

SUPREME COURT OF NEVADA

In re: Susana Ragos Chung
Bar No.: 8405
Docket No.: 62012
Filed: August 1, 2014

ORDER OF DISBARMENT

Attorney disbarred following a conviction in California for submitting fraudulent insurance claims for staged accidents.

This is an automatic review, pursuant to SCR 105(3)(b) of a disciplinary board hearing panel's recommendation that attorney Susana Ragos Chung be disbarred from the practice of law in Nevada.

The complaints giving rise to this matter involved Chung's involvement with an insurance fraud scheme in California in which she worked as an attorney submitting fraudulent insurance claims for an organization that staged automobile accidents for profit. In May 2011, Chung pleaded no lo contendere to two felony counts of false and fraudulent claims against insurers pursuant to California Penal Code Section 549. Chung was sentenced to five years formal probation with numerous conditions, ordered to pay fines and restitution, and to place herself on inactive status with the State Bar of California. She failed to inform the Nevada state bar of her felony convictions, as required by SCR 111.

Upon being informed by the Alameda County District Attorney's office, on May 18, 2011, of her felony convictions, this court temporarily suspended Chung from the practice of law and referred the matter to a disciplinary board to determine the extent of discipline to be imposed. *In re Discipline of Chung*, Docket No. 59442 (Order of Temporary Suspension and Referral to Disciplinary Board, November 17, 2011).

The disciplinary panel held its hearing on August 29, 2012. Chung had not responded to any of the state bar's communications since the filing of its original complaint in February 2012, but she did appear briefly in person at the hearing. After being informed that the panel would recommend disbarment, Chung stated she would stipulate to the recommendation. She then asked to be excused and left the state bar building.

The panel entered its findings that Chung had worked with "cappers," who would orchestrate an automobile collision, send the cars to body shops that inflated the amount of damage and send the "victims" to chiropractors who inflated the medical expenses. Chung participated as the attorney representing the purported "clients" and filed false claims with insurance companies, keeping a portion of the coverage payments.

Based on the findings of fact, the panel concluded that Chung violated RPC 3.4(c) (Fairness to opposing party and counsel: knowingly disobeying an obligation under rules of tribunal), RPC 8.4(b) (Misconduct: committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(d) (Misconduct: engaging in conduct that is prejudicial to the administration of justice).

The panel also found aggravating factors pursuant to SCR 102.5: dishonest or selfish motive (SCR 102.5(b)), pattern of misconduct (SCR 102.5(c)), multiple offenses (SCR 102.5(d)), refusal to acknowledge the wrongful nature of the conduct

(SCR 102.5(g)), substantial experience in the practice of law (SCR 102.5(i)) and illegal conduct (SCR 102.5(k)). The panel found no mitigating factors.

Based on its findings and Chung's stipulation, the panel recommended that Chung be disbarred from the practice of law in Nevada and that she be ordered to pay the costs of the disciplinary proceedings. SCR 120. Having reviewed the record, we approve the recommendation.

Accordingly, we hereby disbar Susana Ragos Chung from the practice of law. In addition, Chung must pay the costs of the disciplinary proceedings.

IT IS SO ORDERED.

In re: Brian M. Jones
Bar No.: 9597
Docket No.: 65817
Filed: July 30, 2014

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Attorney temporarily suspended following the submission of a plea of guilty to a felony count of mail fraud in United States District Court of Nevada.

Bar Counsel for the State Bar of Nevada has petitioned this court, pursuant to SCR 111, to enter an order temporarily suspending attorney Brian Jones from the practice of law and referring him to the appropriate board for discipline. The petition is supported by certified copies of documents indicating that Jones pleaded guilty, in the United States District Court, District of Nevada, to violating 18 USC §1349 (Conspiracy to commit wire and mail fraud), a felony.

Pursuant to SCR 111, temporary suspension and referral to the appropriate disciplinary board are mandatory when an attorney has been convicted of a "serious" crime, which includes a felony. SCR 111(6)-(8). Having reviewed the petition and the supporting documentation submitted by bar counsel, we conclude that the petition conclusively establishes Jones's conviction of a serious crime. Accordingly, we temporarily suspend Jones from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined is the extent of discipline to be imposed. SCR 111(7), (8).

