

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF PAUL W.
DRAKULICH, ESQ.

No. 44858

FILED

JUN 06 2005

JY *J. Smith*
JANE T. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF STAYED SUSPENSION
WITH CONDITIONS

This is an automatic appeal from a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Paul W. Drakulich be suspended from the practice of law for ten days, that he reimburse the state bar for all costs of his disciplinary proceedings, and that he reimburse Churchill and Nye counties for all costs incurred as a result of his misconduct.

This case was initially referred to the bar by this court after Drakulich failed to comply with our repeated orders to file documents in the appeal of Giangousis v. State, Docket No. 41093. Drakulich also failed to file documents required by this court in two other appeals, Spangler v. State, Docket No. 41064, and Miracola v. State, Docket No. 42658.¹ The state bar filed two formal complaints against Drakulich, charging him with violations of SCR 151 (competence), SCR 153 (diligence), and SCR

¹Drakulich has paid the sanctions totaling \$2,000 imposed by this court in the Giangousis and Spangler appeals for his failure to file the requisite documents.

173(3) (knowingly disobeying an obligation under the rules of a tribunal). The three cases were consolidated into one disciplinary case, and the first hearing of the disciplinary panel was held in June, 2004.

Drakulich admitted the violations as charged, and the panel found that he had fully and candidly cooperated with the bar throughout the disciplinary proceedings. At the June hearing, Drakulich and a representative of Lawyers Concerned for Lawyers testified about Drakulich's alcohol problem and his treatment program.² The hearing was continued until January 31, 2005, to allow additional evidence to be gathered and presented concerning:

- (1) Drakulich's compliance with his recommended treatment plan for alcohol abuse;
- (2) Costs to Churchill and Nye counties incurred as a result of Drakulich's actions in the three underlying appeals;
- (3) Any additional disciplinary complaints against Drakulich arising since the initial hearing; and
- (4) Any other evidence that the parties felt would be relevant to the panel's decision.

When the panel reconvened for the January hearing, Drakulich admitted that after the June hearing, he had failed to comply with the treatment plan and had violated the law by leaving the scene of an accident after hitting a roadside marker with his vehicle. As a

²Under SCR 106.5, all information obtained by the Lawyers Concerned for Lawyers program is confidential and inadmissible in any state bar disciplinary proceeding. But the rule does not apply here, because the bar referred Drakulich to the program, and Drakulich further waived his right to confidentiality.

consequence, he attended in-patient treatment in Oregon for a little over one month.

Drakulich testified that since his return to Nevada on December 3, 2004, he had been attending Alcoholics Anonymous (AA) meetings daily and participating in the Lawyers Concerned for Lawyers program. He was also undergoing counseling. According to Drakulich, he has been sober since October 29, 2004, when he left for the residential treatment program. Two witnesses testified that Drakulich has made tremendous progress and that his job performance has improved since he returned from treatment. Even so, these witnesses, along with Drakulich, also testified that Drakulich would benefit from having conditions placed on him to ensure that he remains sober.

Bar counsel found during his investigation that Drakulich is well respected for his professional conduct and legal abilities by clients, judges and other attorneys. The Churchill County District Attorney testified that Drakulich is an outstanding attorney whose criminal defense services are needed in that county. Despite knowing about Drakulich's alcohol problems, the Churchill County commissioners also expressed their confidence in Drakulich and decided to renew his contract to provide public defender services for one-year terms over the next five years, effective October 1, 2004. Drakulich has been performing the county's public defender work since 1990.

The disciplinary panel concluded that there was clear and convincing evidence, including Drakulich's admissions, that he violated SCR 151, SCR 153, and SCR 173(3). In aggravation of his actions, the panel found that after the June hearing, Drakulich failed to comply with his initial treatment plan and violated the law by leaving the scene of an

accident. But in mitigation, the panel found that Drakulich has since entered a residential treatment program, is involved in the Lawyers Concerned for Lawyers program, has been regularly attending AA meetings and participating in the twelve-step program, and has completely abstained from the consumption of alcohol. The panel further found that Drakulich paid for substitute counsel while he was in the residential treatment program and reimbursed Churchill County for the costs incurred in hiring replacement counsel in Miracola and Giangousis, and that both convictions and sentences were upheld on appeal. Additionally, the panel determined that although Drakulich had received three private reprimands and one public reprimand between December 1991 and August 1997, no new complaints had been filed against him with the bar since the current disciplinary action. Therefore, the panel found that there was no prejudice to the counties or the appellants caused by Drakulich's actions, that he has fulfilled his obligations as Churchill County Public Defender, that he has fully complied with his modified treatment program, and that he appears to be committed to remaining sober. Finally, the panel noted that the state bar, a representative of the Lawyers Concerned for Lawyers program, and Drakulich requested that restrictions be placed on Drakulich's conduct in order to encourage his future sobriety rather than seeking out his suspension or disbarment.

