

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DISCIPLINE
OF ULRICH SMITH

No. 39890

FILED

MAR 31 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. A. [Signature]*
COURTY & CLERK

Effective Date: 4-15-03
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ORDER OF SUSPENSION

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's June 11, 2002 decision and order recommending that attorney Ulrich Smith be suspended for ninety days for violating SCR 153 (diligence), SCR 165 (safekeeping property), SCR 173(3) (knowingly disobeying an obligation under a tribunal's rules) and SCR 200(2) (Bar disciplinary matters). The panel recommends that the suspension's final forty-five days be stayed if, within the first forty-five days, Smith complies to the letter with several conditions that were previously imposed on him by the panel's November 8, 2001 interim decision.

On April 16, 2001, the State Bar filed a two-count formal disciplinary complaint against Smith. The first count alleged that Smith violated SCR 165 (safekeeping property) by bouncing three trust account checks (\$150, \$2,910 and \$1,600) in December 2000, and violated SCR 200(2) (Bar admission and disciplinary matters) by failing to reply to four State Bar letters asking him to explain.

The second count arose from Smith's representation of Lonnie Dennis in his appeal from a criminal conviction, Dennis v. State, Docket No. 34870. This court returned Smith's May 15, 2000 opening brief and appendix with a deficiency notice stating that the brief was untimely, and lacked sufficient copies, a certificate of compliance and a motion to extend the filing deadline. Smith did not resubmit the brief with the appropriate motion, so on June 27, 2000, this court ordered him to file and serve, within ten days, either the opening brief and appendix or a motion to extend time. Smith did nothing, so on October 4, 2000, this court sanctioned Smith and ordered him to personally pay \$250 to the Supreme Court Law Library. This court further ordered Smith to, within fifteen days, file proof of payment and to file and serve the opening brief and appendix. Again, Smith did nothing. He also failed to respond to several inquiries from his client and his client's mother, and to the State Bar's request for an explanation. Based on this conduct, count two alleged that Smith violated SCR 151 (competence), SCR 153 (diligence), SCR 154 (communication), SCR 173(3) (knowingly disobeying an obligation under a tribunal's rules), and SCR 203(4) (misconduct: conduct prejudicial to the administration of justice).

On August 30, 2001, the panel convened its formal hearing on the complaint, and rendered its decision orally. On November 8, 2001, the panel entered its formal findings of fact and interim decision. The panel, after noting that Smith was candid and forthcoming in admitting essentially all of the allegations, found that Smith violated SCR 165 and SCR 200(2) as alleged in count one. In aggravation of the SCR 165 violation, the panel found that Smith had failed to take corrective measures that might have prevented the loss after previously being

victimized by employee embezzlement; however, in mitigation, the panel recognized that Smith personally covered any losses and minimized any actual client harm. As to count two, the panel found that Smith violated SCR 153 and SCR 173(3), but that there was insufficient evidence to support the allegations that he violated SCR 151 and SCR 154.¹ Based on its findings, the panel concluded that Smith should be disciplined, but decided to reconvene six months after the hearing date to decide on the appropriate discipline. The panel directed Smith and Bar Counsel to complete several conditions in the interim. The panel stated that when it reconvened, it would be inclined to recommend a public reprimand and assessment of costs if Smith had satisfactorily completed the conditions. But if Smith failed to satisfy the conditions, the panel would be inclined to recommend a three-month suspension, assessment of costs and completion of the stated conditions.

The interim order required Smith to: (1) pay all outstanding sanctions imposed by this court in Dennis v. State, and provide Bar Counsel with proof of payment; (2) complete at least six hours of "live Continuing Legal Education classes in the area of law office management" and provide Bar Counsel with proof of completion; (3) seek psychological counseling and provide Bar Counsel with a competent report regarding his emotional and/or psychological fitness to practice law; and (4) promptly make available for inspection and copying his trust account records, audits, collection contracts and any other related documents Bar Counsel

¹The interim order did not address the allegation that Smith violated SCR 203(4). In its final order, the panel noted that it discussed whether this allegation duplicated the SCR 173(3) allegation, but made no decision regarding it.

requested. The order required Bar Counsel to: (5) request and inspect Smith's trust account records, audits, collection contracts and any other related documents to assess the circumstances leading to the overdrafts at issue in count one, and (6) report back to the panel, when it reconvened, the results of Bar Counsel's review of Smith's psychological report and trust account records to assist the panel in determining appropriate discipline.

By letter dated November 6, 2001, Bar Counsel served Smith with a formal request for documents and asked him to produce twelve specific categories of documents pertaining to his trust account, by December 6, 2001. By letter dated November 20, 2001, the State Bar indicated that it was monitoring the interim decision's conditions and asked Smith to provide (1) proof that he had satisfied this court's sanctions, (2) proof that he had completed six hours of law office management CLE credits, and (3) a psychologist's report evaluating his fitness to practice law. The letter invited Smith to contact the State Bar if he needed assistance in finding available law office management course instruction and asked him to submit the appropriate documentation by January 31, 2002, or state when it would be provided.

According to the record, Smith provided some of the requested trust account documents to Bar Counsel in early February 2002, but either did not have or did not produce other requested documents. In response to the November 20, 2001 letter, Smith stated that he would produce documentation during the last week of February 2002, but he did not do so.