It is so ORDERED.

In re: Douglas H. Clark
Bar No.: 4599
Docket No.: 61903
Filed: August 15, 2014

ORDER APPROVING CONDITIONAL GUILTY PLEA

Attorney suspended for a period of four years for numerous rules violations of misappropriation, failure to supervise nonlawyer assistants and failure to communicate with the state bar.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that we approve, pursuant to SCR 113, a conditional guilty plea in exchange for a stated form of discipline for attorney Douglas H. Clark. Under the agreement, Clark admitted to

numerous violations of RPC 1.1 (Competence), RPC 1.2 (Scope of representation), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees), RPC 1.7 (Conflict of interest: current clients), RPC 1.8 (Conflict of interest: current clients: specific rules), RPC 1.15 (Safekeeping property), RPC 1.16 (Declining or terminating representation), RPC 3.2 (Expediting litigation), RPC 3.4(a) (Fairness to opposing party and counsel); RPC 4.4 (Respect for rights of third party), RPC 5.3 (Responsibility regarding nonlawyer assistants), RPC 8.1(b) (Bar admission and disciplinary matters), and RPC 8.4(a), (b), (c) and (d) (Misconduct).

Clark is currently temporarily suspended from the practice of law. See *In re Discipline of Clark*, Docket No. 54669 (Order of Temporary Suspension, November 18, 2009). The conditional guilty plea agreement provides for a four-year suspension, retroactive to the date of his temporary suspension, subject to the following conditions: (1) Clark shall pay restitution, plus interest, to certain clients and the Client Security Fund, as set forth in the conditional guilty plea agreement; (2) Clark shall continue rehabilitation and recovery of his alcoholism as directed by his therapist Dr. Hopper or another licensed therapist, as approved by the state bar; (3) Clark is required to complete twice the amount of required CLE credits (24 hours) for 2013 and 2014; (4) prior to petitioning for reinstatement, Clark shall submit to an independent psychological examination for the purpose of evaluating his fitness to practice law; and (5) Clark shall pay the costs of the disciplinary proceedings in the instant matter.¹

Based on our review of the record, we conclude that the conditional guilty plea agreement should be approved. See SCR 113(1). Accordingly, Clark is hereby suspended from the practice of law for four years, retroactive to his temporary suspension, and Clark shall comply with the conditions noted above before applying for reinstatement. The parties shall comply with the applicable provisions of SCR 115 and SCR 121.1.

It is so ORDERED.²

SAITTA, J., with whom DOUGLAS, J., agrees, dissenting:

In light of the extent of Clark's misconduct, I would reject the conditional guilty plea agreement and remand for further proceedings before the panel. Accordingly, I dissent from the order approving the agreement.

In re: Mary P. Groesbeck
Bar No.: 4280
Docket No.: 65036
Filed: August 1, 2014

ORDER OF SUSPENSION

Attorney suspended for a period of six years and to pay a fine in the amount of \$10,000 to the state bar and restitution in the amount of \$1,000 for misappropriation and failure to communicate with the state bar.

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's findings of fact, conclusions of law and recommendation for attorney discipline deriving from two state bar complaints. SCR 105(3)(b). The panel recommends that attorney Mary P. Groesbeck pay a fine of \$10,000 to the state bar, pay restitution of \$1,000 and serve a six-year suspension from the practice of law. We approve.

In 2012, the state bar filed two complaints against Groesbeck, based on two grievances submitted against her.³ In December 2009, Groesbeck was contacted by Anderson Adams, a California resident, for help with a child support collection matter. Groesbeck requested, and Adams provided, a signed retainer agreement and \$1,000. The money was deposited in Groesbeck's trust account on January 25, 2010. Bank records show that the balance of the account fell below \$1,000, but Groesbeck never produced any actual work for Adams. What became of the money is unknown. Ultimately, Adams sought relief through the state bar's fee dispute resolution program and was awarded the full \$1,000 by the arbitrator. On June 22, 2012, after repeated attempts to contact Groesbeck, at all known addresses, regarding the fee dispute and the grievance, the state bar filed a complaint against Groesbeck alleging violations of RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees), RPC 1.15 (Safekeeping property), RPC 8.1 (Bar admission and disciplinary matters) and RPC 8.4 (Misconduct).

