

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ANTHONY JONES,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DAVID WALL, DISTRICT JUDGE,

Respondents,

and

GALEN SCHUTT,
Real Party in Interest.

No. 45327

FILED

FEB 02 2007

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person petition for a writ of mandamus challenges a district court's affirmance of an award made by an arbitrator for the State Bar of Nevada's Fee Dispute Arbitration Committee. We have considered this petition and because we are not satisfied that this court's intervention by way of extraordinary relief is warranted, we deny the petition.

Petitioner, acting in proper person, challenges as arbitrary and capricious an arbitrator's decision against him in his claim for reimbursement of money advanced to attorney Galen Schutt. Likewise, petitioner challenges as arbitrary and capricious and as an abuse of discretion the district court's decision affirming the arbitrator's award after conducting a de novo review under SCR 86(12).

In June 1998, petitioner entered into a written agreement with Galen Schutt for legal representation in pursuing any claims arising

from petitioner's mother's death, which occurred after she had undergone a medical procedure. Petitioner agreed to pay costs and to a contingency attorney fee in the event of a recovery. Petitioner advanced Schutt the sum of \$1,500.00 for expenses. Both petitioner and Schutt anticipated that the decedent's medical records would be reviewed by a medical expert to determine if a claim could properly be brought. Both also expected that an expense would be involved in the hiring of a medical expert to review the records.

In November 1998, Schutt corresponded with petitioner and advised that after his office had reviewed the case and caused a medical records review to be conducted by a physician, he had come to the conclusion that the firm with which Schutt was employed and Schutt himself would be unable to handle the case. As to the money advanced by petitioner, the letter states: "we had had medical records reviewed by a physician and have expended a considerable amount of our time, for which we will not be compensated. Further, we have expended all funds you have advanced for expert and other costs in connection with the review. Specifically, in addition to having the records reviewed, we have conferred with the physician referral service with which you had been dealing. They informed us that neither the service nor the physician would be interested in participating in the case."

Petitioner complained to State Bar Counsel in January 2000, demanding that Schutt be compelled to give an accounting and produce "all documentary evidence of how my \$1,500.00 was disposed of, i.e., receipts, bills, letters of lack of viability, etc., and not just his word." In July 2000, petitioner was informed in writing of Bar Counsel's decision not to open a file addressing petitioner's complaint.

Petitioner next filed, in May 2001, a complaint and agreement for binding arbitration with the Nevada State Bar's Fee Dispute Arbitration Committee. The arbitrator issued his decision in April 2002. Therein, the arbitrator found that Schutt had accounted for his use of the money, although the accounting "was provided quite late." The arbitrator awarded nothing to petitioner.

Petitioner appealed the award to the district court, which issued an order in September 2004, affirming the arbitrator's award. Petitioner then appealed the district court's order to this court, which dismissed his appeal in March 2005. Thereafter, petitioner filed his original petition for a writ of mandamus in this court in May 2005.

The gravamen of petitioner's claim for mandamus is that he was entitled to a written accounting and receipts or other evidence verifying how his money had been spent by counsel. Petitioner seeks a writ of mandamus to compel the district court to require the arbitrator to enter an award in petitioner's favor based upon what he characterizes to be Schutt's failure to produce line-item documentation of costs expended.

Mandamus may issue to compel the performance of an act that the law requires or to control a manifest abuse of discretion.¹ Petitioner contends that respondent district court refused to require Schutt to supply documents in support of his accounting when the district court and the arbitrator had a duty under the law to order such a production. For support of this proposition, petitioner cites SCR 78.5(1)(a) and (b), SCR 86(12) and SCR 165(1) and (2).

¹Marquis & Aurbach v. Dist. Ct., 122 Nev. ____, ____, 146 P.3d 1130, 1136 (2006).

