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SUPREME COURT OF NEVADA

In re: Ronald Serota
Docket No.: 57960
Filed: May 24, 2013

ORDER OF DISBARMENT, DENYING PETITION FOR DISSOLUTION OF ORDER OF TEMPORARY SUSPENSION, AND DENYING PETITION FILED PURSUANT TO SCR 111

Attorney disbarred for misappropriating client funds that were to be used to satisfy a judgment against the client.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Ronald N. Serota be disbarred from the practice of law in Nevada.¹ See SCR105(3)(b). Serota misappropriated \$319,000 in client funds that were to be used to satisfy a judgment in an SEC action against the client. He asks us to impose a lesser sanction, contending that, because of mitigating factors, we should merely suspend him from the practice of law and/or refer him to a diversion program. On de novo review, we conclude that disbarment is the proper sanction.

Serota's client was a defendant in an action by the SEC in federal court. In anticipation of a negotiated outcome in that case, the client paid Serota all of the monies due in advance, by way of fourteen checks totaling \$319,901.59 written between July 2 and July 24, 2009, which were deposited in Serota's client trust account. Meanwhile, on July 16, 2009, a check from Serota's client trust account was written to Beverage Plus, a company in which Serota had an ownership interest, for \$225,000. Serota continued to accept checks from the client until the client had paid him the entire amount of the anticipated judgment. Then on July 28, 2009, a check from Serota's trust account was written to Clean Path Resources, another company in which Serota had an interest, for \$94,000.

On August 3, 2009, Serota's client signed a consent to entry of judgment, which was filed with the court on August 27, 2009. Pursuant to the signed consent, on September 25, 2009, final judgment was entered against Serota's client, ordering the client to, among other things, pay a total judgment of \$319,901.59 within ten business days. On October 7, 2009, two days before the judgment was to be paid, Serota admitted his misappropriations to the state bar. Consequently, on December 29, 2009, the state bar filed a complaint against Serota alleging that his conduct violated RPC 1.15 (safekeeping property); RPC 3.4 (fairness to opposing party and counsel); and RPC 8.4 (misconduct). At the formal disciplinary hearing held January 13, 2011, the state bar put on evidence of Serota's misappropriations and of the aggravating circumstances it alleged were present in this matter; the defense focused primarily on mitigating circumstances which it alleged were present. On February 14, 2011, the panel found unanimously that Serota had violated RPC 1.15 and RPC

8.4. It recommended, by a 4 to 1 vote, that Serota be disbarred and ordered to pay costs of the proceedings.²

We review the decision of a hearing panel recommending disbarment automatically. SCR 105(3)(b). The panel's findings must be supported by clear and convincing evidence. SCR 105(2)(e); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Although persuasive, the panel's findings and recommendations are not binding on us. *In re Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007). Our review is conducted de novo, requiring us to exercise independent judgment to determine whether or not, and what type of, discipline is warranted. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). The paramount objective of attorney disciplinary proceedings is "to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole." *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 129, 210, 219, 756 P.2d 464, 473, 526, 533 (1988). In determining the proper disciplinary sanction, we consider four factors:

1. The duty violated;
2. The lawyer's mental state;
3. The potential or actual injury caused by the lawyer's misconduct; and
4. The existence of aggravating or mitigating circumstances.

In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

We conclude that the panel's findings are supported by clear and convincing evidence. Serota concedes that he violated RPC 1.15. Serota's client turned over money to him, to be paid to the SEC to satisfy a judgment against the client, but instead of safeguarding those funds, Serota misappropriated them for his own purposes. He therefore failed in his duties to keep safe his client's property. Serota also concedes that he violated RPC 8.4(c). In addition to misappropriating the client's funds for his own purposes, he allowed the client to sign the consent to entry of judgment, despite knowing that he had already misappropriated the money intended to satisfy the judgment. He therefore engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Therefore, clear and convincing evidence supports the panel's findings that Serota violated RPC 1.15 and 8.4.³

We further conclude that, considering the four *Lerner* factors, disbarment is the appropriate disciplinary sanction in this case, Serota's conduct in this matter violated duties to his client, the profession and the public. We conclude that his conduct was intentional and caused actual injury to his client. The egregiousness of his actions alone justifies disbarment. See American Bar Association Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, at 429 (2010 ed.) (Disbarment generally appropriate when lawyer knowingly converts client property causing injury or potential injury).

The presence of aggravating circumstances further supports this conclusion. See SCR 102.5(1). One such

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circumstance is that Serota has a prior disciplinary offense.⁴ SCR 102.5(1)(a). In addition, we agree with the state bar that his conduct evinces a dishonest or selfish motive. SCR 102.5(1)(b). Furthermore, there was a pattern of misconduct where, prior to each misappropriation, Serota accepted several payments from the client beforehand, and hid his misconduct afterwards until its discovery was imminent. SCR 102.5(1)(c). Finally, Serota concedes that he committed multiple offenses. SCR 102.5(1)(d). Even if Serota's conduct did not by itself warrant disbarment, the presence of these aggravating circumstances would justify an increase in the degree of discipline to be imposed. SCR 102.5(1).