The second grievance involved Groesbeck's failure, in 2011, to return a client file to attorney Michael Warhola, for whom Groesbeck had been working. The client had obtained new counsel in July 2011, and Groesbeck agreed to inventory the file, prepare a statement of inventory and copy the file to new counsel. Groesbeck took possession of the file. Throughout the next few months, Warhola sent Groesbeck numerous texts, letters, emails and phone messages in an attempt to retrieve the file. Meanwhile, Groesbeck apparently moved to Minnesota, to an address she gave Warhola but never reported to the state bar. In November and December 2011, the state bar attempted to contact Groesbeck about the file at all known addresses. Groesbeck did return acknowledgment of receipt of the communications, but otherwise failed, or refused, to respond. Finally, on July 29, 2013, the state bar filed a complaint against Groesbeck, alleging violations of RPC 8.1 (Bar admission and disciplinary matters) and RPC 8.4 (Misconduct).

The complaints were consolidated and the state bar sent notice to Groesbeck at addresses in Las Vegas, Henderson, and Minnesota. The return receipt card mailed to Groesbeck's listed personal address in Minnesota was returned, signed by Groesbeck, but she did not submit any verified answers to the complaints or otherwise respond. According to testimony of Investigator Dawn Reid, who found a telephone number for Groesbeck and spoke to her about the scheduled hearing, Groesbeck stated that she was in default and did not care when the hearing took place, and concluded with, "David [Clark] can take my law license. I don't care."

Groesbeck refused to further respond or to attend the hearing, and proceedings were conducted on a default basis pursuant to SCR 105(2). The hearing was held December 16, 2013. The state bar presented testimony from Michael Warhola and Anderson Adams.

Based on the testimony and documentation supporting the complaints, the panel concluded that, with respect to the first complaint involving Adams, Groesbeck violated RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Safekeeping property), RPC 8.1(b) (Bar admission and disciplinary matters) and RPC 8.4 (Misconduct). As to the second complaint involving Warhola, the panel found Groesbeck violated RPC

continued on page 38

bar counsel report

8.1 (Bar admission and disciplinary matters) and RPC 8.4 (Misconduct). Pursuant to SCR 102.5, the panel considered aggravating and mitigating factors. Aggravators included (1) prior disciplinary offenses, (2) a pattern of misconduct, (3) multiple offenses, (4) bad faith obstruction of the proceedings by intentionally failing to comply with rules or orders, (5) refusal to acknowledge the wrongful nature of her conduct, (6) vulnerability of the victim, (7) substantial experience in the practice of law, and (8) indifference toward making restitution. The panel found two mitigating factors: (1) personal or emotional problems, and (2) character or reputation, based on Warhola's testimony.

The findings and recommendations of a disciplinary board hearing panel, though persuasive, are not binding on this court. *In re Stuhff*, 108 Nev. 629, 633; 837 P.2d 853, 855 (1992). The automatic review of a panel decision recommending suspension is conducted de novo, requiring the exercise of independent judgment by this court. *Id.*; SCR 105(3)(b). The panel's findings must be supported by clear and convincing evidence. SCR 105(2)(e); *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

We conclude that there is clear and convincing evidence in the record before us that demonstrates that Groesbeck committed the misconduct and violations of the Rules of Professional Conduct as found by the hearing panel, and that the panel's recommendation is an appropriate sanction.

Accordingly, attorney Mary P. Groesbeck is hereby suspended from the practice of law in Nevada for six years. At the completion of her term of suspension, Groesbeck shall comply with SCR 116 upon any petition for reinstatement. Further, Groesbeck shall show proof of successful completion of the Nevada State Bar Examination and the Multistate Professional Responsibility Examination prior to reinstatement, if any. See SCR 116(5). Groesbeck shall pay restitution of \$1,000 to Anderson Adams, and a fine of \$10,000 to the state bar. Pursuant to SCR 120, Groesbeck shall also pay the costs of the disciplinary proceedings. Groesbeck shall comply with SCR 115 and the state bar shall comply with SCR 121.1.

It is so ORDERED.

