

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
KENNETH R. SHEEHAN, ESQ.

No. 47103

FILED

NOV 01 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF DISBARMENT

This automatic appeal is taken, under SCR 105(b)(3), from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Kenneth R. Sheehan be disbarred from the practice of law. The state bar's recommended disbarment is based on Sheehan's prior misconduct, his failure to meet the conditions of a previously imposed probation, and additional grievances filed against him. We agree with the state bar's recommendation and disbar attorney Sheehan from the practice of law in Nevada.

Prior Discipline:

Reprimands:

In 2001, Sheehan received a private reprimand for violations of SCR 187 (responsibilities regarding nonlawyer assistants).¹ This

¹Effective May 1, 2006, the rules governing professional conduct were amended and renumbered by ADKT 370 adopted by this court on April 7, 2006. Because the panel's decision in this matter was rendered before the effective date of ADKT 370, this order refers to the disciplinary rule violations by their pre-amendment numbers.

reprimand resulted from Sheehan's failure to properly supervise a non-lawyer employee, who sent orders for dismissal and stipulations to opposing counsel and may have fraudulently changed these documents. This non-lawyer employee also continued to help a client whom Sheehan had decided not to represent.

In 2003, Sheehan received a public reprimand for violations of SCR 187, SCR 189 (unauthorized practice of law), SCR 152 (scope of representation), SCR 153 (diligence) and SCR 154 (communication). This public reprimand involved Sheehan's failure to properly supervise another non-lawyer employee, who accepted a client's representation and did not inform the client that she was not an attorney. This employee and another non-lawyer provided the client with faulty legal advice, and the client ultimately lost his impounded car, received collection notices that impaired his credit, and was held responsible for medical expenses.

Stayed suspension/probation:

In 2005, this court entered an order, pursuant to Sheehan's conditional guilty plea agreement, suspending Sheehan for forty-five days, with the suspension stayed and Sheehan placed on probation for one year, with eight conditions: (1) that Sheehan have no further business or professional relationship with the non-lawyer employee who was involved in the misconduct, (2) that he operate only one law office, (3) that he commit no further violations of SCR 187 (responsibilities regarding non-lawyer assistants) or SCR 189 (unauthorized practice of law), (4) that he inform the state bar of the names of all non-lawyer personnel utilized by him, as well as any changes in personnel, (5) that he promptly respond to the state bar regarding any new complaints received against him, (6) that he submit quarterly reports regarding compliance with the probation

conditions, (7) that he take and pass the Multi-State Professional Responsibility Examination (“MPRE”) within the probationary period, and (8) that he pay the disciplinary proceeding costs.

This discipline was based on Sheehan’s admission that he had again violated SCR 187 and SCR 189, as a non-lawyer employee, who worked in Sheehan’s second Las Vegas office and whose conduct was at issue in Sheehan’s earlier private reprimand, accepted the representation of a client. This employee also mishandled legal matters without Sheehan’s supervision.

Reciprocal discipline based on California misconduct:

In 2004, the California State Bar Court imposed discipline on Sheehan, who was practicing primarily in Nevada, in the form of a public reproof and one-year probation with conditions, because of Sheehan’s association with two non-lawyers who had been permitted to solicit and interview Sheehan’s clients and to negotiate settlements in a satellite office in California. One of the non-lawyers used his access to settlement funds to take them for himself rather than pay medical lienholders.

The California State Bar Court found that Sheehan’s conduct violated the California equivalents of SCR 188(1) (professional independence of a lawyer) and SCR 151 (competence). It considered as mitigating factors Sheehan’s twenty-five years of practice with no prior discipline, his remorse, and his cooperation with the bar. Sheehan and the California bar entered into a stipulation for a public reproof and one-year probation with conditions. After successfully completing these conditions, Sheehan resigned as a member of the State Bar of California.

Even though SCR 114(1) required Sheehan to report this discipline, he failed to inform the State Bar of Nevada of his California discipline. After learning of the discipline through the California bar, the

Nevada bar petitioned for reciprocal discipline, which this court imposed on March 10, 2006. Because Sheehan had already completed the conditions imposed during his probationary period in California, this court did not require Sheehan to undergo the same conditions and instead issued a public reprimand.

Current Disciplinary Proceedings:

Two new complaints, including a total of four counts, were filed by the Nevada bar against Sheehan on May 5, 2005, and October 7, 2005. Additionally, the Nevada bar determined that Sheehan had failed to satisfy the conditions imposed in this court's prior stayed suspension/probation order. Consequently, the disciplinary board hearing panel, at its formal hearing, considered Sheehan's failure to satisfy the conditions of this court's order as well as the new grievances filed against him.

