

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB HAFTER, ESQ.,

Petitioner,

vs.

THE STATE BAR OF NEVADA, A
DIVISION OF THE SUPREME COURT
OF NEVADA; ROB BARE, IN HIS
OFFICIAL CAPACITY; DAVID CLARK,
IN HIS OFFICIAL CAPACITY; GLENN
MACHADO, IN HIS OFFICIAL
CAPACITY; AND PHILLIP PATTEE, IN
HIS OFFICIAL CAPACITY,
Respondents.

No. 56124

FILED

JUN 01 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition seeks to preclude respondents from engaging in possible disciplinary action against petitioner. Specifically, petitioner alleges that a screening panel has decided to issue a formal letter of reprimand against him as a result of allegations of professional misconduct made against him by bar counsel, and that he has 14 days to object to or accept the letter of reprimand.

A writ of prohibition serves to arrest proceedings that are without or in excess of the jurisdiction of a tribunal, board or person exercising judicial functions. See NRS 34.320. Prohibition is an extraordinary remedy, and whether such a petition for extraordinary relief will be considered is solely within this court's discretion. See Smith v.

District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitioner bears the burden of demonstrating that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004). Writ relief is generally not available when the petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.330.

Pursuant to SCR 105(1)(b), once an attorney has been notified by bar counsel of a decision by a screening panel to issue a letter of reprimand, the attorney has fourteen days to object and elect either a formal or informal hearing before a panel of the appropriate disciplinary board. If formal disciplinary proceedings are commenced against the attorney and result in a decision to impose discipline, then the attorney can appeal to this court. SCR 105(1)(c), (2), (3); see Gentile v. State Bar, 106 Nev. 60, 787 P.2d 386 (1990), *overruled on other grounds*, 501 U.S. 1030 (1991).

No actual disciplinary action has been taken against petitioner at this time: under the procedures set forth in SCR 105, the disciplinary process has not yet formally commenced. Because no discipline has yet been imposed, we conclude that the instant petition is premature.¹


¹We take judicial notice of the recent order denying motions to dismiss and for a temporary restraining order in a federal case involving these same parties. Hafter v. Bare, No. 2:10-CV-00553-PMP-LRL, Order (D. Nev. May 20, 2010). In that order, the federal court noted that Hafter characterized the grievance against him as a violation of his First Amendment right to political speech as a candidate for state attorney general, while the State Bar characterized the grievance as discharging its responsibility to investigate possible violations of the rules of professional conduct arising from Hafter's statements concerning the disciplinary

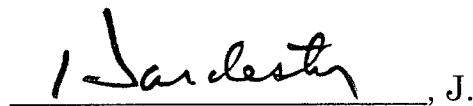
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Moreover, in the event that a decision is reached to impose discipline, petitioner has the right to appeal an adverse decision against him to this court. He therefore has an adequate remedy at law.

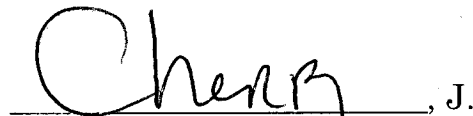
Consequently, having considered the petition and its attachments, we are not persuaded that this court's intervention by way of extraordinary relief is warranted at this time. See NRAP 21(b); SCR 105. Accordingly, we

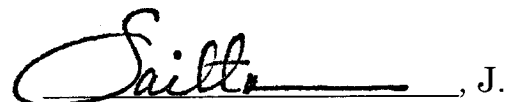
ORDER the petition DENIED.

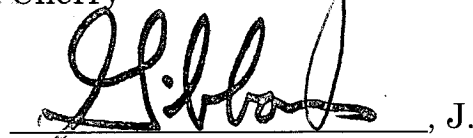

_____, C.J.
Parraguirre

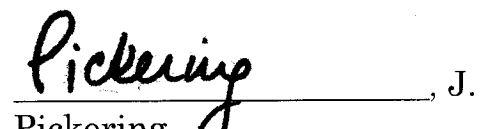

_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

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process. We do not address whether either of these positions has merit. However, we note that, until the disciplinary procedure is concluded, our intervention by way of extraordinary writ is not warranted. The reason for this is that if no discipline is imposed, then the First Amendment is not implicated; only if Hafter's statements are found to violate the rules of professional conduct are his constitutional rights potentially impacted.

cc: Law Office of Jacob L. Hafter & Associates
State Bar of Nevada/Las Vegas