In re: Steven Charles Lynes
Bar No.: 6400
Docket No.: 62802
Filed: August 1, 2014

ORDER IMPOSING RECIPROCAL DISCIPLINE

Reciprocal discipline imposed on an attorney suspended for a stayed two-year suspension and two-year probationary period, with 90 days actual and other conditions.

This is a petition under SCR 114 for reciprocal discipline of attorney Steven Charles Lynes, based on discipline imposed on him in California. Lynes did not self-report the disciplinary sanctions imposed by California, as required by SCR 114(1), and he has not responded to the petition. See SCR 114(3).⁴

Case no. S205810

The California Supreme Court entered an order in case no. S205810, on December 10, 2012, wherein Lynes was placed on a two-year stayed suspension from the practice of

law in California and a two-year probationary period. During Lynes' probationary period, he must adhere to the following conditions: spend the first 90 days on actual suspension; comply with the California Bar Act and the California Rules of Professional Conduct; submit written quarterly reports to the Office of Probation, with a final report due no earlier than 20 days before the last day of the probation period; answer fully, promptly and truthfully, any inquiries of the Office of Probation relating to whether or not Lynes is complying, or has complied, with the conditions of probation; report any change in information to the California Bar and Office of Probation within 10 days of the change; schedule a meeting with a probation deputy within 30 days of the effective date of discipline and meet with the probation deputy, in person or by telephone, as directed and upon request; attend Ethics School within one year of the effective date of discipline and provide proof of attendance and passage of the session end test to the Office of Probation; and take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of discipline.⁵

Lynes was disciplined in case no. 8205810 for failing to provide a client with an accounting or billing statement, failing to respond to clients' status requests, failing to provide a client with a copy of the client's file, failing to promptly refund unearned fees to a client and failing to cooperate in pending disciplinary investigations. In so doing, Lynes was found to have violated California Rule of Professional Conduct (RPC) 4-100(B)(3), equivalent to Nevada RPC 1.15 (Safekeeping property); California Business and Professions Code (BPC) section 6068(m), equivalent to Nevada RPC 1.4 (Communication); California RPC 3-700(D)(1), equivalent to Nevada RPC 1.16 (Declining or terminating representation); California RPC 3-700(D)(2), equivalent to Nevada RPC 1.15 (Safekeeping property); and BPC section 6068(i), equivalent to Nevada RPC 8.1 (Bar admission and disciplinary matters). One aggravating factor: multiple acts of misconduct, involving multiple clients, and one mitigating circumstance: no prior record of discipline, were considered.

Case no. S206240

The California Supreme Court entered an order in case no. S206240 on January 9, 2013, wherein Lynes was placed on a two-year stayed suspension from the practice of law in California and a two-year probationary period. During Lynes' probationary period, he must adhere to the following conditions: comply with the California Bar Act and the California Rules of Professional Conduct; report any change in information to the California Bar and Office of Probation within 10 days of the change; schedule a meeting with a probation deputy within 30 days of the effective date of discipline and meet with the probation deputy, in person or by telephone, as directed and upon request, to discuss terms and conditions of probation; submit written quarterly reports to the Office of Probation, with a final report due no earlier than 20 days before the last day of the probation period; answer fully, promptly, and truthfully, any inquiries of the Office of Probation relating to whether Lynes is complying or has complied with the conditions of probation; attend Ethics School within one year of the effective date of discipline and provide proof of attendance and passage of the session-end test to the Office of Probation; and take and pass the MPRE within one year of the effective date of discipline.⁶

Lynes was disciplined in case no. S206240 for failing to act competently, failing to respond to a client's status requests, failing to promptly refund unearned fees to a client, and failing to cooperate in pending disciplinary investigations. In so doing, Lynes was found to have violated California RPC 3-110A, equivalent to Nevada RPC 1.1 (Competence); BPC section 6068(m), equivalent to Nevada RPC 1.4 (Communication); California RPC 3-700(0)(2), equivalent to Nevada RPC 1.15 (Safekeeping property); and BPC section 6068(i), equivalent to Nevada RPC 8.1 (Bar admission and disciplinary matters). One aggravating factor – prior record of discipline – and no mitigating circumstances were considered.

