

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF JOHN S.
ROGERS.

No. 37510

FILED

NOV 07 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER APPROVING CONDITIONAL GUILTY PLEA
IN EXCHANGE FOR STATED FORM OF DISCIPLINE

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's decision. The panel recommends that we approve a conditional guilty plea agreement in exchange for a stated form of discipline under SCR 113 concerning attorney John S. Rogers, as amended by the panel. The agreement provides that Rogers shall be suspended for six months, with the suspension to be stayed and Rogers placed on probation for one year, subject to several conditions, and that Rogers shall receive a public reprimand. The conditions require Rogers to: (1) enter into a mentor agreement approved by bar counsel during the probationary period, (2) participate in an alcohol abuse program approved by bar counsel during the probationary period, and to submit monthly compliance reports to his mentor, (3) cooperate in any fee dispute or client security fund claims that may be filed against him relating to any client representations undertaken by the entity formerly known as Rogers, Pewitt & Associates (RPA), (4) release RPA's errors and omissions malpractice coverage information to RPA's clients upon request, (5) timely address any future complaints to the bar by RPA's clients and to communicate with those clients concerning the status of their legal matters in a timely fashion, and (6) submit to the continuing jurisdiction of the panel during the probationary period. The panel added the

following conditions: (1) Rogers must meet monthly with bar counsel during the probationary period, (2) Rogers must accept responsibility for restoring any client funds owed as a result of RPA's representation of the client; any funds recovered from Pewitt shall be offset against Rogers' obligation, (3) the panel's continuing jurisdiction extends to any as yet unknown grievances that may be filed during the probationary period against Rogers, and the panel's jurisdiction specifically includes the authority to recommend imposition of the six-month suspension.

The plea agreement resolved one formal complaint filed against Rogers, as well as four grievances which had not yet been screened. Rogers stipulated to resolve the four grievances together with the formal complaint. The facts underlying the formal complaint relate to Rogers' agreement with Harry Pewitt, who is not licensed to practice law in Nevada or anywhere else, to establish RPA. Pewitt was issued business cards that listed him as "of counsel," despite his lack of a license, and RPA was identified as a "professional law corporation." In addition, Pewitt received ten percent of RPA's net quarterly profits, which was to reduce Rogers' indebtedness to Pewitt for a personal loan, and a salary of \$750 per week. RPA did not maintain a trust account, but only a general account in which firm and client funds were freely mingled, and on which nonlawyers Pewitt and Nadine Pewitt were signatories. Rogers' actions violated SCR 78.5 (maintenance of trust funds), SCR 187 (responsibilities regarding nonlawyer assistants), SCR 188 (professional independence of a lawyer), SCR 189 (unauthorized practice of law), SCR 195(1) (communications: misrepresentation), and SCR 199 (firm names). It should be noted that Rogers dissolved his partnership with Pewitt in June 2000.

The remaining grievances also concern Rogers' relationship with Pewitt and Pewitt's purported representation of clients. In the matter underlying the first grievance, RPA was retained by a corporation's principal to recover \$15,000 due on a contract. Pewitt, who was the resident agent for the corporation, negotiated an agreement for payment of the full amount. Pewitt subsequently endorsed the settlement check, and immediately disbursed half of the proceeds to himself personally.

Pewitt admitted that he was personally liable for approximately \$6,800, but claimed that his status as resident agent authorized him to endorse the check on the corporation's behalf. After bar counsel's inquiries brought this matter to Rogers' attention, he expressed "dismay and shock" that the funds had not been appropriately disbursed. Rogers admitted to violations of SCR 165 (safekeeping property), SCR 187 (responsibilities regarding nonlawyer assistants) and SCR 189 (unauthorized practice of law).

The second grievance concerned Pewitt's purported representation of a Chapter 7 bankruptcy debtor for purposes of preparing a motion to change venue. Rogers assigned the matter to Pewitt, and the client believed that Pewitt was a lawyer. After two months, the motion still had not been filed, and the client was informed by the bankruptcy court that his discharge was in jeopardy. Rogers learned of the situation after the client complained to the state bar. Rogers successfully moved for a change of venue, and is actively pursuing the client's bankruptcy case. Rogers' actions violated SCR 187 (responsibilities regarding nonlawyer assistants) and SCR 189 (unauthorized practice of law).

