Third, Rasmussen failed to provide the OPC five days within which to object to the proposed *Order of Reinstatement* before submitting it to the trial court. Fourth, the trial court and the OPC miscommunicated about whether the OPC intended to object to the proposed reinstatement order.

The trial court admitted it was error for the original sanctions order to characterize the suspension as being for 181 days, rather than six months and a day. (R. at 558, p25 and 27). At the Affirmation Hearing, the trial court acknowledged this problem:

THE COURT: So your position is, is that the Court's ruling of 181 days, which the Court thought up as being six months and a day, meaning more than six months, it is defective in saying 181 days was an error, and the Court made the error, and you relied upon that error, and therefore you should fall under the 524; is that what you're saying?

MR. RASMUSSEN: Well, I am saying that I relied on paragraph 1, and I can see where in the preamble to the four conditions entered in the Court's order that it says that it's a suspension for one year; but it also talks about staying all but 181 days. Then when it further references, by the end of the 181 day suspension, I was led to believe and relied on the fact that the suspension would only be in actual time a 181 day suspension.

(R. at 558 p.23-24).

THE COURT: So the question now comes down to the fact is, is that based upon the Court's decision in this matter in a ruling, order that

was entered in this case, and not being clear, that whether or not Mr. Rasmussen is allowed to rely upon that, comply with what the Court said he had to do to be reinstated and file the necessary documents.

(R. at 558 p.25). Because Rasmussen relied on his interpretation that he was applying for reinstatement following a suspension of less than six months, the trial court, in its March 29, 2011, *Affirmation Order* gave him the benefit of his interpretation and refused to set aside the *Order of Reinstatement*. However, because the OPC relied on its interpretation that Rasmussen was applying for reinstatement following a suspension of more than six months, the trial court appears to have given it the benefit of its interpretation by subsequently allowing the OPC to present the evidence it would have been allowed to submit in a 14-525 reinstatement hearing.

Given the trial court's admission that the reinstatement order was improperly worded, fostering the divergent interpretations by the parties, it was a proper, if not exemplary, use of the trial court's discretion to allow both parties the benefit of their interpretation while at the same time carrying out its duty to ensure that the underlying disciplinary matter was administered in "the interests of the public, the courts, and the legal profession." RLDD Rule 14-501(d).

D. The Doctrine of Res Judicata Did Not Bar The Trial Court's Consideration of Evidence that Rasmussen Continued to Practice Law While on Suspension.

Rasmussen argues the trial court was precluded by res judicata from considering evidence of his violations at the Motions Hearing. (Aplt. Br. at 29). As noted by Rasmussen, the doctrine of res judicata "means that neither of the

parties can again litigate that claim, demand or cause of action or any issue, point or part thereof which he could have but failed to litigate in the former action.” Bradshaw v. Kershaw, 627 P.2d 528, 531 (Utah 1981).

The doctrine of res judicata has two branches, claim preclusion and issue preclusion. See, Murdock v. Springville Mun. Corp., 1999 UT 39, 982 P.2d 65. It is unclear from Rasmussen’s brief upon which of these two distinct branches he is relying. However, because each branch has a requirement that the claim or issue must have been actually addressed in the prior proceeding, Rasmussen’s argument fails under either branch.

For claim preclusion to apply, Rasmussen must establish that:

“(i) both cases must involve the same parties, their privies or assigns; (ii) the claim sought to be barred either must have been presented or have been available to be presented in the first case; and (iii) the first suit must have resulted in a final judgment on the merits.”

Id. at ¶ 16. As will be discussed below, Rasmussen has failed to establish that the second element of this doctrine has been satisfied. The issue of whether Rasmussen continued to practice law while on suspension was not presented, nor was it available to be presented, to the trial court at the Affirmation Hearing.

The four elements of the other branch of res judicata, issue preclusion, are:

(i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action

must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.

Id. Again, Rasmussen has failed to show that the issue of his continued practice of law while on suspension was “completely, fully, and fairly litigated” in the Affirmation Hearing, and therefore, he is unable to invoke this doctrine as a bar to the trial court’s consideration of this issue at the subsequent Motion Hearing.

Rasmussen’s position is apparently based on (1) the fact that the OPC had obtained evidence of Rasmussen’s improper conduct prior to the Affirmation Hearing and (2) the OPC’s statement to the trial court at the Affirmation Hearing that it had such information. (Appt. Br. at 30).

As with his after-the-fact attempts to characterize his petition for reinstatement as being pursuant to a more favorable rule, Rasmussen is now attempting an after-the-fact re-characterization of the nature and purpose of the Affirmation Hearing in order to invoke a favorable doctrine.

The trial court signed Rasmussen’s *Order of Reinstatement* as a result of a miscommunication between the trial court and the OPC that led the trial court to believe the OPC would not oppose the order. (R. at 558, p.25-27). However, as noted above, the OPC had already begun the process of opposing reinstatement, and was unaware that Rasmussen was seeking reinstatement based upon a rule that neither the OPC nor the trial court believed was applicable. Once it learned the proposed order had been sent to the trial court, the OPC immediately

opposed the order, not knowing the trial court had signed it the same day. As a result, the OPC requested in its reply brief that the trial court set aside the *Order of Reinstatement*. This request is what prompted the trial court to hold the Affirmation Hearing on March 8, 2011.

Thus, the issue before the trial court at the Affirmation Hearing was not whether Rasmussen had continued to practice law while on suspension, but rather would the trial court set aside the *Order of Reinstatement*, based on the OPC's argument that Rasmussen's petition was premature, and would the trial court allow the OPC to present evidence of Rasmussen's violations at a subsequent hearing. It was this specific request for relief that was ruled upon by the trial court:

THE COURT: The question is, is should the Court now set aside that order. Well, I think in the interest of fair play and equity, I don't think I can. I think that the Court made an error here, wasn't clear in its order. I said 181 days; 181 days passed, and Mr. Rasmussen submitted the order to the Court and the Court signed it.

I think that if there's any problems with what he's done during that 181 days, certainly the OPC has the right to come back before the Court here and see if he violated the conditions of his suspension, and the Court then can entertain whether or not there should be another charge Mr. Rasmussen or an additional period of suspension ordered in this case. So that would be the order. Mr. Walker, would you prepare that for me, please.

(R. at 558 p. 27).

Contrary to Rasmussen's assertions, the issue of his continued practice of law during the term of his suspension was not litigated in connection with the Affirmation Hearing. Additionally, res judicata's bar of issues that *should* have

been litigated in the initial proceeding is equally inapplicable. The Affirmation Hearing was not intended to include the OPC's grounds for opposing the reinstatement. Its purpose was to determine if the OPC would be allowed to later present such grounds. The trial court ruled that it would. This evidence was ultimately brought before the trial court at the Motions Hearing, considered for the first time, and resulted in Rasmussen's disbarment.

III. THE TRIAL COURT APPLIED THE PROPER ANALYSIS IN DETERMINING THAT DISBARMENT WAS THE PROPER SANCTION FOR RASMUSSEN'S VIOLATION OF THE SUSPENSION ORDER.

A. Rasmussen's Sanction for Practicing Law While Suspended Must Be More Severe than the Original Sanction.

The Standards for Imposing Lawyer Sanctions ("Standards") Rule 14-606(a) provides that, "the district court or Supreme Court may impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order." This Court has stated that "to serve as an effective deterrent for further misconduct, the penalty for violating an order of suspension must be more severe than the original suspension." In re Discipline of Doncouse, 2004 UT 77 ¶ 19, 99 P.3d 837.

In the original sanctions order Rasmussen was suspended for one year with all but 181 days stayed. While he admits he continued to practice law during his suspension, he argues the sanction for his conduct should simply be to lift the stay and impose the entire one year suspension. However, the Court's language in In re Discipline of Crawley, 2007 UT 44 ¶ 24, 164 P.3d 1232, would suggest

that, when considering a higher level of sanction, the trial court should impose an increase from the entire length of the original suspension, not just the un-stayed portion.

Although [the attorney's] sanction in this matter should be more severe than the stayed suspension that he violated, we decline to impose a more severe sanction now because the OPC did not appeal on this issue. We thus uphold the sanction imposed by the district court of a one-year suspension with leave to petition the court for probation. But we put the bar and bench on notice that less severe terms of suspension and probation are inappropriate sanctions for an attorney who violates the terms of an existing suspension or probation.

In Crawley, the trial court imposed a one-year suspension after the attorney was found to have practiced law during the six month un-stayed portion of a two year suspension.

In the present case, the trial court properly followed this Court's direction to impose a more severe penalty for violating the terms of the suspension, and properly exercised its discretion in determining that Rasmussen's conduct warranted disbarment.

Rasmussen argues that his discipline should be governed by RLDD rule 14-605, rather than 14-606. (Aplt. Br. at 40). While rule 14-605 articulates the sanctions that are "generally appropriate" for various types of conduct,⁶ rule 14-606 sets forth the principles that "generally apply" in cases involving prior discipline. Rule 14-606 reads as follows:

⁶ Rule 14-605 outlines the elements generally required to impose the sanctions of disbarment, suspension, reprimand and admonition.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604,⁷ the following principles generally apply in cases involving prior discipline.

(a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order.

(b) When a lawyer engages in misconduct similar to that for which the lawyer has previously been disciplined, the appropriate sanction will generally be one level more severe than the sanction the lawyer previously received, provided that the harm requisite for the higher sanction is present.

The exact basis for Rasmussen's argument that the rule governing prior discipline orders should not apply to his violation of a prior discipline order is unclear. He seems to rely on subparagraph (b) for his argument that disbarment is only an appropriate next level of discipline if the conduct at issue is "similar to that for which the lawyer has previously" been suspended. However, subparagraph (b) is not a limitation on subparagraph (a), allowing a higher sanction only for similar conduct, as Rasmussen seems to argue. Rather, subparagraph (b) simply provides guidance to a court as to what level of sanction would be appropriate in situations where an attorney repeats prior misconduct for which he has already been disciplined. In other words, it would generally be inappropriate to suspend an attorney for misconduct that is similar to that for which he was already suspended. In that case, disbarment would be

⁷ Rule 14-604 outlines the factors to be considered in imposing sanctions, namely (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors.

appropriate. However, it does not follow, as Rasmussen is attempting to argue, that disbarment is *only* appropriate in prior discipline cases if the conduct is similar.