Petitioner cannot prevail because he has failed to demonstrate that the district court, in its de novo review, was required to compel the arbitrator to order Schutt to produce documents supporting the expenditures listed in his accounting of petitioner's funds or that it manifestly abused its discretion in affirming the arbitrator's award. SCR 86(12) empowers the State Bar Board of Governors to convene a fee dispute resolution committee and establishes a de novo review by the district court of any decisions made. SCR 165(1) and (2) require licensed attorneys to keep their clients' property separate from their own and require attorneys to provide an accounting of a client's property to a client upon the client's request. SCR 78.5(1)(a) and (b) require that licensed attorneys keep meticulous records of disbursements from trust funds and make such records available to the State Bar for inspection upon request.²

The arbitrator received an accounting from Schutt and accepted it. The arbitrator, despite petitioner's desires to the contrary, was not required by law to demand the production of Schutt's books and records. The duty created by SCR 78.5(1) is owed by all licensed attorneys to the State Bar so that whenever an allegation of wrongdoing might be made, an attorney's records can be readily examined by the State Bar. This record keeping requirement assists the State Bar in performing its

²The Rules of Professional Conduct, which included former SCR 165, were amended and renumbered effective May 1, 2006; SCR 165 is now Nevada Rule of Professional Conduct 1.15. The duties noted in the text under SCR 165(1) and (2) are still required under RPC 1.15(a) and (d). The former version applies to this case. SCR 78.5 was not affected by the amendments.

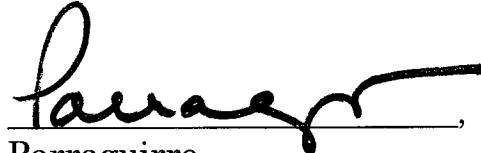
function of safeguarding the public from an attorney who might violate the conditions of licensure by commingling or misusing funds.

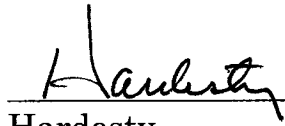
We conclude that while it was within the arbitrator's discretion to require Schutt to provide back-up documentation, neither his failure to demand the documentation nor the district court's affirmance is a manifest abuse of discretion; nor can either the arbitrator's decision or the district court's affirmance be characterized as arbitrary and capricious.

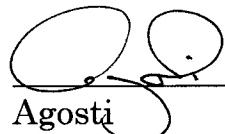
Although petitioner has suggested that the funds were not expended for what he calls "actual services rendered," the documents before us include no evidence to suggest that Schutt misused the funds entrusted to him. Petitioner, for example, questions an item of expense for copying the records, claiming it was unnecessary, as petitioner had other copies of the medical records in his own possession that he could have provided to Schutt. We find no merit to this suggestion, as it was within the arbitrator's discretion and the district court's as well, to refrain from requiring an attorney to look for the cheapest source for document reproduction. Similarly, petitioner has complained that he received no written report from the physician who reviewed the records, suggesting that the review might not have taken place. The arbitrator was within the sound exercise of his discretion to accept Schutt's explanation that he did not order a report for both strategic and expense reasons, in that ordering a written report would constitute an additional expense and would also create a discoverable document which in this instance, would contain an unfavorable opinion. Consequently, the district court in conducting its de novo review and affirming the arbitrator's award, did not manifestly abuse

its discretion or fail to perform a duty imposed by law. Accordingly, we deny the petition.³

It is so ORDERED.⁴


_____, J.
Parraguirre


_____, J.
Hardesty


_____, Sr. J.
Agosti

³We note that even if we construed this petition as one for certiorari, see, e.g., Budget Rent-A-Car v. Eighth Judicial District Court, 108 Nev. 483, 484, 835 P.2d 17, 18 (1992) (noting that this court, in the interest of judicial economy, may treat a petition for a writ of mandamus as one seeking prohibition), our conclusion would be the same. A writ of certiorari is available when an inferior tribunal has exceeded its jurisdiction. See NRS 34.020. Petitioner has not demonstrated that the district court engaged in any extra-jurisdictional acts.

⁴The Honorable Deborah A. Agosti, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.

In light of this order, we deny as moot petitioner's October 25, 2006 motion for decision.

cc: Hon. David Wall, District Judge
Christopher Anthony Jones
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Eighth District Court Clerk