By letter dated April 16, 2002, Bar Counsel advised Smith that the documents he had produced, and the fact that he lacked other

documents, raised several concerns regarding his law office management practices. In an attached memorandum, Bar Counsel summarized review results and specifically identified the State Bar's concerns. The letter further reminded Smith that he had not yet provided a psychologist's report or proof that he had paid this court's sanctions and completed his CLE requirement. By letter dated May 16, 2002, the State Bar reminded Smith once again that it still had not received the documents that it had requested in November 2001 and Smith had promised to produce in February 2002.

The continued hearing had originally been set to resume on March 27, 2002, but was continued to May 24, 2002, then continued again to June 7, 2002. The day before the hearing, by letter dated June 6, 2002, Smith requested a short continuance. Smith stated that (1) he had just discovered that the psychologist he had seen was on vacation until June 10, 2002, and he had not yet obtained a report from her; (2) he needed more time to respond to the April 16, 2002 memo from Bar Counsel's office regarding his trust account and to supply additional trust account documents; and (3) he needed additional time to respond to an inquiry regarding a debt in a separate case. Smith stated that he would hand-deliver on June 7, 2002, proof that he had paid the supreme court sanctions and he hoped to have the psychologist's report by the following week.

On June 7, 2002, the hearing resumed as scheduled. The panel denied Smith's motion for a continuance, and heard from Bar Counsel and Smith on the question whether the six conditions had all been satisfied. They had not. Smith had attempted to comply with the first condition by issuing a check dated May 28, 2002, payable to the Clark

County Law Library, and with the second condition by taking 7.5 hours of online CLE courses through the Arizona State Bar. Smith had partially complied with the third condition. He reported that he had had two one-hour appointments with psychologist Dr. Laura Birkholtz, and had subsequently attended two 32-hour Excellence Foundation seminars in Seattle, which he thought could be substituted for regular counseling, but he had not obtained a fitness report. Finally, Smith had produced some documents but stated at the hearing that he had not produced some additional documents because he had "insufficient time."

During the hearing, panel members voiced their frustration at Smith's failure to comply with their conditions, which were clear and uncomplicated and could easily have been accomplished in the time provided. Ultimately, the panel decided that Smith had not complied with its conditions. In its written order, entered June 11, 2002, the panel noted that Smith issued the sanctions check well after the six-month period specified in the interim order, to the wrong recipient (it should have been made payable to the Supreme Court Law Library), and failed to comply with this court's requirement that he provide the clerk's office with proof of payment. The panel further noted that Smith failed to complete live CLE courses and failed to provide Bar Counsel with certificates of completion for the online CLE courses he reported; failed to provide a psychologist's report, and failed to document the subject matter of the Excellence Foundation seminars he substituted for counseling; and failed to submit part of the documentation requested by Bar Counsel. Based on Smith's noncompliance, the panel recommends that Smith be suspended for ninety days. The panel further recommends that if Smith complies to the letter with its conditions within the first forty-five days of his

suspension, that the last forty-five days of the suspension be stayed or suspended.

On appeal, Smith asserts that he had completed “the majority” of the panel’s conditions before the June 7, 2002 hearing date. He argues that the panel’s denial of his motion for a short continuance, so that he could provide proof that he had complied with the interim order’s conditions, violated his right to due process and notions of justice and fairness. Smith does not support his argument with any authority, or explain why he believes that due process required that he be given more time to complete what he had not done in the previous nine months.

We conclude that the panel did not deprive Smith of due process by denying his motion for a continuance. The record clearly demonstrates that Smith had ample time and opportunity to do what was requested of him. It was Smith’s dilatory conduct that led to the disciplinary proceeding in the first place, and the panel was understandably unimpressed with Smith’s excuses for not completing the conditions in the nine months he had available. We further conclude that the panel’s findings are supported by clear and convincing evidence.² And, finally, we conclude that the recommended discipline is appropriate.

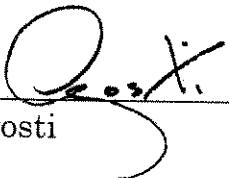
Accordingly, we approve the panel’s recommendation. Ulrich Smith shall be suspended from the practice of law for ninety days.³ If, within the first forty-five days, Smith complies with the conditions


²SCR 105(2)(e); In re Stuhff, 108 Nev. 629, 635, 837 P.2d 853, 856 (1992).


³Under SCR 115, the suspension is effective fifteen days from the date of this order.

imposed upon him by the panel's November 8, 2001 interim decision, to the letter and to Bar Counsel's satisfaction, the last forty-five days of the suspension shall be stayed. Finally, Smith shall pay the costs of the disciplinary proceeding.⁴

It is so ORDERED.⁵

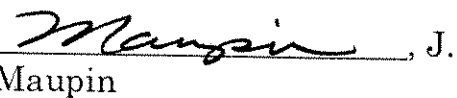

_____, C.J.
Agosti



_____, J.
Shearing


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons

cc: Howard M. Miller, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Perry Thompson, Admissions Office, U.S. Supreme Court
Ulrich W. Smith

⁴Smith and the State Bar shall comply with SCR 115.

⁵This constitutes our final disposition of this case. Any further proceedings should be filed under a new docket number.