

bar counsel report

SUPREME COURT OF NEVADA

In re: Richard L. Pipkins
Bar No.: 369
Docket No.: 57908
Filed: May 24, 2012

ORDER DENYING REINSTATEMENT

Reinstatement to the practice of law denied after Respondent failed to meet his burden of proof.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that suspended attorney Richard L. Pipkins' petition for reinstatement be denied. Having reviewed the record and the submitted briefs, we conclude that the panel correctly found that Pipkins has failed to meet his burden of showing by clear and convincing evidence that he should be reinstated.

While a disciplinary panel's recommendation is persuasive, we review a petition for reinstatement de novo. *In Re Nubar Wright*, 75 Nev. 111, 335 P.2d 609 (1959) (noting that consideration of the record is made without deference to the hearing panel's findings). The person seeking reinstatement bears the burden of proof and must show by clear and convincing evidence that he "has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest" SCR 116(2).

Based on the record and briefs before this court, we conclude that Pipkins has failed to meet his burden under SCR 116 to show that he is entitled to reinstatement. Pipkins failed to set forth evidence relevant to his continued legal education since his suspension sufficient to demonstrate that he has the competency and learning in law required for admission to practice. Further, Pipkins' disingenuous testimony before the hearing panel related to his past judgments and debts, as well as his lack of candor on his bar application, give us concern that his resumption of practice will be detrimental to the integrity and standing of the bar.

Accordingly, we approve the panel's recommendation and deny the petition for reinstatement.

It is so ORDERED.

GIBBONS, J., with whom, CHERRY, C.J., agrees, dissenting:

As the majority acknowledges, the Supreme Court reviews a petition for reinstatement de novo. *In Re Nubar Wright*, 75 Nev. 111, 335 P.2d 609 (1959) (noting that consideration of the record is made without deference to the hearing panel's findings). The hearing upon the petitioner's reinstatement request included supporting testimony from Judge Hunt, Judge Mosley and James Edwards.

In addition, Pipkins has been suspended from the practice of law in Nevada since May 28, 1993. During this period of time, Pipkins passed the bar examination in 2008 and the MPRE in 2009. I conclude that a de facto 18-year suspension is a sufficient sanction for his prior discipline together with the transgressions identified in the disciplinary panel's recommendation. For these reasons, I would grant the petition for reinstatement.

RESIGNATIONS

(VOLUNTARY, NO DISCIPLINE PENDING)

SCR 98(5)(a) states:

Any member of the state bar who is not actively engaged in the practice of law in this state, upon written application on a form approved by the state bar, may resign from membership in the state bar if the member: (1) has no discipline, fee dispute arbitration, or clients' security fund matters pending and (2) is current on all membership fee payments and other financial commitments relating to the member's practice of law in Nevada. Such resignation shall become effective when filed with the state bar, accepted by the board of governors, and approved by the Supreme Court.

The following members resigned pursuant to this rule:

Craig G. Moore	Bar No. 9444	Order 60701	Filed 5/24/12
Robert M. Johnson	Bar No. 2730	Order 60705	Filed 5/24/12
J. Gardiner Pieper	Bar No. 9150	Order 60706	Filed 5/24/12
Chris E. Stange	Bar No. 10770	Order 60707	Filed 5/24/12
Kidd Crawford	Bar No. 7315	Order 60709	Filed 5/24/12
Dean P. Vernon	Bar No. 442	Order 60710	Filed 5/24/12

SOUTHERN NEVADA DISCIPLINARY BOARD

PUBLIC REPRIMAND

In re: Edward E. Vargas
Bar No.: 8702
File No.: SG11-0647
Filed: May 31, 2012

Public Reprimand imposed for failure to comply with Supreme Court order in an appeal.

TO: EDWARD E. VARGAS, ESQ.

In a criminal case which underlies the above-referenced disciplinary case, you represented a client in the Eighth Judicial District Court whose conviction ultimately was appealed to the Nevada Supreme Court (Supreme Court), which subsequently referred the instant matter to the State Bar of Nevada pursuant to Supreme Court Rule (SCR) 105.

You initially represented Manuel Flores in a criminal matter entitled *State of Nevada vs. Manuel Flores*, Case No. 10-C-264453, which originally was heard in the Eighth Judicial District Court.

