

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF JOHN E.  
"RING" SMITH, ESQ.

No. 46060

FILED

DEC 08 2005

*[Signature]*  
DEPUTY CLERK

ORDER OF STAYED SUSPENSION  
WITH CONDITIONS

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney John E. "Ring" Smith be suspended for a period of five months, with the suspension stayed on the condition that within certain time periods, he refund \$600 to a former client, pay for the State Bar of Nevada's costs of the disciplinary proceedings, and provide monthly statements to the state bar, if and when he opens an attorney-client trust account.

In one complaint, a former client alleged that Smith had failed to refund retainer fees that he charged for handling a divorce, which the client ultimately obtained on her own. Smith was charged in that complaint with violations of SCR 165 (safekeeping property) and SCR 200(2) (bar association and disciplinary matters).

After a formal hearing, the panel determined that the charges in this complaint should be dismissed due to lack of supporting evidence. Smith testified as follows: The client initially wanted to obtain a joint divorce, which he refused to handle and so he referred her to another attorney, who set the fee at \$800. Later, the client returned to Smith, stating that she and her husband no longer agreed on all issues so that a contested divorce was necessary. Following further vacillation between

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the client and her husband, and unbeknownst to Smith, the client ultimately filed a joint divorce petition with her husband and demanded a refund of the entire \$800 fee. By this time, Smith believed that he and the referral attorney had earned all or substantially all of the fee. But, because he previously had represented the client and, in a gesture of good will, Smith agreed to refund \$600. Primarily because of health and financial problems, Smith was not able to pay the refund to the client. Thus, while the panel found that Smith had not violated his professional responsibilities, it determined that Smith had agreed to pay the \$600 refund.

In a separate complaint, Smith was charged with failing to timely meet certain conditions, which had been imposed in a previous disciplinary matter. Consequently, this complaint alleged that Smith had violated SCR 165 (safekeeping property), SCR 173(3) (knowingly disobeying an obligation under the rules of a tribunal), and SCR 203(4) (misconduct: conduct prejudicial to the administration of justice).

Smith provided evidence at the formal hearing that he had completed the six hours of continuing legal education in ethics that had been required by this court's order in his prior discipline. Additionally, Smith testified that while he had failed to meet the condition requiring him to provide the bar with copies of his general and trust account statements since January 2004, he has had no major problems with those accounts and has not written checks returned for insufficient funds. Smith testified that the overdrafts in his general account were for small amounts and caused by bank fees charged for going below the minimum balance required for a merchant credit card account. He also testified that he has no client trust account because he collects fees after completing the work and has settlement checks made out to the client directly.

The panel concluded that while Smith violated SCR 173(3) and SCR 200(2) by failing to timely meet the conditions of his previous disciplinary proceedings, substantial mitigating factors exist. The record shows that Smith has suffered from debilitating diabetes, multiple operations, and rehabilitation from the loss of all toes on his left foot. Smith's lack of health insurance and financial difficulties also served to exacerbate his health problems because he could not obtain medicine and proper medical care. In late 1994, Smith also had to relocate his office due to extensive water damage during construction work on the building. Additionally, Smith has had marital problems and, until recently, lacked adequate office assistance. But, according to Smith, he now has qualified staff in his office, and has been able to keep current with his work. His health has also improved after his recent operations and changes in his doctor, medication, diet, and attitude. Finally, Smith has completed the ethics courses required by this court.

Based on our de novo review,<sup>1</sup> we conclude that clear and convincing evidence supports the panel's conclusion that Smith violated SCR 173(3) and SCR 200(2) by failing to timely meet the conditions of his previous disciplinary actions, and that substantial mitigating factors are at play. Consequently, we adopt the recommendations of the disciplinary panel and order that Smith be suspended for five months, with the suspension stayed on the following conditions:

1. Smith shall refund \$600 to his former client within six months of the date of this court's order;
2. Smith shall submit full payment to the state bar for the costs of the disciplinary proceeding,

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<sup>1</sup>See In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984).

excluding staff salaries, within six months of receiving a bill of costs; and

3. If and when Smith opens an attorney-client trust account, he shall provide monthly statements to the state bar for at least six months.

It is so ORDERED.<sup>2</sup>

Becker, C.J.  
Becker

Rose, J.  
Rose

Maupin, J.  
Maupin

Gibbons, J.  
Gibbons

Douglas, J.  
Douglas

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Howard Miller, Chair, Southern Nevada Disciplinary Board  
John E. Ring Smith  
Rob Bare, Bar Counsel  
Allen W. Kimbrough, Executive Director, State Bar

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<sup>2</sup>This is our final disposition of this matter. Any further proceedings concerning Smith shall be filed under a new docket number.