Simply put, the broad language in 14-606(a) permits the court to “impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order.” The rule inherently accords trial courts discretion in determining the appropriate sanction for violation of a prior disciplinary order, and if the required harm is present, all the sanctions in 14-605, including disbarment, are available.

B. Disbarment is the Appropriate Sanction Under a 14-605 Analysis.

Rasmussen argues that if the trial court had analyzed his conduct under rule 14-605, rather than 14-606, it would have concluded that disbarment was too harsh of a sanction. (Aplt. Br. at 43). However, as discussed above, the two rules work hand-in-hand, and because Rasmussen’s conduct involves violation of a prior disciplinary order, rule 14-606 is directly on point. Nonetheless, measuring Rasmussen’s conduct solely against the guidelines in 14-605 reveals that sufficient grounds existed for imposing the sanction of disbarment. Rule 14-605(a) provides that:

Disbarment is generally appropriate when a lawyer:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding;...

In its *Findings of Fact, Conclusions of Law, and Order of Disbarment*, the trial court found that Rasmussen “blatantly disregarded the Order of the Court for his own financial benefit,” that his mental state was “the stated need for money,” and that “there was injury to the public and to the judicial system.” (*Id.*) Measured against the elements of 14-605(a)(1), the trial court’s findings support the sanction of disbarment.

First, “blatantly disregard[ing]” the trial court’s order satisfies the requirement that the attorney knowingly engage in misconduct as defined in Rule 8.4(d), where it is prejudicial to the administration of justice to disobey an order of the court. Second, the stated “need for money,” satisfies the element that the conduct be done with the intent to benefit the lawyer. Finally, the trial court found injury to the public and the judicial system, thus satisfying the final requirement under 14-605(a) for disbarment.

Notwithstanding that Rasmussen’s conduct could be found to justify disbarment under a strict application of the standards articulated in 14-605, it cannot be overlooked that he was starting from a point well beyond a mere rule violation. Rather than impose a “progressive discipline schematic,”⁸ that takes into account the fact that he ignored a prior order of discipline, Rasmussen asks this Court to view his conduct as merely a violation of a court order, the contents of which are irrelevant. Such an interpretation of the rules is untenable.

⁸ Brief of Appellant at 43.

Rasmussen violated a prior order of discipline. Under the circumstances, a “progressive discipline schematic” is mandatory, not discretionary. As previously noted, this Court “put the bar and bench on notice that less severe terms of suspension and probation are inappropriate sanctions for an attorney who violates the terms of an existing suspension or probation.” In re Discipline of Crawley, 2007 UT 44 ¶ 24, 164 P.3d 1232.

C. Rasmussen Lied to the Trial Court in the Affidavit He Filed in Support of His Reinstatement.

Rule 14-605 further provides that disbarment is generally appropriate where an attorney:

(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice law.

Near the conclusion of the 181 days of his imposed suspension, and in support of his petition for reinstatement, Rasmussen filed with the trial court the *Affidavit of Thomas V. Rasmussen*. (R. at 207-208). The only substantive averment in this affidavit was the following statement: “I have not practiced law for a total of 181 days up to the time of my anticipated reinstatement in this matter.” (R. at 208 ¶ 5). However, at the Motions Hearing Rasmussen admitted to practicing law during the 181 days of his suspension, and the trial court ultimately found that the affidavit “was not truthful.” (R. at 523). In fact, the trial court found that “Rasmussen made 36 appearances in 17 courts” during the period of his suspension, and that he “was taking on new matters during his

suspension.” (Id.). Although at the Motions Hearing Rasmussen admitted to practicing law while suspended, he argued his financial obligations justified his conduct. (R. at 557, p.15-16). He further attempted to explain the misstatement in his affidavit by claiming “substantial compliance” based on the fact that he took on fewer clients and made less money during his suspension than he would have otherwise.

Rasmussen’s dishonesty before the trial court in his sworn affidavit is a violation under 14-605(a)(3) that would support this Court’s conclusion that the appropriate “more severe” sanction for his conduct is disbarment.

D. The Trial Court Properly Considered Aggravating and Mitigating Circumstances Associated with Rasmussen’s Continued Practice of Law While on Suspension.

Standards Rule 14-607 instructs that, “after misconduct has been established, aggravating and mitigating circumstances may be considered and weighed in deciding what sanction to impose.”

In the present case, the trial court stated in its July 18, 2011, *Order*:

Finally, there are no mitigating circumstances and the aggravating circumstances are clear. Rasmussen blatantly disregarded the Order of the Court for his own financial benefit. This violation was not a single episode but nearly two score.

Rasmussen admitted he continued to practice law while on suspension because he needed the money. However, he argues this is evidence of a “personal or emotional problem,” and should be considered a mitigating circumstance rather than viewed as evidence of a selfish motive. (Aplt. Br. at

44). Although in a different context, this Court addressed a similar argument, in In re Discipline of Ennenga, 2001 UT 111, ¶ 14, 37 P.3d 1150. In Ennenga, the attorney was found to have misappropriated client funds. At sanctioning, the trial court “concluded that Ennenga’s personal and emotional problems [resulting from] his inability to meet his regular financial obligations” were mitigating factors. Id. (quotations and alterations in original). On appeal, this Court disagreed, stating, “[a]lthough we understand that the pressure of not being able to meet one’s financial obligations can be great, we cannot condone the taking of a client’s money to resolve that problem.” The Court concluded by stating, “[p]ersonal financial pressures cannot mitigate the offense of misappropriation.” Id.

Given this Court’s interest in protecting the public by regulating those who may stand before the bar and represent clients, the same rationale considered in Ennenga should be applied to the present case. Specifically, this Court should find that, “personal financial pressure cannot mitigate the offense of” practicing law while on suspension. More broadly, it cannot mitigate the offense of blatantly disregarding an order of the court. The rationale behind not allowing an attorney to use the need for financial gain as mitigation is especially strong when the financial pressure is brought about by the attorney’s own misconduct. In short, the trial court properly found that Rasmussen’s continued practice of law for the purpose of making money was an aggravating factor, not a mitigating circumstance.

Rasmussen argues the trial court failed to consider his absence of a prior record of discipline as a mitigating factor. Given that Rasmussen was being sanctioned for violating a prior order of discipline, it is unclear how the trial court could have considered a lack of prior discipline as a mitigating circumstance.

Rule 14-607(b)(5) allows the trial court to consider as mitigation, “full and free disclosure to the...disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward the proceedings.” Rasmussen argues the trial court should have taken into account that he “took full responsibility and freely disclosed his conduct to the court, maintaining a cooperative attitude toward the proceedings.” (Aplt. Br. at 45). The trial court became aware that Rasmussen was continuing to represent clients, in violation of his suspension order, because the OPC, not Rasmussen, brought his conduct to light. Furthermore, Rasmussen submitted a false affidavit to the trial court averring that he had not practiced law during the period of his suspension. Again, it is unclear how the trial court could have considered this to be a mitigating circumstance.

Rasmussen next asserts the trial court should have considered the OPC’s delay in presenting the evidence of his unauthorized practice of law as a mitigating circumstance pursuant to rule 14-607(b)(10). (Id.) This rule encompasses delays in disciplinary proceedings that prejudice an attorney’s right to have their case heard expeditiously. Rasmussen is apparently referring to the fact the OPC waited until after he filed his petition for reinstatement before

bringing allegations that he violated the terms of his suspension. This is simply not the type of delay contemplated by the rule.

As an additional mitigating circumstance, Rasmussen argues that the trial court should have considered, as “interim reform” under 14-607(b)(11), that he ceased his unauthorized practice of law after receiving the OPC’s December warning letter. Rasmussen did not “reform” his behavior. He merely stopped violating the trial court’s order after learning that he had been caught. The trial court was correct in not considering this as mitigation.

Next, Rasmussen contends that the \$2000 in sanctions he paid to the Seventh District Court should be considered as mitigation under rule 14-607(b)(12). (Id.). However, those sanctions were imposed by a different trial court as a result of his conduct which eventually gave rise to the initial suspension. (R. at 272). The \$2,000 sanction was unrelated to the suspension or the disbarment proceedings. Thus, it would be inappropriate for the trial court to consider it as mitigation.

Finally, Rasmussen asserts that the remorse he conveyed at the Motions Hearing should have been considered as mitigation pursuant to rule 14-607(b)(13). (Aplt. Br. at 45). In the words of this Court, “[Rasmussen’s] remorse at trial is irrelevant.” In re Discipline of Tanner, 960 P.2d 399, 403 (Utah 1998). The Tanner court went on to explain:

Naturally, anyone going through a trial for the above wrongdoing would feel remorse after getting caught. Instead, the remorse question closely relates to acknowledgment of wrongful conduct: did

Tanner feel remorse about his behavior *before* getting caught, and was he motivated by remorse in making amends?

Id. (Emphasis in original).

In sum, the trial court properly considered any aggravating and mitigating circumstances that were properly before it in determining that disbarment was the appropriate sanction for Rasmussen's violation of the order of suspension.

E. THIS COURT'S PRECEDENT SUPPORTS THE TRIAL COURT'S IMPOSITION OF THE SANCTION OF DISBARMENT.

In recent years this Court has considered other cases addressing the issue of progressive sanctions in attorney discipline matters. In In re Discipline of Doncouse, 2004 UT 77, 99 P.3d 837, an attorney was suspended for three years after it was found he violated the terms of a ninety-day suspension. However, in In re Johnson, 830 P.2d 262 (Utah 1992), this Court ordered disbarment where an attorney violated a six month suspension. The difference between the two cases is the extent to which the attorneys continued to practice law while on suspension. As will be shown, Rasmussen's conduct is more analogous to the violations of the attorney disbarred in Johnson.⁹

The attorney in In re Johnson, was originally suspended for six months for violating the terms of a prior probation. During the course of the six month

⁹ This issue was also addressed in the consolidated case of In re Discipline of Crawley, 2007 UT 44, 164 P.3d 1232, where an attorney violated the terms of a suspension. This Court declined to impose a sanction more severe than the one year suspension imposed by the district court because the OPC failed to appeal the issue.

suspension, the OPC continued to receive complaints, and it was eventually determined that, while suspended, the attorney accepted new clients, provided legal advice to clients, held himself out as one authorized to practice law, and received compensation from his firm. Id. at 263. This Court found that the attorney “continued to practice law in flagrant disregard of this court’s order of suspension.” Id. As a result, the attorney was disbarred. Id. at 264.