On November 1, 2010, Flores filed a pro per Notice of Appeal with the Supreme Court. On the same day, the Supreme Court's Clerk of the Court issued a Notice to Request Rough Draft Transcripts, which directed you to file a rough draft transcript request form pursuant to Nevada Rule of Appellate Procedure (NRAP) 3C(d)(3) within 10 days. The notice warned you that failure to comply with the court's directive could result in the imposition of sanctions pursuant to NRAP 3C(n).

You did not file the request within the period of 10 days. Therefore, the Supreme Court entered an order on December 6, 2010, which:

- Conditionally imposed sanctions of \$500 upon you, and directed you to pay the sanction to the Supreme Court Law Library and provide proof of payment to the Supreme Court within 15 days; and

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- Directed you to, within 10 days, file two file-stamped copies of the rough draft transcript request form or a certificate that no transcripts were being requested.

The court's order of December 6, 2010, also stated that if you filed the documents in a timely manner, the conditional sanctions would be automatically vacated. Finally, the order reminded you that the fast track statement and appendix in Flores' case were due by December 13, 2010.

In response, you sent a letter to the Supreme Court on December 31, 2010, acknowledging that you did not file the appeal in the *Flores* case. You stated that your representation of Flores had ended at the sentencing hearing in District Court, and you had been so informed by the Flores family. You also told the Supreme Court that you had been contacted by another law firm which you believed would thereafter handle Flores' appeal, and that you had "no intentions of pursuing any appeal" for Flores.

Thereafter, despite three orders (dated January 19, February 9 and March 10, 2011) from the Supreme Court instructing you to do so, you filed no further documents in the *Flores* matter. In an order dated May 4, 2011, the Supreme Court:

- Removed you as counsel-of-record in the Flores matter;
- Imposed sanctions upon you totaling \$1,500, which was to be paid within 10 days to the Supreme Court Law Library; and
- Referred this matter to the State Bar of Nevada for review.

In correspondence to the state bar and in testimony to a formal hearing panel of the Southern Nevada Disciplinary Board, you stated a belief that you could not file any appellate documents on behalf of Flores because you had been instructed not to do so by the client and/or his family; there were no legal grounds for filing an appeal, and it was your understanding that another attorney had taken over Flores' representation.

The panel is sympathetic to the apparent ethical quandary in which you found yourself by being asked to file documents for an appeal in which you had no part, for a client who did not desire your services and with a promised substitute counsel ready to take over handling the matter.

However, as disciplinary panel members and the Office of Bar Counsel have explained to you, an attorney cannot simply ignore orders from a court, especially the Supreme Court. In this matter, the only response that you provided to the Supreme Court at all came after you were initially sanctioned and it was simply a letter, not a proper motion, expressing your position and concerns.

As a lawyer with more than 20 years of experience, you should have known that this was improper and inadequate. Moreover, after the Supreme Court generously construed your letter as a motion and ruled on the same, you completely ignored their subsequent orders directing you to take certain actions.

The language of NRAP 3C mandated the conduct which was the subject of the orders from the Supreme Court. While you might have felt uncomfortable in that role, it was not an ethical violation to so act because the rule required it and the Supreme Court ordered it. Further, there were other alternative actions which you could have taken, such as having new counsel immediately substitute as counsel or having the Flores family write a letter to the Supreme Court refusing to accept your assistance any further. Inaction, especially in the form of ignoring specific directions from the Supreme Court, was not an option and was conduct worthy of this reprimand.

Failure to comply, or at least properly reply, to any court orders, especially from the Nevada Supreme Court, is inappropriate and unacceptable.

In mitigation, you ultimately cooperated with the state bar's investigation and accepted responsibility for your actions. You have also paid the sanctions imposed by the Supreme Court. In addition, the Formal Hearing Panel senses that you are truly remorseful for your actions and now realize the impropriety of such. The panel expects that there will be no replication of this behavior. For these reasons, the panel is issuing only a Public Reprimand, rather than recommending more severe discipline.

In light of the foregoing, you violated Rule of Professional Conduct (RPC) 1.3 (Diligence), RPC 3.4(c) (Fairness to Opposing Party and Counsel: Knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b) (Bar Admission and Disciplinary Matters), and RPC 8.4(d) (Misconduct: Engaging in conduct that is prejudicial to the administration of justice), and are hereby PUBLICLY REPRIMANDED. ■

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.