The third grievance concerned Pewitt's purported representation of a criminal defendant in justice's court. At a hearing, Pewitt fraudulently represented to the court that he was Rogers, and lied to the court about the client's absence. After Pewitt left, the client arrived and was questioned by the court. The client informed the court that her counsel was Harry Pewitt, and provided his business card. The court issued an order to show cause why both Rogers and Pewitt should not be held in contempt. At the first hearing, Rogers appeared and was barred from appearing in justice's court until the matter was resolved; in addition, the court reported Rogers to the state bar. Pewitt had not been served with notice of the first hearing. At a subsequent hearing, for which Pewitt was properly served, he admitted that he had misrepresented his identity, and that he has engaged in the unauthorized practice of law for several years. Pewitt also admitted that Rogers had no knowledge of Pewitt's misrepresentations to the court. The court found Pewitt in contempt and sentenced him to twenty-five days in jail. The court also

lifted the ban on Rogers' appearance in justice's court. Rogers' conduct in this matter violated SCR 187 (responsibilities regarding nonlawyer assistants) and SCR 189 (unauthorized practice of law).

The final grievance concerned RPA's representation of a client in a dispute over the care of several horses. The client initially met with both Rogers and Pewitt, but subsequently dealt mainly with Pewitt. Pewitt informed the client that she was not required to attend a court appearance; the client later learned that no one had appeared on her behalf. The client was unable to contact Rogers to determine the status of her case. Upon receiving bar counsel's inquiries, Rogers communicated with the client and is pursuing her case. Rogers' actions in this matter violated SCR 153 (diligence) and SCR 154 (communication).

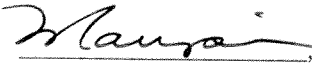
At the disciplinary hearing, Rogers testified that he first met Pewitt in 1996 when they both worked for attorney Patrick Nohrden, Rogers as an attorney, and Pewitt as a paralegal. Pewitt told Rogers that he planned to apply for admission to the Nevada bar within a few years. Rogers left Nohrden's employment in December 1996, and subsequently moved to Montana until 1999. In 1999, Pewitt contacted Rogers and stated that he planned to be admitted to the Nevada bar soon. Pewitt indicated that he planned to start a practice, and asked if Rogers would like to join him. Rogers agreed in principle, and Pewitt arranged for office space, business cards, letterhead, etc. Rogers also testified that he had once had some checks returned for insufficient funds (totaling approximately \$80), and had been placed on a check system that precluded him from establishing a checking account in his own name. Accordingly, Pewitt was the signatory on the account. Rogers dissolved the relationship after eight months, when Pewitt's actions became known to him.

Rogers testified that he would characterize himself as a social drinker. He stated that he did not believe he had an alcohol problem, but admitted that he had two DUI convictions and that his driver's license had been taken because of the second conviction. Rogers indicated that while he did not believe he had a problem, he was willing to undergo counseling for alcohol abuse as required by the panel.

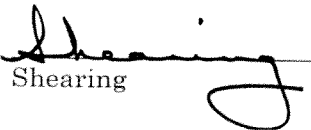
Rogers was admitted in 1992, and has no prior discipline. He acknowledged responsibility for paying restitution to any clients harmed by Pewitt's actions or his own. He also expressed remorse for his conduct, and a willingness to abide by the panel's recommended conditions.

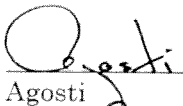
We conclude that while Rogers' conduct was egregious, the discipline set forth in the panel's recommendation is appropriate in light of the mitigating circumstances. Accordingly, we suspend Rogers for six months, with the suspension to be stayed, and place Rogers on probation for one year, subject to the conditions recommended by the panel. In addition, Rogers is hereby publicly reprimanded. The panel shall have continuing jurisdiction over Rogers, and any future misconduct shall be grounds for the panel to recommend to this court that the six-month suspension should be imposed.

It is so ORDERED.

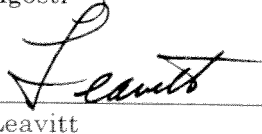

Maupin, C.J.


Young, J.


Shearing, J.


Agosti, J.


Rose, J.


Leavitt, J.


Becker, J.

cc: Richard J. Pocker, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
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William B. Terry