By contrast, the attorney in In re Discipline of Doncouse, 2004 UT 77, 99 P.3d 837, was found to have practiced law on just three occasions during the course of a ninety-day suspension. After considering mitigating and aggravating factors, the trial court suspended the attorney for one year. The OPC appealed, arguing the attorney should be disbarred. After reviewing the standards for imposing sanctions, this Court noted that the distinction between disbarment and suspension “lies, in part, in the attorney’s motive and in the relative severity of the conduct.” Id. at ¶16.

In that case, the attorney’s practice of law while on suspension was limited to identifying himself as an attorney in order to access a client in prison, filing a reply memorandum on behalf of a client, and accepting a new client in a matter. Id. at ¶7. This Court found the attorney’s actions were not egregious enough, and that the level of injury was not severe enough, to warrant disbarment. Id. at ¶16. It distinguished the Johnson case, noting the attorney there “essentially ignored the imposition of sanctions and continu[ed] with business as usual.” Id. at ¶17. However, in Doncouse, this Court did increase the length of the suspension from

one year to three, stating that, “to serve as an effective deterrent for further misconduct, the penalty for violating an order of suspension must be more severe than the original suspension.” Id. at ¶19.

In the present case, Rasmussen made 36 court appearances and filed 17 pleadings. (R. at 251, 258-259). He not only continued representing his existing clients, he took on new matters as well. And his admitted motivation for violating the court’s order was the need for money. As with the attorney in Johnson, Rasmussen “essentially ignored the imposition of sanctions and continu[ed] with business as usual.” Notwithstanding his argument that he took on fewer matters than he otherwise would during the six months of his suspension, it is undisputed that Rasmussen continued to practice law in violation of the courts order and that his violations were numerous. As such, the trial court correctly imposed the sanction of disbarment.

CONCLUSION

Rasmussen’s suspension was for a period greater than six months, and therefore, his reinstatement was governed by the provisions of RLDD 14-525. Thus, the trial court did not exceed its jurisdiction by entertaining the OPC’s objection that was filed more than ten days after Rasmussen’s petition for reinstatement.

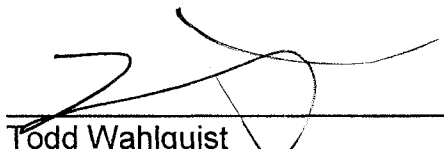
The trial court had discretion to consider the OPC’s *Opposition to Order of Reinstatement of Thomas V. Rasmussen* as a post-judgment motion pursuant to rule 60(b), and discretion to grant the relief requested in the motion. Because the

issue of Rasmussen's violation of the terms of his suspension was not addressed in the Affirmation Hearing, the doctrine of res judicata did not prevent the trial court from considering the evidence at the Motions Hearing.

Rasmussen's sanction for violating the terms of his suspension should be more severe than the original suspension of one year. The trial court correctly weighed aggravating and mitigating circumstances, and properly ruled that the appropriate sanction for Rasmussen's violation of the terms of his suspension was disbarment.

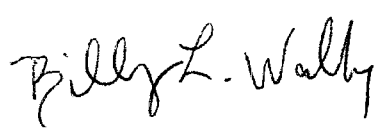
DATED: August 2, 2012.

OFFICE OF PROFESSIONAL CONDUCT



Todd Wahlquist
Deputy Senior Counsel

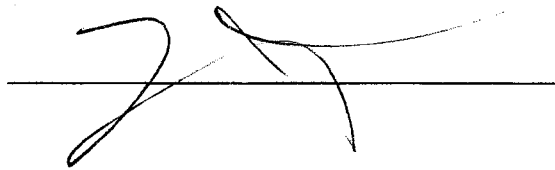
OFFICE OF PROFESSIONAL CONDUCT



Billy L. Walker
Senior Counsel

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of August, 2012, I caused to be mailed via United States first-class mail, postage pre-paid, two true and correct copies of the foregoing Appellee Brief to: Thomas V. Rasmussen, 4959 South Highland Drive, Salt Lake City, Utah 84117.

A handwritten signature in black ink, consisting of a large, stylized 'Z' or 'J' shape followed by a horizontal line and a small flourish.

ADDENDUM

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Rules of Central Importance Cited in the Brief

- A. Rule 14-6. Standards for Imposing Lawyer Sanctions.
- B. Rules 14-501, 14-509, 14-511, 14-512, 14-524, 14-525, and 14-526 of the Utah Rules of Lawyer Discipline and Disability ("RLDD").
- C. Rule 60 of the Utah Rules of Civil Procedure.

Documents Referenced in the Brief

- D. *Proposed Order of Reinstatement of Thomas V. Rasmussen.*
- E. *Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.*
- F. *Reply to Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.*
- G. *The Office of Professional Conduct's Reply to Reply to its Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.*
- H. *Memorandum in Support of Motion for the Court to Consider Evidence of Thomas V. Rasmussen's Failure to Comply with Its Sanctions Order.*

Addendum A

Rules of Central Importance Cited in the Brief

Rule 14-601. Definitions, Standards for Imposing Lawyer Sanctions.

As used in this article:

- (a) "complainant" means the person who files an informal complaint or the OPC when the OPC determines to open an investigation based on information it has received;
- (b) "formal complaint" means a complaint filed in the district court alleging misconduct by a lawyer or seeking the transfer of a lawyer to disability status;
- (c) "informal complaint" means any written, notarized allegation of misconduct by or incapacity of a lawyer;
- (d) "injury" means harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury;
- (e) "intent" means the conscious objective or purpose to accomplish a particular result;
- (f) "knowledge" means the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result;
- (g) "negligence" means the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation;
- (h) "potential injury" means the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct;
- (i) "respondent" means a lawyer subject to the disciplinary jurisdiction of the Supreme Court against whom an informal or formal complaint has been filed; and
- (j) "Rules of Professional Conduct" means the Utah Rules of Professional Conduct (including the accompanying comments) initially adopted by the Supreme Court in 1988, as amended from time to time.

Rule 14-602. Purpose and Nature of Sanctions, Standards for Imposing Lawyer Sanctions.

(a) Summary. This article is based on the Black Letter Rules contained in the Standards for Imposing Lawyer Sanctions prepared by the American Bar Association's Center for Professional Responsibility. They have been substantially revised by the Supreme Court. Notably, ABA Standards 4 through 8 have been reduced into a single Rule 14-605.

(b) Purpose of lawyer discipline proceedings. The purpose of imposing lawyer sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers, and to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or likely to be unable to discharge properly their professional responsibilities.

(c) Public nature of lawyer discipline proceedings. Ultimate disposition of lawyer discipline shall be public in cases of disbarment, suspension, and reprimand, and nonpublic in cases of admonition.

(d) Purpose of these rules. These rules are designed for use in imposing a sanction or sanctions following a determination that a member of the legal profession has violated a provision of the Rules of Professional Conduct. Descriptions in these rules of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Rules of Professional Conduct. The rules constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:

(d)(1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;

(d)(2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and

(d)(3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

Rule 14-603. Sanctions, Standards for Imposing Lawyer Sanctions.

(a) Scope. A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement that the lawyer has engaged in professional misconduct.

(b) Disbarment. Disbarment terminates the individual's status as a lawyer. A lawyer who has been disbarred may be readmitted as provided in Rule 14-525.

(c) Suspension. Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. Generally, suspension should be imposed for a specific period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years.

(c)(1) A lawyer who has been suspended for six months or less may be reinstated as set forth in Rule 14-524.

(c)(2) A lawyer who has been suspended for more than six months may be reinstated as set forth in Rule 14-525.

(d) Interim suspension. Interim suspension is the temporary suspension of a lawyer from the practice of law. Interim suspension may be imposed as set forth in Rules 14-518 and 14-519.

(e) Reprimand. Reprimand is public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(f) Admonition. Admonition is nonpublic discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(g) Probation. Probation is a sanction that allows a lawyer to practice law under specified conditions. Probation can be public or nonpublic, can be imposed alone or in conjunction with other sanctions, and can be imposed as a condition of readmission or reinstatement.

(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline which allows a respondent to resign from the practice of law while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 14-521.

(i) Other sanctions and remedies. Other sanctions and remedies which may be imposed include:

(i)(1) restitution;

(i)(2) assessment of costs;

(i)(3) limitation upon practice;

(i)(4) appointment of a receiver;

(i)(5) a requirement that the lawyer take the Bar Examination or professional responsibility examination; and

(i)(6) a requirement that the lawyer attend continuing education courses.

(j) Reciprocal discipline. Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

Rule 14-604. Factors to be Considered in Imposing Sanctions, Standards for Imposing Lawyer Sanctions.

The following factors should be considered in imposing a sanction after a finding of lawyer misconduct:

(a) the duty violated;

(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

Rule 14-605. Imposition of Sanctions, Standards for Imposing Lawyer Sanctions.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604, the following sanctions are generally appropriate.

(a) Disbarment. Disbarment is generally appropriate when a lawyer:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or

(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

(b) Suspension. Suspension is generally appropriate when a lawyer:

(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding; or

(b)(2) engages in criminal conduct that does not contain the elements listed in Rule 14-605(a)(2) but nevertheless seriously adversely reflects on the lawyer's fitness to practice law.

(c) Reprimand. Reprimand is generally appropriate when a lawyer:

(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding; or

(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(d) Admonition. Admonition is generally appropriate when a lawyer:

(d)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or

(d)(2) engages in any professional misconduct not otherwise identified in this rule that adversely reflects on the lawyer's fitness to practice law.

Rule 14-606. Prior Discipline Orders, Standards for Imposing Lawyer Sanctions.

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604, the following principles generally apply in cases involving prior discipline.

(a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order.

(b) When a lawyer engages in misconduct similar to that for which the lawyer has previously been disciplined, the appropriate sanction will generally be one level more severe than the sanction the lawyer previously received, provided that the harm requisite for the higher sanction is present.