Reciprocal Discipline

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, that at least one of four factors is present: (1) the procedure in the other jurisdiction denied the attorney due process; (2) there was such an infirmity of proof of the misconduct in the other jurisdiction that this court cannot accept the other court's decision; (3) substantially different discipline is warranted in this state; or (4) the established misconduct does not constitute misconduct under the rules of this state. Discipline elsewhere is *res judicata*, as SCR 114(5) provides that “[i]n all other respects, a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purposes of a disciplinary proceeding in this state.”

We are not persuaded that any of the exceptions apply to this case. Accordingly, we grant the petition for reciprocal discipline. We hereby suspend Steven Charles Lynes for two years, stay the suspension and place him on probation for two years. Consistent with the California terms of probation, Lynes must spend the first 90 days in actual suspension. Further, Lynes shall copy Nevada Bar Counsel with proof of his compliance with the conditions of his probation in California. In particular, Lynes shall provide all reports submitted to the California state bar probation unit, proof of attendance at Ethics School and his MPRE score. This discipline shall commence on the date this order is filed. Lynes and the Nevada state bar shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In re: Paul W. Drakulich
Bar No.: 2188
Docket Nos.: 64346, 66037
Filed: August 1, 2014

ORDER OF TRANSFER TO DISABILITY INACTIVE STATUS AND DISMISSING DISCIPLINARY PROCEEDING WITHOUT PREJUDICE

Attorney transferred to disability inactive status. Disciplinary proceedings against attorney are suspended.

Bar Counsel for the State Bar of Nevada and attorney Paul W. Drakulich have jointly petitioned this court for an order transferring Drakulich to disability inactive status (Docket No. 66037). Drakulich and his counsel have signed the joint petition. The parties have stipulated that Drakulich

is presently incapacitated under the terms of SCR 117 from continuing to practice law and from adequately defending himself against pending disciplinary charges.

Having reviewed the petition and its attachment, we conclude that the relief requested in the joint petition is warranted under the circumstances. Accordingly, Paul Drakulich is transferred to disability inactive status. Drakulich may resume the active practice of law only after he has complied with SCR 117(4) and (5).

Docket No. 64346 is a petition by bar counsel, pursuant to SCR 111(4), stemming from Drakulich's plea of no contest to violating NRS 484.379 (substituted in revision by NRS 484C.110). SCR 117(2) requires that any pending disciplinary proceedings against an attorney be suspended when he is transferred to disability inactive status.

Accordingly, the proceeding in Docket No. 64346 is hereby suspended. However, in order to avoid this matter lingering indefinitely on this court's docket, pending Drakulich's compliance with SCR 117(4) and (5), we conclude that judicial efficiency will be best served if Docket No. 64346 is dismissed without prejudice to the state bar's ability to reinstate such proceedings, if appropriate, upon Drakulich's reinstatement to the active practice of law. *Cf.* SCR 117(4). Further, any other disciplinary proceedings pending against Drakulich are suspended. SCR 117(2).

If he is able, Drakulich shall comply with SCR 115. SCR 117(7). If not, the state bar shall proceed under SCR 118. SCR 117(7). The state bar shall effect notice of this order as required under SCR 121.1. Bar Counsel shall provide this court with proof that notice has been served.

It is so ORDERED.

DOUGLAS and SAITTA, JJ., dissenting:
We dissent.

In re: Robin W. Enos
CA Bar No.: 152612
Docket No.: 61883
Filed: July 31, 2014

ORDER OF INJUNCTION

California attorney enjoined from the practice of law in Nevada and assessed a \$5,000 fine and costs of the disciplinary proceedings.

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's recommendation that former California attorney Robin W. Enos be enjoined from practicing law in Nevada, that he be fined \$5,000 and that he pay the costs of the disciplinary proceedings.⁷ The panel's recommendation was based on its conclusion that Enos violated RPC 1.15 (Safekeeping property), RPC 5.3 (Responsibilities regarding nonlawyer assistants) and RPC 8.4 (Misconduct). Enos did not appear at the disciplinary hearing, nor has he filed a brief or expressed any intention to contest the panel's findings and recommendations in this matter.

The record reflects that Claudio Gonzalez went to the Las Vegas office of a company advertising assistance in obtaining loan modifications. Gonzalez sought such a modification and paid fees for those services by writing two checks payable to

continued on page 40

bar counsel report

Enos. On a subsequent visit to the office, Gonzalez discovered that the office was out of business and left no forwarding address. When Gonzalez contacted the Nevada state bar, he learned that Enos was not licensed to practice law in this state.

