

D. SCOTT SUMMER
(Disbarment)

On October 31, 2013, the Idaho Supreme Court entered its Disbarment Order, disbarring Nampa attorney D. Scott Summer. Following a disciplinary hearing, a Hearing Committee of the Professional Conduct Board recommended disbarment. The Idaho Supreme Court Order concluded the reciprocal disciplinary case, which was filed on April 10, 2013.

Mr. Summer was admitted to practice law in Idaho in April 1996. He was also admitted to practice law in Oregon. Mr. Summer was disbarred in Oregon pursuant to a Trial Panel Opinion on April 3, 2013. In the Oregon disciplinary case, the Oregon Trial Panel concluded that Mr. Summer violated RPC 3.1, 3.3(a)(1), 3.4(c), 8.1(a)(1) and (2), and 8.4(a)(3) and (4), which are the equivalents of I.R.P.C. 3.1, 3.3(a)(1), 3.4(c), 8.1(a)(1) and (2) and 8.4(c) and (d).

In the Oregon disciplinary case, Mr. Summer represented a plaintiff in a medical malpractice case in Oregon state court. Mr. Summer failed to timely respond to the defendants' motion for summary judgment. On a date set for hearing on the summary judgment motion, Mr. Summer failed to appear, but he filed an affidavit pursuant to ORCP 47E, in which he swore, under penalty of perjury, that he had consulted with and retained a qualified expert who was available and willing to testify to admissible facts and opinions necessary to establish a genuine issue of material fact. In Oregon, such an attorney's affidavit is sufficient to avoid summary judgment, and there is no requirement to include evidence from an expert supporting the attorney's representation. The defendant's motion for summary judgment was denied based upon Mr. Summer's affidavit and a trial date was scheduled.

On the date of trial, Mr. Summer appeared and advised the court that the plaintiffs were not prepared to proceed to trial because he was unable to secure the testimony at trial of any qualified experts who were willing to express opinions in favor of plaintiffs and against defendants. The trial court dismissed the case and retained jurisdiction of the case to investigate the factual basis of Mr. Summer's affidavit filed in opposition to the motion for summary judgment.

The court granted an order compelling Mr. Summer to be deposed about his affidavit. Without obtaining prior relief from the court or the agreement of defense counsel, Mr. Summer failed to appear for the deposition as commanded by a subpoena. The defendants filed a motion for sanctions and motion to show cause against Mr. Summer for his failure to obey the subpoena. Mr. Summer did not appear in court for that hearing, but faxed a letter to the court on the morning of the hearing notifying the court of the reasons for his absence. In that letter, Mr. Summer referenced a consultation with a doctor related to his affidavit. Subsequently, that doctor executed a declaration establishing that Mr. Summer's affidavit and a letter to the court contained false and misleading statements about the doctor's willingness to testify in favor of plaintiff. The Oregon Trial Panel and the Idaho Hearing Committee concluded that Mr. Summer filed

an intentionally misleading affidavit, blatantly disregarded court orders, intentionally misled the trial court judge, filed the affidavit in bad faith, and prejudiced the decision making process.

In the Idaho hearing, Mr. Summer contended that imposing disbarment in Idaho would result in grave injustice under I.B.C.R. 513. The Hearing Committee of the Professional Conduct Board and the Idaho Supreme Court concluded that Mr. Summer did not show by clear and convincing evidence that disbarment in Idaho would result in grave injustice. The Court's Order removed Mr. Summer from the records of the Idaho Supreme Court as a member of the Idaho State Bar and his right to practice law before the Idaho courts was terminated on October 31, 2013. Mr. Summer cannot apply for admission to the Idaho State Bar sooner than five years from the date of his disbarment. If he applies for admission, he will be required to comply with the bar admission requirements in Section II of the Idaho Bar Commission Rules and will have the burden of overcoming the rebuttal presumption of "unfitness to practice law."

This disbarment notice shall be published in the *Advocate*, the *Idaho-Press Tribune*, and the *Idaho Reports*.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.