Rule 14-607. Aggravation and Mitigation, Standards for Imposing Lawyer Sanctions.

After misconduct has been established, aggravating and mitigating circumstances may be considered and weighed in deciding what sanction to impose.

(a) Aggravating circumstances. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating circumstances may include:

- (a)(1) prior record of discipline;
- (a)(2) dishonest or selfish motive;
- (a)(3) a pattern of misconduct;
- (a)(4) multiple offenses;
- (a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;
- (a)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;
- (a)(8) vulnerability of victim;
- (a)(9) substantial experience in the practice of law;
- (a)(10) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and
- (a)(11) illegal conduct, including the use of controlled substances.

(b) Mitigating circumstances. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

- (b)(1) absence of a prior record of discipline;
- (b)(2) absence of a dishonest or selfish motive;
- (b)(3) personal or emotional problems;
- (b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;
- (b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;
- (b)(6) inexperience in the practice of law;
- (b)(7) good character or reputation;
- (b)(8) physical disability;
- (b)(9) mental disability or impairment, including substance abuse when:
 - (b)(9)(A) the respondent is affected by a substance abuse or mental disability; and
 - (b)(9)(B) the substance abuse or mental disability causally contributed to the misconduct; and
 - (b)(9)(C) the respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (b)(9)(D) the recovery arrested the misconduct and the recurrence of that misconduct is unlikely;
- (b)(10) unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;
- (b)(11) interim reform in circumstances not involving mental disability or impairment;
- (b)(12) imposition of other penalties or sanctions;
- (b)(13) remorse; and
- (b)(14) remoteness of prior offenses.

(c) Other circumstances. The following circumstances should not be considered as either aggravating or mitigating:

- (c)(1) forced or compelled restitution;

- (c)(2) withdrawal of complaint against the lawyer;
- (c)(3) resignation prior to completion of disciplinary proceedings;
- (c)(4) complainant's recommendation as to sanction; and
- (c)(5) failure of injured client to complain.

Addendum B

Rule 14-501. Purpose, authority, scope and structure of lawyer disciplinary and disability proceedings.

(a) The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

(c) All disciplinary proceedings shall be conducted in accordance with this article and Article 6, Standards for Imposing Lawyer Sanctions. Formal disciplinary and disability proceedings are civil in nature. These rules shall be construed so as to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

Rule 14-509. Grounds for discipline.

It shall be a ground for discipline for a lawyer to:

- (a) violate the Rules of Professional Conduct;
- (b) willfully violate a valid order of a court or a screening panel imposing discipline;
- (c) be publicly disciplined in another jurisdiction;
- (d) fail to comply with the requirements of Rule 14-526(e); or
- (e) fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule 14-522(a).

Rule 14-511. Proceedings subsequent to finding of probable cause.

(a) Commencement of action. If the screening panel finds probable cause to believe that there are grounds for public discipline and that a formal complaint is merited, OPC counsel shall prepare and file with the district court a formal

complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Rules of Professional Conduct. The formal complaint shall be signed by the Committee chair or, in the chair's absence, by the Committee vice chair or a screening panel chair designated by the Committee chair.

(b) Venue. The action shall be brought and the trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Utah; provided, however, that if the respondent is not a resident of Utah and the alleged offense is not committed in Utah, the trial shall be held in a county designated by the Chief Justice of the Supreme Court. The parties may stipulate to a change of venue in accordance with applicable law.

(c) Style of proceedings. All proceedings instituted by the OPC shall be styled "In the Matter of the Discipline of (name of respondent and respondent's Bar number), Respondent."

(d) Change of judge as a matter of right.

(d)(1) Notice of change. The respondent or OPC counsel may, by filing a notice indicating the name of the assigned judge, the date on which the formal complaint was filed, and that a good faith effort has been made to serve all parties, change the judge assigned to the case. The notice shall not specify any reason for the change of judge. The party filing the notice shall send a copy of the notice to the assigned judge and to the presiding judge. The party filing the notice may request reassignment to another district court judge from the same district, which request shall be granted. Under no circumstances shall more than one change of judge be allowed to each party under this rule.

(d)(2) Time. Unless extended by the court upon a showing of good cause, the notice must be filed within 30 days after commencement of the action or prior to the notice of trial setting, whichever occurs first. Failure to file a timely notice precludes any change of judge under this rule.

(d)(3) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the Chief Justice of the Supreme Court, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

(e) Actions tried to the bench; findings and conclusions. All actions tried according to this article shall be tried to the bench, and the district court shall enter findings of fact and conclusions of law. Neither masters nor commissioners shall be utilized.

(f) Sanctions hearing. Upon a finding of misconduct and as soon as reasonably practicable, within a target date of not more than 30 days after the district court enters its findings of fact and conclusions of law, it shall hold a hearing to receive relevant evidence in aggravation and mitigation, and shall within five days thereafter, enter an order sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may hold the sanctions hearing immediately after the misconduct proceeding.

(g) Review. Any discipline order by the district court may be reviewed by the Supreme Court through a petition for review pursuant to the Utah Rules of Appellate Procedure.

Rule 14-512. Sanctions.

The imposition of sanctions against a respondent who has been found to have engaged in misconduct shall be governed by Chapter 14, Article 6, Imposing Lawyer Sanctions.

Rule 14-524. Reinstatement following a suspension of six months or less.

A respondent who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order and that the respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ten days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

Rule 14-525. Reinstatement following a suspension of more than six months; readmission.

(a) Generally. A respondent suspended for more than six months or a disbarred respondent shall be reinstated or readmitted only upon order of the district court. No respondent may petition for reinstatement until three months before the period for suspension has expired. No respondent may petition for readmission until five years after the effective date of disbarment. A respondent who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the effective date of the interim suspension.

(b) Petition. A petition for reinstatement or readmission shall be verified, filed with the district court, and shall specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or readmission. With specific reference to paragraph (e)(4), prior to the filing of a petition for readmission, the respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the respondent must satisfy all other requirements as set forth in Article 7, Admissions. Prior to or as part of the respondent's petition, the respondent may request modification or abatement of conditions of discipline, reinstatement or readmission.

(c) Service of petition. The respondent shall serve a copy of the petition upon OPC counsel.

(d) Publication of notice of petition. At the time a respondent files a petition for reinstatement or readmission, OPC counsel shall publish a notice of the petition in the Utah Bar Journal. The notice shall inform members of the Bar about the application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the district court within 30 days of the date of publication. In addition, OPC counsel shall notify each complainant in the disciplinary proceeding that led to the respondent's suspension or disbarment that the respondent is applying for reinstatement or readmission, and shall inform each complainant that the complainant has 30 days from the date of mailing to raise objections to or to support the respondent's petition. Notice shall be mailed to the last known address of each complainant in OPC counsel's records.

(e) Criteria for reinstatement and readmission. A respondent may be reinstated or readmitted only if the respondent meets each of the following criteria, or, if not, presents good and sufficient reason why the respondent should nevertheless be reinstated or readmitted.

(e)(1) The respondent has fully complied with the terms and conditions of all prior disciplinary orders except to the extent they are abated by the district court.

(e)(2) The respondent has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.

(e)(3) If the respondent was suffering from a physical or mental disability or impairment which was a causative factor of the respondent's misconduct, including substance abuse, the disability or impairment has been removed. Where substance abuse was a causative factor in the respondent's misconduct, the respondent shall not be reinstated or readmitted unless:

(e)(3)(A) the respondent has recovered from the substance abuse as demonstrated by a meaningful and sustained period of successful rehabilitation;

(e)(3)(B) the respondent has abstained from the use of the abused substance and the unlawful use of controlled substances for the preceding six months; and

(e)(3)(C) the respondent is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(e)(4) Notwithstanding the conduct for which the respondent was disciplined, the respondent has the requisite honesty and integrity to practice law. In readmission cases, the respondent must appear before the Bar's Character and Fitness Committee and cooperate in its investigation of the respondent. A copy of the Character and Fitness Committee's report and recommendation shall be provided to the OPC and forwarded to the district court assigned to the petition after the respondent files a petition.

(e)(5) The respondent has kept informed about recent developments in the law and is competent to practice.

(e)(6) In cases of suspensions for one year or more, the respondent shall be required to pass the Multistate Professional Responsibility Examination.

(e)(7) In all cases of disbarment, the respondent shall be required to pass the student applicant Bar Examination and the Multistate Professional Responsibility Examination.

(e)(8) The respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection for any amounts paid on account of the respondent's conduct.

(f) Review of petition. Within 60 days after receiving a respondent's petition for reinstatement or readmission, OPC counsel shall either:

(f)(1) advise the respondent and the district court that OPC counsel will not object to the respondent's reinstatement or readmission; or

(f)(2) file a written objection to the petition.

(g) Hearing; report. If an objection is filed by OPC counsel, the district court, as soon as reasonably practicable and within a target date of 90 days of the filing of the petition, shall conduct a hearing at which the respondent shall have the burden of demonstrating by a preponderance of the evidence that the respondent has met each of the criteria in paragraph (e) or, if not, that there is good and sufficient reason why the respondent should nevertheless be reinstated or readmitted. The district court shall enter its findings and order. If no objection is

filed by OPC counsel, the district court shall review the petition without a hearing and enter its findings and order.

(h) Successive petitions. Unless otherwise ordered by the district court, no respondent shall apply for reinstatement or readmission within one year following an adverse judgment upon a petition for reinstatement or readmission.

(i) Conditions of reinstatement or readmission. The district court may impose conditions on a respondent's reinstatement or readmission if the respondent has met the burden of proof justifying reinstatement or readmission, but the district court reasonably believes that further precautions should be taken to ensure that the public will be protected upon the respondent's return to practice.

(j) Reciprocal reinstatement or readmission. If a respondent has been suspended or disbarred solely on the basis of discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, and if the respondent is later reinstated or readmitted by that court, jurisdiction or regulatory body, the respondent may petition for reciprocal reinstatement or readmission in Utah. The respondent shall file with the district court and serve upon OPC counsel a petition for reciprocal reinstatement or readmission, as the case may be. The petition shall include a certified or otherwise authenticated copy of the order of reinstatement or readmission from the other court, jurisdiction or regulatory body. Within 20 days of service of the petition, OPC counsel may file an objection thereto based solely upon substantial procedural irregularities. If an objection is filed, the district court shall hold a hearing and enter its finding and order. If no objection is filed, the district court shall enter its order based upon the petition.