Based on its findings and conclusions, the disciplinary panel recommended that:

- (1) Drakulich be suspended for a period of ten days.
- (2) Drakulich reimburse the state bar for all costs incurred in the disciplinary cases.

- (3) Drakulich reimburse Churchill County and Nye County for all costs incurred in the underlying appeals that were the subject of the disciplinary action.³

Based on our de novo review,⁴ we conclude that clear and convincing evidence supports the panel's conclusion that Drakulich violated SCR 151, SCR 152, and SCR 173(3) in failing to timely file the documents required in three appeals before this court.⁵ We further conclude that Drakulich's misconduct was the result of his alcohol abuse, for which he is receiving treatment and has been making substantial recovery. Nevertheless, to ensure Drakulich's future compliance with our appellate rules and his own alcohol treatment plan, we decline to adopt the recommendations of the disciplinary panel and instead impose the following discipline:

- (1) Drakulich shall be suspended for a period of thirty days; this suspension shall be stayed, subject to a one-year probationary period with the following conditions:
 - (a) Drakulich shall timely file required documents in any appeals to this court.
 - (b) Drakulich shall refrain from drinking any alcoholic beverage, and shall be subject to random alcohol testing, at his own expense, upon the request of bar

³Although the Spangler appeal remains pending in this court, we note that no restitution to Nye County is necessary in that appeal, since Drakulich was hired as outside counsel and was not paid for that case.

⁴See In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984).

⁵See In re Stuhff, 108 Nev. 629, 634-35, 837 P.2d 853, 856 (1992); see also SCR 105(2)(e).

counsel or a representative of the Lawyers Concerned for Lawyers program.

- (c) Drakulich shall be required to participate in the Lawyers Concerned for Lawyers program. Coe Swobe, or a member of the program, shall provide a report of Drakulich's progress to bar counsel at the end of the probationary period.
 - (d) Drakulich shall be required to regularly attend Alcoholics Anonymous meetings and participate in the twelve-step program, as directed by his sponsor, who shall be selected by Swobe or the Alcoholics Anonymous organization. Drakulich's attendance at the meetings shall be independently verified.
 - (e) Drakulich shall continue psychotherapy sessions as directed by his counselor. Drakulich shall waive his right to confidentiality and his counselor shall provide reports of his progress to bar counsel upon request.
- (2) Drakulich shall pay for the costs of the disciplinary proceedings within thirty days of his receipt of the bar's bill of costs.
 - (3) To the extent that there are any outstanding amounts due to Churchill County for reimbursement of the fees for Drakulich's replacement counsel in the Giangousis or Miracola appeals, Drakulich shall pay or make arrangements to pay such amounts within thirty days of receipt of the county's bill.
 - (4) The panel shall maintain jurisdiction over this matter for a period of one year from the date of this court's order. If Drakulich fails to meet any of the above conditions, the panel

chair, at bar counsel's request, may reconvene the panel.

We remind Drakulich that as the sole public defender in Churchill County, his initial participation in the fast track program for criminal appeals is essential, because NRAP 3C requires trial counsel to file the rough draft transcript request and the fast track statement. Trial counsel may move to withdraw only after filing the requisite documents, and with this court's permission.⁶

It is so ORDERED.⁷

Becker, C. J.
Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Patrick V. Fagan, Chair, Northern Nevada Disciplinary Board
Lemons Grundy & Eisenberg
Rob Bare, Bar Counsel
Allen W. Kimbrough, Executive Director, State Bar
Coe Swobe, Lawyers Concerned for Lawyers

⁶NRAP 3C(b)(1).

⁷This is our final disposition of this matter. Any new proceedings concerning Drakulich shall be docketed under a new docket number.