With respect to this court's prior stayed suspension/probation order, the disciplinary panel unanimously found that Sheehan had violated four conditions of his probation because he

1. operated more than one office for the practice of law;
2. did not keep the state bar informed of the names of all non-lawyer personnel employed or utilized by him, nor did he promptly notify the state bar of any changes in personnel;
3. did not submit quarterly reports to the state bar affirming that he was in compliance with the conditions; and
4. did not take and pass the MPRE within the probation period and submit satisfactory proof to the state bar.

The panel concluded that Sheehan had violated another condition of his probation by violating SCR 187 (supervision of non-lawyer assistants) and SCR 189 (unauthorized practice of law), as well as SCR 165 (safekeeping property). Sheehan apparently only complied with three probation conditions: (1) to have no further business or professional relationship with a named non-lawyer, (2) to promptly respond to new complaints received by the state bar, and (3) to pay the disciplinary proceeding costs.

With respect to the new grievances filed against Sheehan, the panel determined that he violated SCR 187 (supervision of non-lawyer assistants), SCR 189 (unauthorized practice of law), SCR 165 (safekeeping property) SCR 200 (false statement in a disciplinary matter), SCR 203(2) (conduct that involves a criminal act that reflects adversely on the attorney is honesty and trustworthiness), and SCR 203(3) (misconduct: conduct that involves dishonesty, fraud, deceit or misrepresentation) based on the following stipulated facts.

Diagnostic Imaging grievance:

Sheehan represented a client in a personal injury claim and obtained a settlement, but failed to ensure that the client's medical provider, Diagnostic Imaging of Southern Nevada, was paid as agreed. When the client filed her grievance, Diagnostic Imaging had not been paid. Sheehan contended that he had given a non-lawyer in one of his offices authority to receive all settlement monies and to use these monies to pay and settle all outstanding liens, which the non-lawyer failed to pay. Sheehan terminated the non-lawyer and, after the grievance was filed, paid Diagnostic Imaging its outstanding medical lien in full. The panel found, based upon these facts, that Sheehan had violated SCR 187

(supervision of non-lawyer assistants), SCR 189 (unauthorized practice of law) and SCR 165 (safekeeping of property).

Forbes grievance:

Sheehan paid \$1,000 to Dr. Scott Forbes on a medical lien for a different client as "payment in full." Dr. Forbes contested the amount, contending that his bill for the client's treatment was \$1,576.50, and alleged that Sheehan added a disclaimer to the lien agreement without prior communications and only after Dr. Forbes had already executed the agreement. Sheehan admittedly did not inform Dr. Forbes about the client's settlement or Sheehan's receipt of the settlement proceeds. Additionally, Sheehan distributed less than the lien amount to the provider. Although Sheehan subsequently paid the lien in full, the panel concluded that he had violated SCR 165 (safekeeping property).

Misrepresentation regarding Bank of America trust account drafts:

After Sheehan's Bank of America client trust account was overdrawn, Sheehan explained, in writing, that his office had given "clients their checks before they were ready to be cashed" and the clients presented their checks before the banks' seven-day hold on these out-of-state checks had been removed. The panel found that only one of the four overdrafts had been made to an apparent client, two others were written to a chiropractic company, and one was written to Sheehan for "fees." Consequently, the panel concluded that Sheehan had violated SCR 165 (safekeeping of property), SCR 200 (false statement in a disciplinary matter) and SCR 203(3) (misconduct: conduct that involves dishonesty, fraud, deceit or misrepresentation).

Insurance application misrepresentation:

Sheehan applied for legal malpractice insurance and stated on the application that he had never been subject to disciplinary action by any state, local bar, or the ABA. Sheehan further represented that all statements and facts in his application were true and that no material facts had been suppressed or misstated. Although Sheehan claimed during the disciplinary proceedings that he did not intend to make a false statement, and that he did not remember why he answered as he did, except that he was rushing to obtain coverage, he admitted that his representations on the application were material and the insurance company/underwriter would have relied upon them in assessing his insurability, issuing the policy, and setting the premium amount. Thus, the panel concluded that Sheehan had violated SCR 203(2) and (3) (misconduct: conduct that involves a criminal act that reflects adversely on the attorney's honesty and trustworthiness, and conduct that involves dishonesty, fraud, deceit, or misrepresentation).