Rule 14-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

(a) Effective date of order; winding up affairs. Each order that imposes disbarment or suspension is effective 30 days after the date of the order, or at such other time as the order provides. Each order that transfers a respondent to disability status is effective immediately upon the date of the order, unless the order otherwise provides. After the entry of any order of disbarment, suspension, or transfer to disability status, the respondent shall not accept any new retainer or employment as a lawyer in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date, the respondent may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) Notice to clients and others. In every case in which a respondent is disbarred or suspended for more than six months, the respondent shall, within 20 days of the entry of the order, accomplish the following acts:

(b)(1) notify each client and any co-counsel in every pending legal matter, litigation and non-litigation, that the respondent has been disbarred or suspended from the practice of law and is disqualified from further participation in the matter;

(b)(2) notify each client that, in the absence of co-counsel, the client should obtain a new lawyer, calling attention to the urgency to seek new counsel, particularly in pending litigation;

(b)(3) deliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to the client or co-counsel of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;

(b)(4) refund any part of any fee paid in advance that has not been earned as of the effective date of the discipline;

(b)(5) in each matter pending before a court, agency or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's disbarment or suspension and consequent disqualification to further participate as a lawyer in the matter;

(b)(6) file with the court, agency or tribunal before which any matter is pending a copy of the notice given to opposing counsel or to an adverse party; and

(b)(7) within ten days after the effective date of disbarment or suspension, file an affidavit with OPC counsel showing complete performance of the foregoing requirements of this rule. The respondent shall keep and maintain for inspection by OPC counsel all records of the steps taken to accomplish the requirements of this rule.

(c) Lien. Any attorney's lien for services rendered which are not tainted by reason of disbarment or suspension shall not be rendered invalid merely because of the order of discipline.

(d) Other notice. If a respondent is suspended for six months or less, the district court may impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the district court may also require the issuance of notice to others as it deems necessary to protect the interests of clients or the public.

(e) Compliance. Substantial compliance with the provisions of paragraphs (a), (b) and (d) shall be a precondition for reinstatement or readmission. Willful failure to comply with paragraphs (a), (b) and (d) shall constitute contempt of court and may be punished as such or by further disciplinary action.

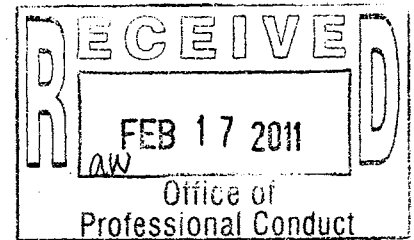
Addendum C

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Addendum D



THOMAS V. RASMUSSEN, #2693
4659 So. Highland Drive
Salt Lake City, Utah 84117
Telephone: (801) 484-3000
Facsimile: (801) 273-1089

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the	:	ORDER OF REINSTATEMENT OF
Discipline of:	:	THOMAS V. RASMUSSEN
	:	
Thomas V. Rasmussen, #2693	:	Civil No. 090908841
	:	Judge: L. A. Dever
	:	

Based upon Respondent's Verified Petition for Reinstatement and accompanying documentation, and the fact that more than 181 days from the effective date of the Court's Order of Sanctions, dated July 20, 2010, has elapsed, and for good cause appearing, it is hereby;

ORDERED, ADJUDGED, & DECREED, that Thomas V. Rasmussen, #2693, is hereby Reinstated as an Attorney at Law in good standing in the State of Utah.

DATED this ____ day of February, 2011.

BY THE COURT:

Judge L. A. DEVER

CERTIFICATE OF MAILING

I hereby certify that I mailed postage pre-paid a true and correct copy of the foregoing Order of Reinstatement of Thomas V. Rasmussen to the Office of Professional Conduct at 645 South 200 East, Salt Lake City, Utah 84111.

Dated this 17 day of February, 2011.

A handwritten signature in cursive script, reading "Anne L. Zdunich", written over a horizontal line.

A. L. Zdunich
Secretary

Addendum E

FILED
THIRD DISTRICT COURT
11 FEB 18 PM 1:36
SALT LAKE DEPARTMENT

Billy L. Walker, #3358
Senior Counsel
Utah State Bar
Office of Professional Conduct
645 South 200 East
Salt Lake City, Utah 84111
Telephone: (801) 531-9110

BY _____
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Discipline of:	)	MEMORANDUM IN OPPOSITION
	)	TO ORDER OF REINSTATEMENT
	)	OF THOMAS V. RASMUSSEN
Thomas V. Rasmussen #02693)	
	)	Civil No. 090908841
Respondent.)	
	)	Judge L. A. Dever

The Utah State Bar's Office of Professional Conduct ("OPC"), by and through Billy L. Walker, Senior Counsel, and in accordance with Rule 14-525 of the Rules of Lawyer Discipline and Disability ("RLDD"), hereby objects to Mr. Rasmussen's proposed Order of Reinstatement of Thomas V. Rasmussen ("Order").

ARGUMENT

I. MR. RASMUSSEN ORDER IS PREMATURE

Rule 14-525(f) RLDD states: "Within 60 days after receiving a respondent's petition for reinstatement or readmission, OPC counsel shall either (1) advise the respondent and the district court that OPC counsel will not object to the respondent's reinstatement or

readmission; or (2) file a written objection to the petition.” Mr. Rasmussen filed his Verified Petition on January 24, 2011 and served the OPC with the Verified Petition on the same day. Therefore, the OPC has until March 25, 2011 to file its objection, which it intends to do.

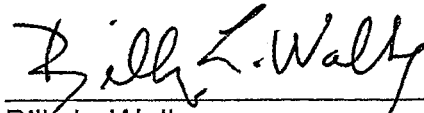
It is apparent that Mr. Rasmussen’s intent was to file his petition pursuant to 14-525 of the RLDD because it is verified which is required by 14-525(b) of the rule. Furthermore, the Court’s Order of Sanction was for a suspension of one year which requires a petition to be filed in accordance with 14-525.

For the Court’s information, on February 1, 2011, the OPC sent Interrogatories and Request for Production of Documents to Mr. Rasmussen with regard to his reinstatement. Mr. Rasmussen has yet to respond to the discovery requests, however, his responses are not due until March 2, 2011. The OPC plans to use Mr. Rasmussen’s responses to supplement the objection it will file on or before March 25, 2011. After the OPC files its objection which will detail the basis for a denial of reinstatement, the Court is required to hold a hearing pursuant to 14-525(g) of the rule.

CONCLUSION

Mr. Rasmussen's Order is premature and by submitting it to the Court it is the OPC's viewpoint that Mr. Rasmussen is attempting to bypass Rule 14-525(f) of the RLDD. Therefore, Mr. Rasmussen's Order should not be signed.

DATED this 18 day of February, 2011.

A handwritten signature in black ink, appearing to read "Billy L. Walker", written over a horizontal line.

Billy L. Walker
Senior Counsel
Office of Professional Conduct

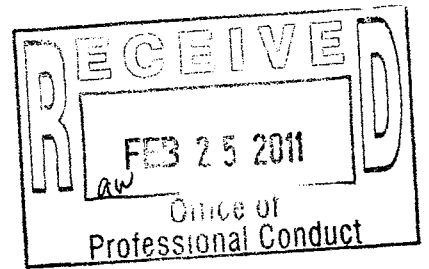
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2011, I caused to be mailed a true and correct copy of the Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen to:

Thomas V. Rasmussen
4659 South Highland Drive
Salt Lake City, Utah 84117

alisa Webb

Addendum F



THOMAS V. RASMUSSEN, #2693
4659 So. Highland Drive
Salt Lake City, Utah 84117
Telephone: (801) 484-3000
Facsimile: (801) 273-1089

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the	:	REPLY TO MEMORANDUM IN
Discipline of:	:	OPPOSITION TO ORDER OF
	:	REINSTATEMENT OF
	:	THOMAS V. RASMUSSEN
Thomas V. Rasmussen, #2693	:	
	:	Civil No. 090908841
Respondent.	:	Judge L. A. Dever

OPC's Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen, is out of order and lacks any legal authority under the Rules of Lawyer Discipline and Disability, as it completely missed its deadline to object under Rule 14-524. On the contrary, this Court properly and legally signed an Order of Reinstatement of Thomas V. Rasmussen on February 17, 2011. The Court's action was in full compliance with Rule 14-524, which reads:

RULE 14-524. REINSTATEMENT FOLLOWING A SUSPENSION OF
SIX MONTHS OR LESS

A respondent who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order Within ten days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

The Court's Order of Sanction executed on July 20, 2010, primarily required that Respondent "enter and complete an ethics and professional conduct course by the end of the 181 day suspension" and "not practice law during the [181 day] suspension and so certify that fact by affidavit", which is the very same requirement as contained in Rule 14-524. It is clear on the face of Rule 14-524 that both the Court and the Respondent have fully complied with the requirements of the Rule. It is equally apparent that OPC is in non-compliance with the above-stated Rule, as it filed an objection to the Court's Order of Reinstatement on or after February 18, 2011, well beyond the 10 days deadline specified in Rule 14-524 for the filing of an objection by OPC counsel or the granting of a hearing by the Court.

The timeline below illuminates the analysis and conclusions mentioned above.

1. July 20, 2010, Order of Sanction signed by District Court Judge L. A. Dever.

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2. August 19, 2010, effective date of suspension pursuant to Rule 14-526.

3. January 24, 2011, filing of required affidavit with the district court and service of the same upon OPC, pursuant to Rule 14-524.

4. February 7, 2011, deadline for the filing of an objection by OPC counsel, pursuant to Rule 14-524 and Rule 6(a), URCP.

5. February 16, 2011, is the last day of the Court's 181 day suspension, under its Order of Sanction dated July 20, 2010.

6. February 17, 2011, Order of Reinstatement of Thomas V. Rasmussen was signed by District Court Judge L. A. Dever, on the 182nd day after the effective date of suspension, pursuant to the Court's Order of Sanction.

