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01 April 2008

Colorado Attorney Regulation Counsel
1560 Broadway, Suite 1600
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RE: Atty. Reg. # 4498, Edward W. Nottingham

1. “All members of the Bar of Colorado, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times.” Rule 251.1 (a). This compulsory language is a preface to the disciplinary rules and serves as a reminder that the laws and rules are more than suggestions and that compliance with the law by attorneys is mandatory at all times. Preamble No. 5 provides, in pertinent part, that “A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business **and personal affairs.**” [emphasis added].

2. The above-captioned Respondent has taken and subscribed the Oath of Admission, was admitted to the Bar of the State of Colorado on or about September 27, 1972, and is registered as an attorney on inactive status upon the official records of the Colorado Supreme Court, Attorney Registration No. 4498. I believe that he is, therefore, subject to the jurisdiction of the Colorado Supreme Court and the Office of the PDJ pursuant to C.R.C.P. 251.1(b).

3. Respondent has served as a United States district court judge since his appointment in 1989. He serves in the Alfred A. Arraj United States Courthouse in Denver. Prior to his current appointment, he was in private practice as an attorney in Colorado. Judge Nottingham’s registered business address is 901 19th Street, Denver, CO 80294.

4. Although Judge Nottingham’s status is inactive, such that he is not actively engaged in the practice of law in Colorado courts, he is in “good standing with the Supreme Court” and, until very recently, served on that court’s Standing Committee on the Rules of Professional Conduct.” Comment 5 to Rule 8.4 provides that “Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers.”

5. Certain complaints have alleged—and respondent has admitted to, in some instances—conduct and offenses involving moral turpitude. The conduct includes, but is not limited to, the following:

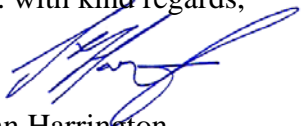
- a. Respondent admitted to spending three-thousand dollars at a topless bar over the course of one or two days. Incident thereto, respondent testified under oath that he was "ashamed and mortified" to admit the expenditures but, that he was so intoxicated in the public establishment, he could not account for how the money was spent. Respondent's public drunkenness—now an indelible admission—is an offense of moral turpitude, reflecting poorly on one's fitness to practice law. *See, e.g., People v. Boyer*, 934 P.2d 1361, 1362 (Colo. 1997) (*en banc*) ("[Respondent] developed a substantial alcohol dependency. The foregoing conduct violated DR 1--102(A)(3) (engaging in illegal conduct involving moral turpitude)").
- b. Respondent's ex-wife reportedly testified under oath that she observed respondent viewing pornographic Web sites from chambers. The knowing downloading and viewing of pornography within the scope of holding public office is an offense of moral turpitude, reflecting poorly on one's fitness to practice law. Cmt. 5, Rule 8.4.
- c. Respondent knowingly violated the law by parking in a disabled parking space without a valid permit. In connection therewith, a complaint filed by Helen Jean Elliot, an attorney in good standing in this state (reg. no. 13002), alleged that respondent wielded his badge, identified himself as a federal judge and threatened to have her removed by the U.S. Marshall Service.
- d. Respondent has been reported by several independent sources to be a consumer of unlawful prostitution services. Upon information and belief, Respondent has not been yet charged, which is not relevant to this complaint. *See* C.R.C.P. 251.5(b).¹ However, even if the district attorney declines prosecution, the conduct (if proved true by the lesser standard employed in attorney disciplinary proceedings) constitutes offenses of moral turpitude. *See R&F Enterprises, Inc. v. Bd. of Cty. Comm'rs. of Adams Cty.*, 606 P.2d 64, 67 (Colo, 1980)(*en banc*) ("Here, the employee admittedly engaged in an act of prostitution in

¹ "Any act or omission which violates the criminal laws of this state or any other state, or of the United States; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action." C.R.C.P. 251(b)

violation of section 18-7-201, C.R.S.1973, which we hold to be an offense involving moral turpitude”); People v. Hebenstreit, 764 P.2d 51, 52 (Colo. 1988) (*en banc*) (“respondent's stipulation at the hearing included a factual summary of events . . . related to prostitution The respondent also violated the Code of Professional Responsibility and particularly the following disciplinary rules: DR 1--102(A)(1) (violation of disciplinary rule) (ABA Model Rule 8.4(a)); DR 1--102(A)(3) (engaging in illegal conduct involving moral turpitude)”).²

Wherefore, pursuant to the standards set forth in Rule 251.9, I respectfully request that the Office of Attorney Regulation Counsel investigate the foregoing allegations to determine if they can be proved by clear-and-convincing evidence. I further request that, if respondent has been found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct, that respondent be appropriately disciplined for such misconduct. I further request that the Attorney Regulation Committee recommend that the respondent be enjoined from participation in any Colorado Supreme Court Committee or Commission pending the outcome of any administrative, criminal or regulatory/disciplinary investigation against him.

. . . with kind regards,



Sean Harrington

² Several other jurisdictions have held that conduct centering around prostitution involves moral turpitude: Iowa Supreme Court Board of Professional Ethics and Conduct v. Lyzenga, 619 N.W.2d 327 (Iowa 2000); Richland County Bar Ass'n v. Brightbill, 564 N.E.2d 471, 472 (Ohio 1990) (holding that conviction for soliciting a prostitute to engage in sexual activity for hire was prejudicial to the administration of justice); In re Howard, 681 P.2d 775, 776 (Or. 1984) (accepting and approving attorney's admission that his payment of a fee to engage in sexual conduct constituted an act "involving moral turpitude"); Cogdill v. Committee of the Virginia State Bar, 269 S.E.2d 391, 393 (Va. 1980) (holding that conviction for procuring a woman for the purpose of prostitution evidenced violation of DR 1-102(A)(3)); In re Kosher, 377 P.2d 988, 990 (Wash. 1963) (holding that aiding and abetting in the "illicit practice of prostitution" involved moral turpitude); In re Wolff, 490 A.2d 1118, 1119 (DC 1985), adopted *en banc*, 511 A.2d 1047 (DC 1986) (the court noted that conduct centering around prostitution has been deemed activity involving moral turpitude in disbarment proceedings); In re Kosher, 377 P. 2d 988 (1963); In re Katz, 109 N.J. 17, 20-21, 532 A.2d 729 (N.J. 1987).