In assessing the discipline to be recommended, the panel considered Sheehan's prior discipline, pattern of misconduct, and multiple offenses. In light of these aggravating factors, the panel recommended that Sheehan be disbarred and ordered to pay all costs of the disciplinary proceedings within thirty days of his receipt of the state bar's bill of costs.

Discussion:

Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings and recommendations. Sheehan's failure to comprehend his misconduct and his refusal to acknowledge the wrongful nature of his conduct are evident throughout the record and his appeal. Additionally, this court cannot excuse

Sheehan's inability to meet the conditions imposed by our prior stayed suspension/probation order.

Sheehan has been previously disciplined for multiple offenses involving his lax or non-supervision of non-lawyers, yet he continues to rely on non-lawyers in the settlement of clients' cases and has failed to report information to the state bar regarding his employment of non-lawyers as required by this court's prior order. Moreover, Sheehan continues to operate multiple offices, despite this court's clear condition prohibiting more than one office. Sheehan has also been unable to meet this court's requirement that he take and pass the MPRE within his probationary period.

Sheehan's latest violations concerning the trust account overdrafts and his insurance application were not merely "stupid" oversights on his part. Given his substantial experience in the practice of law and his numerous prior disciplinary proceedings, Sheehan should have known better. Instead, Sheehan has demonstrated a cavalier attitude in responding to the bar, has provided false statements and contradictory testimony, and made material misrepresentations on his legal malpractice insurance application.

Although Sheehan attempts to blame his prior attorney for ineffective assistance in the disciplinary proceedings and his emotional distress resulting from his first wife's death in 2001 for his misconduct, Sheehan's multiple offenses clearly evidence a pattern of misconduct, including his refusal or inability to comply with the panel's and this court's conditions, continuing violations, and false statements during the

current disciplinary proceedings.² Prior discipline has not curbed Sheehan's misconduct. These aggravating factors, coupled with Sheehan's refusal to acknowledge the wrongful nature of his misconduct, lead us to conclude that Sheehan's disbarment is necessary to protect his clients, and the integrity and standing of the bar, the administration of justice, and the public interest.³

Thus, we agree with the panel's recommendations in full. Accordingly, Sheehan is disbarred from the practice of law in this state.⁴

²As the Nevada bar points out, Sheehan's assertion that he received ineffective assistance of counsel during the disciplinary proceedings necessarily fails, for the following reasons: (1) this court reviews bar matters de novo, regardless of the panel's recommendations; (2) the two bar complaints, based on the four grievances, were properly consolidated because the formal hearing panel retained jurisdiction to hear both alleged violations of probationary terms and to consider future grievances involving SCR 187 and SCR 189; (3) Sheehan benefited from stipulating to certain facts because doing so obviated the State Bar's need to transport witnesses from California, which lessened Sheehan's exposure to additional costs of proceedings and to potential surprise testimony from live witnesses, so that he was able to prepare a defense to known facts; (4) Sheehan failed to state who his other witnesses would have been or the substance of their testimony; and (5) most, if not all, of the stipulated facts are based upon Sheehan's own statements, records and documents.


³See SCR 116(3); Standards for Imposing Lawyer Sanctions §§ 1.1, 9.1. 9.22 (American Bar Ass'n, as approved February 1986, and amended February 1992).


⁴Sheehan and the state bar shall comply with the provisions of SCR 115.

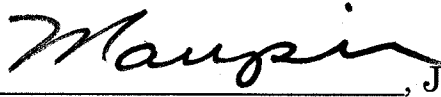
This is our final disposition of this matter. Any new proceedings concerning Sheehan shall be docketed under a new docket number.

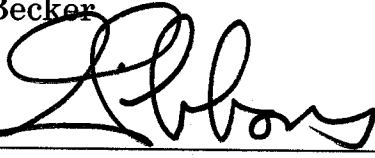
Sheehan is also ordered to pay all costs of the disciplinary proceedings within thirty days of his receipt of the state bar's bill of costs.⁵

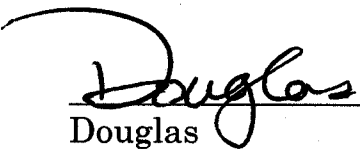
It is so ORDERED.

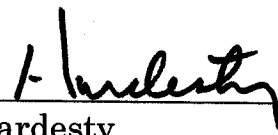

_____, C.J.
Rose


_____, J.
Becker


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Maupin


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Gibbons


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Douglas


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Hardesty


_____, J.
Parraguirre

cc: Howard Miller, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Wayne Blevins, Acting Executive Director, State Bar
Steven B. Wolfson, Chtd.
Admissions Office, U.S. Supreme Court

⁵SCR 120(1).