7. February 18, 2011, date appearing on OPC's Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.

8. February 19, 2011, six (6) months from the effective date of the Court's Order of Sanction.

Again, the above timeline demonstrates conclusively that both Respondent and the Court fully complied with the requirements of Rule 14-524, while OPC counsel did not comply with the 10 days deadline to file its objection. Therefore, without a timely objection by OPC counsel, it was not incumbent on the district court to conduct a hearing in the matter.

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The fact that Respondent filed a Verified Petition for Reinstatement needs to be explained. On or about December 20, 2010, Respondent received a copy of a letter drafted by Diane Akiyama, Assistant Counsel, OPC, containing the erroneous statement that Respondent

"has been suspended for six months and a day. ... we [OPC] have not received anything from Mr. Rasmussen regarding his obligations under Rule 14-526 of the Rules of Lawyer Discipline and Disability.

I direct your attention to Rule 14-526 of the Rules of Lawyer Discipline and Disability with respect to Mr. Rasmussen's responsibilities."

While Respondent believed the above-mentioned content of OPC's December 20, 2010, letter to be in error, based on the exact wording of the Court's July 20, 2010, Order of Sanction, he decided to file a Verified Petition for Reinstatement with the Court, pursuant to Rule 14-525, and also to file an affidavit with OPC counsel, pursuant to Rule 14-526. This action was taken out of an abundance of caution and fear, as Respondent was trying to avoid complete financial ruin by covering all the bases in an effort to eliminate any unnecessary delay in his reinstatement to practice law.

Respondent had always operated under the belief that his suspension was a Rule 14-524 suspension and, therefore, conducted his affairs accordingly. He also believed OPC considered his suspension to be one of "6 months or less" when OPC remained

Page 5

completely silent with regard to any perceived responsibilities under Rule 14-526, including the filing of an affidavit with OPC counsel that would have been due on or before August 19, 2010. It was not until after December 20, 2010, that Respondent received any indication from OPC that it considered Rule 14-526 to be applicable to his suspension. The December 20, 2010, letter was composed by OPC five months after the execution of the Court's Order of Sanction and four months after the effective date of Respondent's suspension, therefore, OPC should be estopped from asserting that Rule 14-525 and 14-526 apply in this matter. As mentioned earlier, the December 20, 2010, letter erroneously states that Respondent was suspended for "6 months and a day", which is not the language of the Court's Order. If OPC truly believed that Rule 14-525 dealing with a suspension "more than six months" was applicable, it should have timely notified Respondent and/or the Court of Respondent's failure to file an affidavit with them, on or before, August 19, 2010. Clearly, OPC was silent on this matter, causing Respondent to rely to his potential detriment on OPC's silence and inactivity, while all the time holding fast to the language of the Court's Order. As to the interpretation of Rules 14-524, 14-525 and 14-526, it is unmistakable from the language of each respective Rule that the relevant time period applicable to Respondent is either "six months


Page 6

or less" or "more than six months". "[S]ix months" is clearly being used as a Term of Art, in the above-mentioned Rules of Lawyer Discipline and Disability. Nowhere in the relevant Rules is there any reference to "days" being used as the metric for determining whether a suspension is "six months or less" or "more than six months". Rules 14-524, 14-525, and 14-526 are unambiguous in the use of the words "six months" as the appropriate marker of time with respect to a suspension. There is absolutely no hint or suggestion in those Rules that 180 days is a synonym for six months. Therefore, Respondent has always believed that his suspension was pursuant to Rule 14-524. While Respondent filed a Verified Petition, etc. out of fear of confusion and delay emanating from the erroneous content of OPC's letter dated December 20, 2010, he continued to reflect on the actual language of the Court's Order of Sanction and was renewed in his belief that Rules 14-525 and 14-526 did not apply to his suspension. His belief was further renewed in the fact that Rule 14-524 governed his suspension thereby requiring OPC to file any objection to his reinstatement by February 7, 2011. With no objection being timely filed by OPC counsel, Respondent resolved that he was free to approach the Court without any obstruction, challenge or objection by OPC after the conclusion of his 181 day suspension. Judge Dever lawfully, courteously, and without delay signed the Order of Reinstatement on February 17, 2011.

Page 7

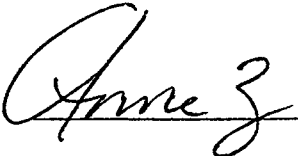
In summary, the Court's lawful Order reinstating Thomas V. Rasmussen as an attorney at law in good standing in the State of Utah should stand, pursuant to Rule 14-524, and OPC should be barred and estopped from objecting or arguing otherwise, as they have not timely acted upon relevant deadlines contained in the applicable Rules of Lawyer Discipline and Disability.

DATED this 24 day of February, 2011.


THOMAS V. RASMUSSEN
Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 24 day of February, 2011, I caused to be hand delivered, facsimiled, or mailed postage pre-paid a true and correct copy of the Reply to the Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen.



Addendum G

FILED
THIRD DISTRICT COURT
11 FEB 25 PM 4:42
SALT LAKE DEPARTMENT
BY _____
DEPUTY CLERK

Billy L. Walker, #3358
Senior Counsel
Utah State Bar
Office of Professional Conduct
645 South 200 East
Salt Lake City, Utah 84111
Telephone: (801) 531-9110

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Discipline of:	)	THE OFFICE OF PROFESSIONAL
	)	CONDUCT'S REPLY TO REPLY TO
	)	ITS MEMORANDUM IN OPPOSITION
	)	TO ORDER OF REINSTATEMENT
	)	OF THOMAS V. RASMUSSEN
Thomas V. Rasmussen #02693)	
	)	Civil No. 090908841
Respondent.)	
	)	Judge L. A. Dever

The Utah State Bar's Office of Professional Conduct ("OPC"), by and through Billy L. Walker, Senior Counsel, and in accordance with Rule 14-525 of the Rules of Lawyer Discipline and Disability ("RLDD"), hereby submits its Reply to Mr. Rasmussen's Reply to Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen ("Order").

ARGUMENT

- I. THE OPC HAS MADE NO ERROR, ITS ACTIONS HAVE BEEN CONSISTENT WITH ITS POSITION THAT MR. RASMUSSEN'S REINSTATEMENT SHOULD BE CONSIDERED PURSANT TO RLDD 14-525 NOT 14-524

The OPC has made no error in this case. The OPC's actions have been consistent with the position that the reinstatement of Mr. Rasmussen should fall under Rule 14-525, not 14-524. Mr. Rasmussen's suspension was for one year with all but 181 days stayed, which brings it clearly under Rule 14-525(a). Rule 14-525(a) reads as follows:

A respondent suspended for more than six months or a disbarred respondent shall be reinstated or readmitted only upon order of the district court. No respondent may petition for reinstatement until three months before the period for suspension has expired. No respondent may petition for readmission until five years after the effective date of disbarment. A respondent who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the effective date of the interim suspension.

Furthermore, even if the non-stayed portion of the suspension (181 days) is the standard for reinstatement there is no other reasonable conclusion that can be drawn by the "181 days" determination by the Court other than six months and one day (i.e. 30 days for a month) which also would place reinstatement under Rule 14-525. It is incomprehensible that the interpretation of 181 days is inconsistent with a six month and one day suspension because the Court used days instead of months. A strict interpretation of "six months" as a "term of art" does not make sense and in OPC's viewpoint is inconsistent with the intent of the Court's Sanction Order.

The OPC did send a letter dated December 20, 2010, to Mr. Rasmussen's attorney James Deans. A copy of the letter is attached hereto as Exhibit "A". The letter was not sent in error. The letter was sent for the following two reasons:

- a) The OPC had received information that it was likely that Mr. Rasmussen was practicing law while on suspension.¹
- b) The OPC had not received information from Mr. Deans or Mr. Rasmussen regarding Mr. Rasmussen's obligations under 14-526. Specifically, Rule 14-526(b) requires as follows:

Notice to clients and others. In every case in which a respondent is disbarred or suspended for more than six months, the respondent shall, within 20 days of the entry of the order, accomplish the following acts:

- (1) notify each client and any co-counsel in every pending legal matter, litigation and non-litigation, that the respondent has been disbarred or suspended from the practice of law and is disqualified from further participation in the matter;
- (2) notify each client that, in the absence of co-counsel, the client should obtain a new lawyer, calling attention to the urgency to seek new counsel, particularly in pending litigation;
- (3) deliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to the client or co-counsel of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;
- (4) refund any part of any fee paid in advance that has not been earned as of the effective date of the discipline;
- (5) in each matter pending before a court, agency or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's disbarment or suspension and consequent disqualification to further participate as a lawyer in the matter;

¹ The OPC now has further information that Mr. Rasmussen was practicing during his suspension period and has served discovery on Mr. Rasmussen for further verification. The OPC plans to present its evidence of Mr. Rasmussen's unauthorized practice of law at the reinstatement hearing provided for in 14-525(g).

(6) file with the court, agency or tribunal before which any matter is pending a copy of the notice given to opposing counsel or to an adverse party; and

(7) within two days after the effective date of disbarment or suspension, file an affidavit with OPC counsel showing complete performance of the foregoing requirements of this rule. The respondent shall keep and maintain for inspection by OPC counsel all records of the steps taken to accomplish the requirement of this rule.

The OPC did not state the specifics of the rule in the letter. However, the rule does not require OPC to notify Mr. Rasmussen of his obligation under Rule 14-526. Thus, there was no error. The letter was sent as a courtesy consistent with OPC's understanding and position that Mr. Rasmussen was suspended for more than six months and reinstatement needs to be pursuant to Rule 14-525.

It should be noted that Mr. Rasmussen is claiming he felt the OPC was acting in error and his Verified Petition for Reinstatement "was taken out of an abundance of caution and fear." However, never once, until Mr. Rasmussen's reply dated February 25, 2011, did Mr. Rasmussen state to the OPC that the OPC was making an error and never once did Mr. Rasmussen do anything inconsistent with OPC's understanding that his reinstatement would be pursuant to Rule 14-525. As a matter of fact, until now all of Mr. Rasmussen's actions including filing a Verified Petition are consistent with reinstatement under 14-525 not 14-524.