In response to the bar's investigation of Gonzalez's grievance, Enos wrote a letter stating that Gonzalez was never his client and that he had no office in Las Vegas. He also stated that the loan modification company was owned by another person, who is not an attorney. Enos admitted that he was general counsel for the loan modification business, and that he held fees paid to the company in his trust account. Enos claimed that he tried to mediate the disagreement between Gonzalez and the company owner, and that ultimately no modification was obtained for Gonzalez.

The bar subsequently filed a complaint against Enos, alleging the foregoing and that Enos had committed misconduct in Nevada. The complaint also alleged that Enos' biographical information appeared on the loan modification company's website and that Gonzalez never received a refund from the loan modification company and ultimately lost his home. When Enos failed to timely file an answer or otherwise respond to the complaint, the bar served him notice that, if he did not file an answer, it intended to proceed on a default basis and all charges against him would be admitted. SCR 105(2) ("In the event the attorney fails to plead, the charges shall be deemed admitted."). Enos failed to respond to the notice and failed to appear at the subsequent disciplinary panel hearing.

When imposing discipline on an attorney not licensed in this state, sanctions must be tailored accordingly. *Droz*, 123 Nev. at 168, 160 P.3d at 884. Appropriate sanctions in such circumstances include injunctive relief, fines and payments of costs. *Id.* at 168, 160 P.3d at 884-85.

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings. SCR 105(2) (f); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We further determine that the sanctions recommended by the disciplinary panel are warranted. *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We therefore approve the panel's recommendation. Enos is hereby enjoined from practicing law in Nevada or appearing as counsel before any tribunal in Nevada; Enos is required to petition this court to lift this injunction prior to being eligible to practice law in Nevada or appear in any Nevada court. Within 90 days from the date of this order, Enos shall pay a fine of \$5,000 and the costs of the disciplinary proceeding to the state bar.

It is so ORDERED.

In re: Douglas K. Fermoile
Bar No.: 662
Docket No.: 63620
Filed: August 1, 2014

ORDER APPROVING PUBLIC REPRIMAND

Attorney received public reprimand, required to pass MPRE and meet other conditions for failing to safekeep third-party funds, forging his client's signature and settling his client's case without authority or communication.

This is an automatic de novo review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board

hearing panel's findings of fact, conclusions of law and recommendations for attorney discipline, arising from attorney Douglas K. Fermoile's handling of a client's personal injury case and Fermoile's actions in another client's criminal case.⁸ The panel found that Fermoile violated RPC 1.2 (Scope of representation), RPC 1.4 (Communication), RPC 1.15 (Safekeeping property) and RPC 8.4(c) (Misconduct: engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).⁹ Based on these violations, the panel recommended that Fermoile: (1) be issued a public reprimand; (2) be required to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year; (3) pay the costs of the disciplinary proceeding; and (4) within six months, retain another attorney, at his own expense, to audit his law practice, and then implement any changes to his law practice suggested by the auditor.

The state bar does not contest the panel's conclusions as to its findings of facts or rule violations, but contests the amount of discipline proposed, arguing it is too lenient. Fermoile asserts that the state bar failed to establish most of the alleged violations by clear and convincing evidence, and thus argues that even a public reprimand is too harsh. The findings and recommendations of a disciplinary board hearing panel, though persuasive, are not binding on this court. *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). The automatic review of a panel decision recommending public discipline is conducted de novo, requiring the exercise of independent judgment by this court. *Id.*; SCR 105(3)(b). The panel's findings must be supported by clear and convincing evidence. SCR 105(2)(e); *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). In determining the proper disciplinary sanction, this court considers 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 Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008) (citing American Bar Association Standards for Imposing Lawyer Sanctions 3.0, Compendium of Professional Responsibility Rules and Standards, 344 (1999)).