We further conclude that, although there are some mitigating circumstances present in this case, they do not justify a reduction in the degree of discipline to be imposed. SCR 102.5(2). To begin, Serota's contention that there is an absence of a dishonest or selfish motive is belied by his conduct. SCR 102.5(2)(b). In addition, though his medical condition may have contributed to personal or emotional problems, we conclude that these mitigating circumstances are insufficient to warrant a reduction in discipline, in light of the egregiousness of his misconduct. SCR 102.5(2)(c), (h). We further conclude that his claimed mental disabilities are largely uncorroborated and, in any case, he failed to establish a causal connection between them and his misconduct. SCR 102.5(2)(i). Although he was cooperative and self-reported, SCR 102.5(2)(e), discovery of his misconduct was imminent and, thus, this does not warrant a reduction in discipline. We conclude that Serota's claimed rehabilitation is not supported by the record. SCR 102.5(2)(k). We further conclude that he failed to demonstrate genuine remorse and, instead, on appeal attempts to blame the victim. SCR 102.5(2)(m). Finally, his claims of having done pro bono and other work to benefit the profession and the community are largely unsubstantiated and, in any case, would not warrant a reduction in discipline in light of the seriousness of his misconduct. SCR 102.5(2).

Accordingly, Serota is hereby disbarred from the practice of law in this state.⁵ Serota shall pay costs of the disciplinary proceedings in the amount of \$2,142.75 within 30 days from the date of this order. Serota and the state bar shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In re: Robert J. Kossack
Docket No.: 58388
Filed: May 24, 2013

ORDER OF SUSPENSION

Attorney suspended from the practice of law for 18 months, subject to conditions after a non-lawyer staff member misappropriated client funds.

This is an automatic review, pursuant to SCR 105(3)(b), of a disciplinary board hearing panel's recommendation that attorney Robert J. Kossack be suspended from the practice of law for three years, subject to conditions.

The complaints giving rise to this matter involved the misappropriation of client funds by Kossack's non-lawyer staff. After a hearing on the matter, the disciplinary panel found that Kossack violated RPC 1.1 (competence); RPC 1.3 (diligence); RPC 1.4 (communication); RPC 1.15 (safekeeping property); RPC 3.3 (responsibilities regarding nonlawyer assistants); and RPC 5.5 (unauthorized practice of law).

The panel recommended Kossack be suspended from the practice of law for three years, with the conditions that:

1. Kossack be required to take and pass the MPRE prior to applying for reinstatement;
2. If reinstated, Kossack enter into a mentoring agreement with a mentor approved by the state bar for two years, with the mentor making quarterly written reports to bar counsel regarding Kossack's practice; and
3. Kossack pay the costs of the disciplinary proceedings.

To this court, Kossack argued that he should not be suspended, while the state bar argued that this court should adopt the panel's recommendation.

Having reviewed the briefs and the record, we approve the panel's recommendation that Kossack be suspended subject to conditions. However, in weighing Kossack's disregard for the responsibilities of running a legal practice and supervising his staff, against the fraudulent and well-concealed conduct of his staff, we determine that a shorter period of suspension is appropriate. Further, while conditions are appropriate, we determine that the panel's recommended conditions require modification to better protect the public. We therefore reject the recommended suspension term of three years and instead direct that Kossack be suspended for 18 months, with the conditions that:

1. Kossack be required to take and pass the MPRE prior to applying for reinstatement;
2. If reinstated, Kossack shall enter into a two-year mentoring agreement with a mentor approved by the state bar; the mentor shall have access to and control over Kossack's trust account, and the mentor shall make quarterly written reports to bar counsel regarding Kossack's law practice and trust account;
3. If reinstated, Kossack's mentor shall determine whether Kossack shall:
 - a. Complete a substance abuse evaluation and comply with any recommendations, or
 - b. Participate in the Lawyers Concerned for Lawyers program⁶;
4. If reinstated, in addition to the customary required annual CLE, in his first year of reinstatement,

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Kossack shall complete four CLE credits in ethics and six CLE credits in accounting, trust account management and/or law practice management; and

5. Kossack shall pay the costs of the disciplinary proceedings before applying for reinstatement.

Accordingly, we hereby suspend Robert K. Kossack from the practice of law for 18 months from the date of this order. In addition, Kossack must comply with the conditions set forth above.

It is so ORDERED.