II. MR. RASMUSSEN'S REQUEST FOR REINSTATEMENT WAS AT BEST NOT CONSISTENT WITH THE PROVISIONS OF RULE 14-524 AND AT WORST DECEPTIVE.

Even if Mr. Rasmussen was entitled to reinstatement under Rule 14-524 his filing was at best not consistent with Rule 14-524 and at worst deceptive. Under Rule 14-524:

A respondent who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order and that the respondent has fully reimbursed the Bar's Lawyers' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ten days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

Mr. Rasmussen submitted a document titled "Verified Petition" to the OPC. In this Verified Petition he claims to be in "compliance with the terms and conditions of the Court's Order of Sanction, dated July 20, 2010." He did not submit a document titled "Affidavit" making this claim. He did submit two Affidavits to the OPC, one claims he did not "practice law for a total of 181 days up to his anticipated reinstatement." The other Affidavit refers to compliance with 14-526. The 14-526 "Affidavit" on the face of the language of 14-524 is inapplicable to 14-524 because 14-524 is for suspensions of six months or less and 14-526(b) where an Affidavit is required is for suspensions of more than six months.

The significance of not titling the "Verified Petition" document "Affidavit" is: Had Mr. Rasmussen submitted an Affidavit for reinstatement claiming he had complied with all the conditions of the Court's Sanction Order, the OPC would have been alerted of Mr.

Rasmussen's position that 14-524 was the applicable rule for his reinstatement. The OPC would have then acted accordingly and submitted its objection to the Court within 10 days. Instead, the OPC noted the document as a "Verified Petition" as allowed for under 14-525(b) and proceeded under 14-525. This included submitting a request to have publication of the notice of Mr. Rasmussen's petition in the Bar Journal pursuant to 14-525(d). Attached as Exhibit "B" is a copy of this notice.

Furthermore, even if the Court views a Verified Petition as sufficient under 14-524, if it was Mr. Rasmussen's intent to be reinstated pursuant to Rule 14-524 and not 14-525, his designation of his request for reinstatement as a Verified Petition consistent with the language of 14-525 was deceptive.² The OPC was deceived and Mr. Rasmussen should not benefit from this deception.

III. IN OBTAINING HIS ORDER OF REINSTATEMENT, MR. RASMUSSEN DID NOT COMPLY WITH RULE 7 OF THE RULES OF CIVIL PROCEDURE

Rule 7(f)(2) of the Rules of Civil Procedure reads as follows:

Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

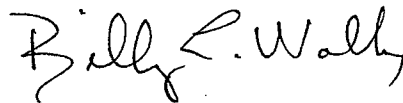
² It was especially deceptive when combined with Mr. Rasmussen's other actions, i.e. his reference to 14-526 in one of his Affidavits and his request to be "reinstated at the earliest possible time" in his Petition. In this respect under Rule 14-524, a respondent would not have to request be reinstated at the earliest possible time, because the rule provides for reinstatement at the end of the period of suspension upon filing of the Affidavit.

The OPC received Mr. Rasmussen's proposed Order of Reinstatement on February 17, 2011 at 4:30 pm. The OPC was not allowed the five days to object to Mr. Rasmussen's order. Rather the Order was signed on the same day it was presented to the Court and the OPC.

CONCLUSION

There has been no error made by the Office of Professional Conduct in this case. All of its actions have been consistent with its understanding and position that Mr. Rasmussen's reinstatement should be governed by Rule 14-525 of the Rules of Lawyer Discipline and Disability, not 14-524 of these rules. Furthermore, notwithstanding Mr. Rasmussen's reply, all of his actions have also been consistent with reinstatement under 14-525. Therefore, the OPC respectfully requests that the Court set aside its Reinstatement Order of February 17, 2011 and allow this matter to proceed in accordance with Rule 14-525.

DATED this 25 day of February, 2011.



Billy L. Walker
Senior Counsel
Office of Professional Conduct

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2011, I caused to be mailed a true and correct copy of The Office of Professional Conduct's Reply to Reply to Its Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen to:

Thomas V. Rasmussen
4659 South Highland Drive
Salt Lake City, Utah 84117

Alisa Webb

EXHIBIT "A"



Utah State Bar

Office of Professional Conduct

645 South 200 East, Suite 205 • Salt Lake City, Utah 84111-3834

Telephone: (801) 531-9110 • FAX: (801) 531-9912 • 1-800-698-9077

E-mail: opc@utahbar.org

December 20, 2010

James H. Deans
440 South 700 East #101
Salt Lake City, Utah 84102

Re: In the Matter of the Discipline of Thomas V. Rasmussen
Civil No. 090908841

Dear Mr. Deans:

This morning the OPC was notified that Mr. Rasmussen called the 8th District Court and held himself out as an attorney representing a client. It also appears that Mr. Rasmussen did not notify the court of his suspension. As you are aware, the Order of Sanction in this matter was signed on July 21, 2010. Pursuant to Rule 14-526 of the Rules of Lawyer Discipline and Disability, unless otherwise stated in the order, a suspension is effective 30 days after the date of the order.

Because Mr. Rasmussen has been suspended for six months and a day, he may not represent clients, hold himself out as an attorney or otherwise engage in the practice of law. If Mr. Rasmussen continues to practice while on suspension the OPC will file an Order to Show Cause. Also to date, we have not received anything from Mr. Rasmussen regarding his obligations under Rule 14-526 of the Rules of Lawyer Discipline and Disability.

I direct your attention to Rule 14-526 of the Rules of Lawyer Discipline and Disability with respect to Mr. Rasmussen's responsibilities. Thank you for your attention to this matter

Sincerely,

Diane Akiyama
Assistant Counsel
Office of Professional Conduct

DA/aw

... Walker
ounsel

Akiyama
Assistant Counsel

C. Bevis
Assistant Counsel

adee Fleming
Assistant Counsel

ie Wakeham
Assistant Counsel

ara L. Townsend
Assistant Counsel

EXHIBIT "B"

**Notice of Petition for Reinstatement to the Utah State Bar
by Thomas V. Rasmussen**

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of Respondent's Verified Petition for Reinstatement and Affidavit of Thomas V. Rasmussen ("Petition") filed by Thomas V. Rasmussen in *In the Matter of the Discipline of Thomas V. Rasmussen*, Third Judicial District Court, Civil No. 090908841. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

Addendum H

FILED
THIRD DISTRICT COURT
11 MAR 17 PM 3:19
SALT LAKE DEPARTMENT
BY _____
DEPUTY CLERK

Billy L. Walker, #3358
Senior Counsel
Utah State Bar
Office of Professional Conduct
645 South 200 East
Salt Lake City, Utah 84111
Telephone: (801) 531-9110

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Discipline of:	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR THE COURT TO
	)	CONSIDER EVIDENCE OF
	)	THOMAS V. RASMUSSEN'S
	)	FAILURE TO COMPLY WITH ITS
	)	SANCTIONS ORDER
)	
Thomas V. Rasmussen #02693	)	Civil No. 090908841
Respondent.	)	Judge L. A. Dever

The Utah State Bar's Office of Professional Conduct ("OPC"), by and through Billy L. Walker, Senior Counsel, and in accordance with Rule 7(c) of the Rules of Civil Procedure, and this Court's Ruling issued as a result of the March 8, 2011 hearing, hereby submits its Memorandum in Support of Motion for the Court to Consider Evidence of Thomas V. Rasmussen's Failure to Comply with its Sanctions Order dated July 21, 2010.

STATEMENT OF FACTS

1. On July 21, 2010 the Court entered a Sanctions Order which stated:

The Court will enter a suspension for one year in this matter but will stay all but 181 days. The Court is staying the imposition of the remaining time upon the following terms and conditions:

1. That he [Mr. Rasmussen] enter and complete an ethics and professional conduct course by the end of the 181 day suspension.
2. That he [Mr. Rasmussen] not practice law during the suspension and so certify that fact by affidavit.
3. That he [Mr. Rasmussen] have no violations of the rules for one year from the date of this Order.
4. That he [Mr. Rasmussen] will initiate a change in his office procedure whereby he [Mr. Rasmussen] personally communicates with the Court, its staff and opposing counsel and all such communication will be memorialized in his case file and will include the date, time and named individual communicated with. Additionally, all changes of court dates must be followed by written communication to the Court.

2. The effective date of the Sanctions Order was August 19, 2010.

3. Mr. Rasmussen filed a Verified Petition 158 days from the effective date of the Sanctions Order on January 24, 2011 stating he had complied with the terms and conditions of the Sanctions Order.

4. Mr. Rasmussen also, 158 days from the effective date of the Sanctions Order, filed an Affidavit dated January 24, 2011 stating he had not practiced law for a total of 181 days up to the time of his anticipated reinstatement.

5. Mr. Rasmussen was readmitted by Court Order on February 17, 2011.

ARGUMENT

I. MR. RASMUSEN HAS PRACTICED LAW THROUGH THE DURATION OF THE EFFECTIVE DATE OF HIS SUSPENSION

The second term and condition of the Court's Order instructed Mr. Rasmussen, not to "practice law during the suspension and so certify that fact by affidavit." Yet on December 22, 2010, Judge Vernice Trease, Third District Court, contacted the OPC regarding Mr. Rasmussen. Mr. Rasmussen appeared in Judge Trease's court on December 17, 2010 in case 101905250, *State of Utah vs. Michael Charles Smoot*. After the OPC learned of Mr. Rasmussen's appearance before Judge Trease, and in anticipation of Mr. Rasmussen's request for reinstatement, the OPC contacted the Administrative Offices of the Courts and requested a list of all of Mr. Rasmussen's cases. From that listing the OPC created a spreadsheet chronicling Mr. Rasmussen's extensive and flagrant refusal to comply with the Court's Order. A copy of the spreadsheet is attached hereto as Exhibit "A".

The OPC is in the process of obtaining certified dockets of all the cases represented on the spreadsheet. Once obtained, the OPC will present this evidence to the Court. The spreadsheet details the name of the client, case numbers, and dates when Mr. Rasmussen appeared in court, filed pleadings with the court, or had his office contact the Court. After the effective date of the suspension, Mr. Rasmussen had a case in Federal Court, cases in 13 Justice Courts (South Jordan, Box Elder, Draper, Herriman, Davis, Salt Lake County, South Salt Lake, Taylorsville, Bluffdale, Midvale,

Summit, Sevier, and Utah County) and in three District Courts (Eighth – Duchesne, Eighth – Uintah, and Third – Salt Lake City). More specifically, according to the dockets Mr. Rasmussen made 36 appearances on cases; filed 17 pleadings in cases and had his office contact the court on cases nine times after the effective date of his suspension.