Having reviewed the parties' briefs and the record on appeal, we conclude that clear and convincing evidence supports the panel's findings as to the rule violations committed by Fermoile. We also conclude, based on the evidence presented and the conflicting testimony of the parties, that the panel's recommended punishment is appropriate. Accordingly, we direct the disciplinary panel to issue the public reprimand that it attached as an exhibit to its decision. Additionally, Fermoile must take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the date of this order; pay the costs of the disciplinary proceeding; and, within six months of the date of this order, retain another attorney at his own expense to audit his law practice and then implement any changes to his law practice suggested by the auditor.

IT IS SO ORDERED.

In re: Ameer Shah
Bar No.: 10750
Docket No.: 62099
Filed: August 1, 2014

ORDER IMPOSING RECIPROCAL DISCIPLINE

Reciprocal discipline of public reprimand with conditions imposed on an attorney for failing to render appropriate accounts to his client.

This is a petition under SCR 114 for reciprocal discipline of attorney Ameer Shah, based on discipline imposed on him in California. Shah did not self-report his California discipline as required by SCR 114(1), and he has not responded to the petition. See SCR 114(3).

On March 13, 2012, the California Supreme Court imposed discipline on Shah in the form of a public reproof. Shah was also ordered to comply with the following conditions for a period of one year: comply with the California Bar Act and the California Rules of Professional Conduct; report any change in information to the California Bar and Office of Probation within 10 days of the change; schedule a meeting with a probation deputy within 30 days of the effective date of discipline and meet with the probation duty, in person or by telephone, as directed and upon request; submit written quarterly reports to the Office of Probation, with a final report due no earlier than 20 days before the last day of the condition period; answer fully, promptly and truthfully, any inquiries of the Office of Probation relating to whether or not Shah is complying, or has complied, with the conditions; attend Ethics School within one year of the effective date of discipline and provide proof of attendance and passage of the session-end test to the Office of Probation; and take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of discipline.¹⁰

Shah was disciplined for failing to supervise his staff member and for failing to timely render appropriate accounts to a client. In so doing, Shah was found to have violated California Rule of Professional Conduct (RPC) 3-110(A), equivalent to Nevada RPC 1.1 (Competence),¹¹ and California RPC 4-100(B)(3), equivalent to Nevada RPC 1.15 (safekeeping property). No aggravating factors were considered. The mitigating circumstances considered include Shah having no prior record of discipline, acting in good faith, acknowledging his misconduct and cooperating with the state bar.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that at least one of four factors is present: (1) the procedure in the other jurisdiction denied the attorney due process; (2) there was such an infirmity of proof of the misconduct in the other jurisdiction that this court cannot accept the other court's decision; (3) substantially different discipline is warranted in this state; or (4) the established misconduct does not constitute misconduct under the rules of this state. Discipline elsewhere is res judicata, as SCR 114(5) provides that "[i]n all other respects, a final adjudication in another jurisdiction that an attorney has engaged

in misconduct conclusively establishes the misconduct for the purposes of a disciplinary proceeding in this state."

We are not persuaded that any of the exceptions apply to this case. We therefore grant the petition for reciprocal discipline. Ameer Shah is hereby publicly reprimanded for his ethical violations in California. SCR 102(5). Furthermore, Shah shall copy Nevada Bar Counsel with proof of his compliance with the conditions imposed. In particular, Shah shall provide all reports submitted to the California state bar probation unit, proof of attendance at Ethics School and passage of the session-end test, and his MPRE score. The State Bar of Nevada shall comply with the requirements of SCR 121.1.

In re: Ryan R. West
Bar No.: 8721
Docket No.: 62100
Filed: August 1, 2014

ORDER IMPOSING RECIPROCAL DISCIPLINE

Reciprocal discipline of a public reprimand imposed on attorney for failure to communicate with his clients and charging an unreasonable fee.

This is a petition under SCR 114 for reciprocal discipline of attorney Ryan R. West, based on his public reprimand in Utah. West did not self-report his Utah discipline as required by SCR 114(1), and he has not responded to the petition. See SCR 114(3).¹²