1. We temporarily suspended Serota from the practice of law pending the outcome of the instant disciplinary proceedings *In re Discipline of Serota*, Docket No. 54856 (Order of Temporary Suspension, November 18, 2009).
2. Serota's motion to set aside the recommendation of disbarment by the board, filed July 7, 2011, is denied. The state bar's motion to strike or, in the alternative, opposition to Serota's motion to set aside the recommendation of disbarment by the board, filed July 20, 2011, is therefore denied as moot.

Serota has communicated to this court by way of several letters addressed to the clerk of the court. He is admonished that any request for relief from this court must be presented by way of a formal, written motion, not by way of a letter addressed to the clerk of the court. *Weddell v. Stewart*, 127 Nev. ____ , __n.8, 261 P.3d 1080, 1085 n.8 (2011). In addition, Serota's briefs contain numerous factual assertions not supported by references to the record and references to facts which are outside the record altogether. This is improper and we must disregard such references. See NRAP 28(e)(1); SCR 105(3)(b); *Carson Ready Mix, Inc. v. First Nat'l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). In addition, Serota has improperly attempted to supplement the record with exhibits not before the disciplinary panel, which we cannot consider and have therefore disregarded. See NRAP 10; NRAP 30(b); 5CR 105(3)(b); *State, Dep't of Taxation v. Kelly-Ryan, Inc.*, 110 Nev. 276, 282, 871 P.2d 331, 336 (1994). We direct the clerk of this court to return, unfiled, the document entitled "Appellant's Exhibit Supplement to Reply Brief," provisionally received on October 19, 2011; we further direct the clerk of this court to strike Exhibits 1-6 from Appellant's Reply Brief filed October 21, 2011.

Finally, on August 4, 2011, appellant filed an opposition to respondent's motion to extend the time in which to file the answering brief. At the time the opposition was filed, the extension of time had already been granted. We therefore elect to treat appellant's opposition as a motion for reconsideration of our order granting the requested extension of time and we deny it. See NRAP 31(b)(3)(B); SCR 105(3)(b).

3. Because clear and convincing evidence supports the panel's findings regarding these rules of professional conduct, we need not consider the parties' remaining arguments regarding RPC 3.4 or subsection (d) of RPC 8.4.
4. On August 18, 2008, Serota received a letter of reprimand for having violated RPC 1.1 (competence); RPC 3.1 (meritorious claims and contentions); and RPC 5.5 (unauthorized practice of law).
5. In light of this disposition, the other matters currently pending before this court regarding Serota have been rendered moot. *Personhood Nevada v. Bristol*, 126 Nev. ____, ____, 245 P.3d 572, 574 (2010); *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). We therefore deny Serota's petition for dissolution of our order temporarily suspending him from the practice of law as moot.

In re Discipline Serota, Docket No. 60179 (Petition for Dissolution of Temporary Suspension, April 24, 2012). Likewise, we deny the state bar's petition regarding Serota's felony conviction as moot. *In re Discipline of Serota*, Docket No. 59551 (Petition of Bar Counsel Pursuant to Reporting Requirements of SCR 111(4)).

6. Alternatively, if, along with any petition for reinstatement, Kossack provides evidence that he has passed a drug test within the 30 days prior to the petition being filed, this requirement may be waived.

DISCIPLINE KEY

Resignation with charges pending: SCR 98(5)(b)

Types of possible discipline listed generally: SCR 102

Attorneys convicted of crimes: SCR 111

Conditional guilty plea agreements

(*discipline by consent*): SCR 113

Reciprocal discipline: SCR 114

Disbarred/Suspended attorneys: SCR 115

Reinstatement: SCR 116

Disability Inactive: SCR 117

Supreme Court Rules (SCRs):

www.leg.state.nv.us/CourtRules/SCR.html

DISBARMENT – License to practice revoked.

SUSPENSION – License suspended for a time certain, ineligible to practice. More than six months requires petition for reinstatement and court order.

DISABILITY INACTIVE – Ineligible to practice until further order of the court. In the interim, disciplinary proceedings held in abeyance.

INTERIM TEMPORARY SUSPENSION – Interim suspension based on showing of a substantial threat of serious harm to the public, in effect until further court order, usually after hearing.

RESIGNATION WITH CHARGES PENDING – Ineligible to practice. Requires Bar Counsel approval. Resignation is irrevocable, with readmission only possible upon application as a new admittee.

PUBLIC REPRIMAND – Misconduct found and public censure issued, including attorney's name and the underlying facts and charges. Published in *Nevada Lawyer* and made available to the press. Remains eligible to practice law.

LETTER OF REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or for failure to complete and report the required Continuing Legal Education hours (SCR 212). While these **are not disciplinary suspensions**, the attorney is **ineligible to practice law** until the deficiency is remedied and the procedures to transfer back to active status completed as set forth in the applicable rules.