

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
DOUGLAS MACMILLAN BORTHWICK,
BAR NO. 6232.

No. 52852

FILED

JAN 08 2009

TRACIE K. ZINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER IMPOSING RECIPROCAL DISCIPLINE

This is a petition under SCR 114 to reciprocally discipline attorney Douglas MacMillan Borthwick, based on discipline imposed upon him in California. Borthwick has not responded to the petition.

The California Supreme Court approved a stipulation calling for a one-year stayed suspension, placing Borthwick on probation for two years, and imposing a 60-day actual suspension. The stipulation also requires Borthwick to satisfy several conditions: he must pay the costs of the disciplinary proceeding; he must submit quarterly reports to the California State Bar's probation unit and respond promptly and completely to any inquiries by the probation unit; he must pass the Multi-State Professional Responsibility Examination within one year; and he must attend the California State Bar Ethics School.

The discipline was based on Borthwick's violation of California Business and Professions Code Section 6106, which is essentially equivalent to RPC 8.4(c) (engaging in misconduct involving dishonesty, fraud, deceit, or misrepresentation). Specifically, Borthwick's resume included outdated, misleading information about his most recent employment. Based on this resume, Borthwick interviewed for a position, did not correct the misleading information during the interview, submitted a revised resume that did not clearly correct the misstatements in the

original version, and was hired. He was shortly thereafter terminated from the position. One aggravating circumstance, actual harm to the hiring employer, and three mitigating circumstances, remorse, lack of prior discipline, and good character as demonstrated by letters from individuals in the community, were also considered.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court determines that one of four exceptions applies:

- (a) That the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept the decision of the other jurisdiction as fairly reached; or
- (c) That the misconduct established warrants substantially different discipline in this state; or
- (d) That the misconduct established does not constitute misconduct under any Nevada Rule of Professional Conduct.

Discipline elsewhere is res judicata, as SCR 114(5) also provides, “[i]n all other respects, a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purposes of a disciplinary proceeding in this state.”¹

¹SCR 114(1) requires attorneys licensed in this state to inform Nevada Bar Counsel if they are subjected to professional disciplinary action in another jurisdiction. Borthwick did not notify Nevada Bar Counsel of his California discipline, which was discovered by Bar Counsel’s office’s review of public discipline imposed in California. When

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None of the exceptions applies to this case, and so we grant the petition for reciprocal discipline. Borthwick shall be suspended for one year, with the suspension stayed, and Borthwick shall be placed on probation for two years. In addition, Borthwick shall serve a 60-day actual suspension.² Finally, Borthwick shall copy Nevada Bar Counsel on all reports submitted to the California State Bar probation unit, proof that he has attended the Ethics School, and his MPRE score. Borthwick and the Nevada State Bar shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

1 Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

... continued

this matter, Borthwick claimed not to be aware of the rule's requirements. We do not view Borthwick's ignorance of SCR 114's provisions as excusing his conduct.

²Under SCR 115(7), the suspension is effective 15 days from this order's date. Borthwick may wind up his representation of any existing clients during this time, but may not accept any new matters.

cc: Rob W. Bare, Bar Counsel
Kimberly K. Farmer, Executive Director
Douglas M. Borthwick
Perry Thompson, Admissions Office, United States Supreme Court