West was publicly reprimanded by the Ethics and Discipline Committee of the Utah Supreme Court on June 28, 2012, for failing to provide competent representation to his client, failing to communicate adequately with his client and to keep the client informed about developments, charging an unreasonable fee, given his lack of experience in tax cases, and violating the Utah Rules of Professional Conduct (RPC). In so doing, West was found to have violated Utah RPC 1.1, equivalent to Nevada RPC 1.1 (Competence); Utah RPC 1.4, equivalent to Nevada RPC 1.4 (Communication); Utah RPC 1.5, equivalent to Nevada RPC 1.5 (Fees); and Utah RPC 8.4, equivalent to Nevada RPC 8.4 (Misconduct). No aggravating or mitigating circumstances were mentioned.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that at least one of four factors is present: (1) the procedure in the other jurisdiction denied the attorney due process; (2) there was such an infirmity of proof of the misconduct in the other jurisdiction that this court cannot accept the other court's decision; (3) substantially different discipline is warranted in this state; or (4) the established misconduct does not constitute misconduct under the rules of this state. Discipline elsewhere is res judicata, as SCR 114(5) provides that "[i]n all other respects, a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purposes of a disciplinary proceeding in this state."

We are not persuaded that any of the exceptions apply to this case. We therefore grant the petition for reciprocal discipline. Ryan R. West is hereby publicly reprimanded. The state bar shall comply with the requirements of SCR 121.1.

It is so ORDERED.

bar counsel report

1. The parties also stipulated to the additional conditions that, for two years following reinstatement, Clark would have a mentor who made periodic reports to the state bar and that Clark would attend at least one Alcoholics Anonymous meeting (or the equivalent), per week. While these conditions appear reasonable, such conditions are more appropriately considered part of a reinstatement proceeding, and, thus, we decline to impose them now.
2. Clark has been suspended from the practice of law in Nevada since October 2009, for failure to complete required continuing legal education requirements. See *In re Application of Bd. of Continuing Legal Educ.* Docket No. 54333 (Order Dismissing Petition as to Certain Respondent Attorneys and Granting Petition as to Certain Respondent Attorneys, October 21, 2009). Accordingly, in addition to satisfying the conditions outlined in this order and petitioning for reinstatement pursuant to SCR 116, Clark must also comply with the requirements set forth in SCR 213 in order to be reinstated to the practice of law in Nevada.
3. We have considered discipline of Groesbeck previously when transferring her to temporary disability inactive status in 1998, pursuant to a joint petition from Groesbeck and the state bar. We later reinstated her in 2002, subject to a two-year probationary period and several conditions to enable the monitoring of her practice. *In re Reinstatement of Groesbeck*, Docket No. 37967 (Order Granting Petition for Reinstatement, March 6, 2002).
4. Lynes has been suspended from the practice of law in Nevada since June 2008, for failing to pay his state bar membership fees, see SCR 98(9)(12), and since December 2008, for failing to complete his continuing legal education requirements, see SCR 212(5).
5. Lynes was also ordered to pay the costs of the disciplinary proceedings.
6. Lynes was also ordered to pay restitution and the costs of the disciplinary proceedings.
7. The record indicates that in 2011, Enos resigned from the California bar with disciplinary charges pending. Although Enos is not licensed to practice law in Nevada, this court has jurisdiction to impose professional discipline on him. See SCR 99(1); *In re Discipline of Droz*, 123 Nev. 163, 167-68, 160 P.3d 881, 884 (2007).
8. The two clients that are the subject of the disciplinary proceedings are husband and wife.
9. In determining the extent of Fermoile's punishment, the panel found, by clear and convincing evidence, that the following aggravating factors applied: pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law. SCR 102.5(1). Further, the panel noted that Fermoile was not always forthcoming and responsive to requests for documents and explanations, which contributed to the delay in scheduling the hearing. In mitigation, the panel concluded that the two other instances of prior discipline regarding Fermoile were remote in time per SCR 102.5(2)(n). Further, while not corresponding to a numerated factor, the panel did note that the clients who filed the complaints against Fermoile had memory gaps when they testified, which affected their credibility.
10. Shah was also ordered to pay the costs of the disciplinary proceedings.
11. Although the equivalent Nevada RPC is Rule 1.1, Shah's conduct would specifically violate Nevada RPC 5.3 (Responsibilities regarding nonlawyer assistants).
12. West has been suspended from the practice of law in Nevada since August, 2013, for failing to pay his state bar membership fees, see SCR 98(9)-(12), and for failing to complete his continuing legal education requirements, see SCR 212(5).

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. October also include up to a \$1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys Octoberbe 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.