

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF GARY MICHAEL
SEGAL, ESQ., BAR NO. 3220.

No. 59574

FILED

DEC 07 2012

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

ORDER DENYING RECIPROCAL DISCIPLINE

This is a petition under SCR 114 to reciprocally discipline attorney Gary Michael Segal, based on discipline imposed upon him in another state. Segal was disbarred in California based on failure to comply with terms of that state's bar suspension order. Segal has filed an opposition to the petition.

Segal's California misconduct arose from his failure to adhere to reciprocal discipline requirements in that state based on an underlying Nevada disciplinary matter. Specifically, in March 2005, Segal was ordered suspended from practicing law in Nevada for six months and one day. In re: Discipline of Gary Segal, Docket No. 44401 (Order of Suspension, March 25, 2005). In August 2008, California ordered reciprocal discipline based on the Nevada conduct, but with different terms. California stayed a two-year suspension, imposed an actual suspension of 90 days, and placed Segal on probation with one of the conditions being an order to comply with California Rule of Court 9.20(a) and (c), wherein Segal needed to notify his California clients of his

suspension and provide proof of notification to the bar, no later than November 5, 2008.

Segal never filed proof of compliance per Rule 9.20(c) nor responded to any communication from the Supreme Court of California. Thus, California initiated new disciplinary proceedings and Segal was ultimately disbarred in that state on January 28, 2011.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, either: (a) there was a lack of due process in the other jurisdiction; (b) the decision of the other jurisdiction lacked fairness due to infirmity of evidence; (c) the misconduct deserves a punishment substantially different than that imposed by the other jurisdiction; or (d) the acts do not constitute misconduct in Nevada.¹

We find that exceptions (a), (b), and (d) do not apply, but we do find that an exception based on SCR 114(4)(c) is applicable, and thus decline to order reciprocal disbarment.² However, significant punishment short of disbarment is still warranted.

The extent of punitive action required depends on an examination of mitigating and aggravating circumstances. In aggravation, we cannot overlook the five prior victims of Segal's poor

¹The Nevada equivalent of California Rule of Court 9.20 is SCR 115.

²Unlike in California, disbarment in Nevada is irrevocable. SCR 102(1).

representation in 2005, nor can we forget that Segal has been delinquent in fulfilling his CLE requirements for nearly seven years.³


But in mitigation, we do not gloss over the fact that, if true that Segal had zero California clients when the order issued, his act of noncompliance may not have been calculated or malevolent.


Given these considerations, coupled with the fact that Segal has already been suspended from practice so long that he must take and pass the bar examination and petition for reinstatement per SCR 116(2) and (5), we order that: (1) any petition for reinstatement filed by Segal must demonstrate proof that he has taken and passed the Nevada Bar Examination within the two years preceding the petition; and (2) any petition for reinstatement filed by Segal must include some offer of tangible proof in the form of an affidavit or otherwise demonstrating that he did not have any clients who were California residents as of August 27, 2008. Should Segal not furnish the required proof as part of his petition for reinstatement, we note that this court will be disinclined to approve any recommendation of reinstatement. Should however Segal offer such proof to the satisfaction of the hearing panel and should reinstatement be recommended and granted, Segal's reinstatement will still be subject to the following conditions: (1) that he will be on probation for three years from the date of reinstatement, with the terms and conditions of probation to be decided by state bar counsel; and (2) that during the three year term


³Segal was suspended separate and apart from the conduct discussed in this order for failing to meet his yearly continuing legal education requirements. In re: Continuing Legal Education, Docket No. 43912 (Order Granting Petition, September 2, 2005).

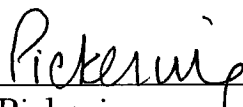
of probation, he must complete double the yearly requirement of CLE credits and submit proof of same to state bar counsel. Segal and the State Bar shall comply with all requirements of SCR 115 and SCR 121.1.

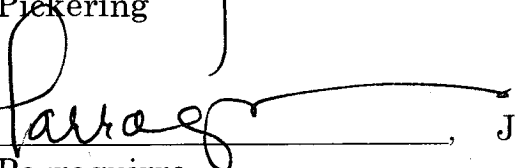
It is so ORDERED.


_____, C.J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Parraguirre

cc: Glenn M. Machado, Assistant Bar Counsel
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Gary Michael Segal
Perry Thompson, Admissions Office, United States Supreme Court

HARDESTY, J., with whom DOUGLAS, J, agrees, dissenting:

I respectfully dissent from the majority's order denying reciprocal discipline.

Per SCR 114(4)(c), the majority concludes that Segal's misconduct deserves a punishment substantially different than that imposed by the other jurisdiction, primarily because in California, disbarment is not a permanent end to an attorney's ability to practice law, where in Nevada, disbarment is irrevocable. SCR 102(1). Since disbarment means two different things in each state, the majority believes that disbarment in our state would not be true reciprocal discipline. To overcome the differences, the majority has fashioned an extensive supervision program to accommodate a lawyer who does not deserve to be accommodated, having violated the Rules of Professional Conduct of both Nevada and California.

While I acknowledge the technical differences in our two state's rules, I do not agree with the majority that the two disbarments represent punishment that is not reciprocal. While the result of a California disbarment may differ from the result of a Nevada disbarment, California still dealt out its harshest possible punishment. Thus, we too should deal our harshest possible punishment. By ordering the highest level of punishment, we would, in fact, be reciprocating California's punishment.

I do not believe a permanent end to Segal's ability to practice law is too extreme a consequence given his prior conduct. Segal has been subject to two prior suspensions from this court: one for failing to meet CLE obligations and one for poorly representing five clients. Segal never

made attempts to catch up on his CLE requirements in seven years. Further, Segal's California discipline was itself reciprocal punishment for misconduct committed in our jurisdiction. If he wanted to practice in Nevada, he should have been painstakingly precise in complying with the California bar requirements. In my mind, the ability to apply for reinstatement should be earned, and by failing to take steps to rectify his CLE situation and by not being exact in his California compliance, Segal did not earn this right. Therefore, due to his prior disciplinary record, I believe disbarment is appropriate.

Since I disagree with the majority's conclusions, I have no alternative but to dissent.

Jan Hardesty, J.
Hardesty

I concur:

Douglas, J.
Douglas