II. SINCE THE EFFECTIVE DATE OF HIS SUSPENSION THE OPC HAS RECEIVED ONE OFFICIAL BAR COMPLAINT AND TWO UNOFFICIAL BAR COMPLAINTS AGAINST MR. RASMUSSEN ALLEGING RULE OF PROFESSIONAL CONDUCT VIOLATIONS.¹

One official Bar Complaint was filed with the OPC against Mr. Rasmussen on or about September 10, 2010 by Kevin Loughrin. Mr. Rasmussen was retained for a federal court criminal case prior to the effective date of his suspension in June 2010. Mr. Loughrin alleges that during the representation Mr. Rasmussen did not adequately communicate with him, including a failure to provide Mr. Loughrin with information that Mr. Rasmussen received in discovery until repeated requests had been made. Based on the lack of communication, Mr. Loughrin asked Mr. Rasmussen to withdraw from the case, which Mr. Rasmussen did on or about October 5, 2010. However, before Mr. Rasmussen's withdrawal according to Mr. Loughrin subsequent counsel, Mr. Rasmussen threatened Mr. Loughrin with respect to his sentencing recommendation, if

¹ Official Bar Complaints have to be notarized and verified attesting to the accuracy of the information pursuant to Rule 14-510(a)(2) of the Rules of Lawyer Discipline and Disability. The OPC can consider unofficial Bar Complaints pursuant to Rule 14-504(b)(2) of these Rules.

he did not drop his Bar Complaint. These allegations raise the possibility of violations of Rule 1.4 (Communication) and conduct prejudicial to the administration of justice under Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct. Furthermore, Mr. Rasmussen appeared in Court and filed pleadings on Mr. Loughrin's behalf after the effective date of his suspension as noted in Exhibit A.

Mr. Mark Rasmussen filed an unofficial Bar Complaint with the OPC on about November 15, 2010. Mr. Mark Rasmussen was "given" a DUI on or about August 20, 2010. Mr. Mark Rasmussen paid Mr. Rasmussen \$1200.00 for representation on the DUI. According to Mr. Mark Rasmussen, Mr. Rasmussen failed to appear at the hearings and did not return phone calls between November 4, 2010 and November 15, 2010. These allegations raise the possibility of violations of 1.1 (Competence) and 1.4 (Communication) of the Rules of Professional Conduct. Additionally, based on the dates of Mr. Mark Rasmussen's allegations, it appears that the entire representation occurred after the effective date of Mr. Rasmussen's suspension.

Mr. Troy Bragg filed an unofficial Bar Complaint on or about December 10, 2010. Mr. Bragg was charged with several felonies. Mr. Rasmussen filed an appearance of counsel on behalf of Mr. Bragg on or about June 10, 2010. Mr. Bragg claimed he paid Mr. Rasmussen approximately \$7000.00 to get a plea agreement. However, on or about October 19, 2010, according to the court docket Mr. Rasmussen withdrew because Mr. Bragg lost his job and was unable to continue to pay Mr. Rasmussen. Mr. Bragg claims that Mr. Rasmussen's progress in the case was not consistent with what he was paid.

These allegations raise the possibility of an excessive fee and a violation of rule 1.5 (Fees) of the Rules of Professional Conduct. Furthermore, again, Mr. Rasmussen appeared in court and filed pleadings on behalf of Mr. Bragg in the Eighth District - Vernal Uintah County after the effective date of his suspension. See Exhibit A.

The complaints filed by Loughrin, Mark Rasmussen, and Bragg on their face raise the real possibility that Mr. Rasmussen violated the Rules of Professional Conduct. If this is the case, Mr. Rasmussen violated the second term of the Court's Sanction Order that "he have no violations of the Rules for one year from the dates of [the] Order." And as outlined above, Mr. Rasmussen practiced law after the effective date of his suspension in each of the cases.

III. MR. RASMUSSEN SHOULD BE DISBARRED

Based on the evidence of Mr. Rasmussen's continued disregard of the Court's Sanction Order, the OPC requests that the Court impose additional discipline pursuant to Rule 14-606(a) of the Standards for Imposing Lawyer Sanctions. This rule states:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Rule 14-604, the following principles generally apply in cases involving prior discipline. (a) The district court or Supreme Court may impose further sanctions upon a lawyer who violates the terms of a prior disciplinary order.

Mr. Rasmussen clearly knew the effective date of his suspension was August 19, 2010. See Mr. Rasmussen's reference to this in his timeline in the Reply to Memorandum in Opposition to Order of Reinstatement of Thomas V. Rasmussen filed on February 25, 2011. Mr. Rasmussen also claims to have not practiced law for 181

days as of February 17, 2011, the date of his reinstatement. February 17, 2011 is 182 days from August 19, 2010.

Notwithstanding Mr. Rasmussen's claim, the evidence seems to show an extensive and flagrant continuing practice of law. Thus, given the extensive and flagrant continuing practice of law activities of Mr. Rasmussen, the OPC respectfully requests that Mr. Rasmussen be disbarred consistent with the case of *In re Richard Johnson* 830 P.2d 262 (Utah 1992). In that case Mr. Johnson was initially suspended for six months. However, during the six month suspension period Mr. Johnson continued to practice law "in flagrant disregard of this court's order of suspension dated March 29, 1990." Based on this the Court disbarred Mr. Johnson.²

It should also be noted that Mr. Rasmussen has an additional level of dishonesty as represented by filing an affidavit with the Court certifying that he had not practiced law for 181 days up to the time of his anticipated reinstatement. The evidence shows otherwise.

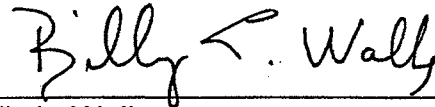
CONCLUSION

Mr. Rasmussen has engaged in the unauthorized practice of law by practicing throughout the effective date of his suspension which is clearly a violation of the Court's

² The *Johnson* case is to be contrasted with *In re Russell T. Doncouse* 99 P.3d 837 (Utah 2004) where an attorney initially was suspended for 90 days; practiced law while suspended and the Utah Supreme Court increased the suspension to three years. The Supreme Court specifically distinguished Doncouse from Johnson by stating that Mr. Doncouse's activities were not as "extensive or flagrant as Johnson's nor did they engender new complaints with the Bar." Mr. Rasmussen's practice of law activities are numerous like Johnson's and like Johnson did generate new Bar Complaints.

Sanction's Order. Furthermore, new Bar Complaints submitted to the OPC raise the real possibility that Mr. Rasmussen violated the Rules of Professional Conduct which is also a violation of the Sanctions Order. The OPC respectfully requests that the Court determine that the appropriate sanction for Mr. Rasmussen's blatant refusal to comply with the Court's Order is disbarment.

DATED this 17 day of March, 2011.

A handwritten signature in black ink, reading "Billy L. Walker". The signature is written in a cursive style with a horizontal line underneath it.

Billy L. Walker
Senior Counsel
Office of Professional Conduct

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2011, I caused to be mailed a true and correct copy of the Memorandum in Support of Motion for the Court to Consider Evidence of Thomas V. Rasmussen's Failure to Comply with Sanctions Order to:

James H. Deans
440 South 700 East #101
Salt Lake City, Utah 84102

Alisa Webb

EXHIBIT "A"

Case No.	Client's Name	Court	Appearance	Pleadings Filed	Called Court
101800285	Abel Robledo	Eighth Duchesne		10/22/2010	
101800278	Christopher Wiersma	Eighth Duchesne	10/7/2010 10/18/2010	9/30/2010	
104800042	Christopher Wiersma	Eighth Duchesne	9/16/2010 10/7/2010		
101905987	Jacque Clarke	Third Salt Lake City	10/14/2010 11/18/2010 12/14/2010	10/1/2010	1/18/2011
101905250	Michael Smoot	Third Salt Lake City	9/21/2010 12/17/2010	8/23/2010 11/18/2010	
101904427	Breanna Zehnder	Third Salt Lake City	8/20/2010 9/21/2010 10/12/2010		9/7/2010
101903156	R. Steele Maxfield	Third Salt Lake City	9/17/2010		
101901215	Jeremias Mullins	Third Salt Lake City	8/30/2010 10/18/2010 11/8/2010 11/15/2010		
091908954	Lamar Bowman Jr.	Third Salt Lake city	8/20/2010 9/10/2010		
101800246	Troy Bragg	Eighth Uintah	10/19/2010	9/9/2010	

Case No.	Client's Name	Court	Appearance	Pleadings Filed	Called Court
105806113	Saravanan Thangaraj	South Jordan	12/7/2010	11/9/2010	12/14/2010 1/27/2011
105005091	James Willis	Box Elder		12/14/2010	
101100502	R. Douglas Poole	Draper	12/3/2010	11/4/2010 12/13/2010	
101300136	John Gibson	Herriman		11/10/2010	
105011468	Preston Tait	Davis		10/22/2010	
105606717	Glen Webster	Salt Lake Co.	12/14/2010	10/18/2010	
105504766	Courtney Garcia	South Salt Lake	10/6/2010	8/20/2010	
105107297	Trudy Robertson	Taylorsville	11/2/2010	10/8/2010	10/6/2010
101200072	Kirk Rindlisbach	Bluffdale	10/13/2010 11/10/2010		
105007198	Feuan Nhothibouth	Midvale	11/4/2010		
105203006	Justin Nielsen	Summit	8/31/2010 12/7/2010	10/11/2010	12/13/2010
101000469	Elton Richard Cox	Midvale	10/15/2010		9/7/2010 9/29/2010
101600453	Patrick Drowne	Salt Lake County	9/13/2010		
105036696	Scott Sullivan	Sevier	11/16/2010		10/14/2010
105101250	Robert Hatch	Utah County	8/25/2010		
2:10-cr-00478	Kevin Loughrin	Federal Court	8/20/2010 10/5/2010	9/13/2010	