IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF MONA L. SNAPE.

No. 37025

FILED

OCT 03 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Mona L. Snape be suspended from the practice of law for one year, and that her eventual reinstatement be subject to several conditions, discussed below.

Mona Snape was admitted to practice law in Nevada in May 1993. Following her admission, she worked for Dennis Kist & Associates until sometime in 1996. Beginning in mid-1996, she maintained a solo practice in Las Vegas. Snape's license was administratively suspended in 1998 for failure to pay state bar dues.

Snape alleges that in November 1997, she received a serious head injury in an accident involving an all-terrain vehicle. She further asserts that the accident caused her to suffer from debilitating headaches and chronic pain. Snape claims that she has no documentation of her alleged medical problems because she could not afford health insurance, and so she could not afford to obtain treatment for her condition; she also testified at the disciplinary hearing that she "hate[s] doctors." Following the accident, Snape left the state for a time, and worked in various non-legal jobs. It appears that her administrative suspension occurred during this period.

Snape maintains that all of the conduct forming the basis for the complaint in this matter arose after her accident. She further asserts that she is now recovered, and estimates herself to be "90%" of her former self. She states that she is capable of practicing law, but indicates that she would "go slowly," so as not to put too much stress on herself. Snape does not contest that she engaged in most of the conduct underlying the disciplinary complaint, but asserts that the misconduct was caused by the accident and that the accident should be a mitigating factor.

01-16608

Count I of the complaint is based on Snape's representation of Eugene Shults. Snape was retained in early 1997 by Thomas Beatty, executive director of the Nevada Service Employees' Union, to evaluate a potential civil claim of Shults, a union member, against his employer. Snape failed to respond to numerous requests for information by Beatty and Shults. Shults eventually retained new counsel, but Snape failed to return Shults' file to him. Shults, through new counsel, obtained a district court order directing Snape to turn over the file, imposing $250 in sanctions, and awarding costs of $258.88 to Shults. Snape failed to pay the sanction or the costs, and Shults still did not have his file at the time of the formal hearing in this matter.

Beatty and Shults complained to the state bar. Despite the bar's repeated attempts to contact Snape about the pending grievances, Snape failed to respond. Snape finally appeared at the state bar offices in June 1999 in response to a subpoena issued by the state bar; she was given the complaint and was granted an extension of time, until July 12, 1999, to respond. She still failed to respond to the grievances.

Count II of the complaint was based on Snape's representation of Kenna Perkins. Perkins retained Snape in April 1997 for $1,500 plus costs to represent her in a discrimination suit against her employer. Snape filed a complaint on Perkins' behalf in federal court in June 1997. After November 1997, Perkins, despite repeated attempts to contact Snape, was unable to communicate with her about the case. Snape essentially abandoned the case in the middle of discovery, and failed to formally withdraw. Perkins' case was dismissed in September 1998 as a discovery sanction. Perkins only learned of the dismissal when she herself called the court in early 1999 to check on the status of her case. In February 1999, Perkins wrote a letter to the court asking for reconsideration of the dismissal; the federal court treated it as a proper person motion, and Perkins was eventually successful in reviving her claim, without Snape's assistance.

Perkins filed a fee dispute against Snape with the state bar, and obtained an arbitration award of $1,764.40. Snape failed to pay the award, despite Perkins' demand. Perkins also filed an ethics grievance. Despite numerous requests by bar counsel, Snape failed to respond to the grievance. Even after meeting with bar counsel and promising to file an answer to the complaint, and despite having been granted an extension of time, she still failed to respond.

Count III of the complaint was based on Snape's representation of Joseph Magenti. Magenti retained Snape in August 1996, for $1,500 plus costs, to represent him in a federal lawsuit. The complaint was filed in November 1996, and Magenti worked closely with Snape on his case until February 1998. From then on, Magenti was unable to communicate with Snape at all. Snape essentially abandoned the lawsuit, and failed to formally withdraw. Magenti wrote to the federal judge assigned to his case, advised him that he could not communicate with his counsel, and asked for time to retain new counsel. He was successful in doing so, and was able to avoid the dismissal of his lawsuit. After he had retained new counsel, Magenti and new counsel were unable to obtain Magenti's file from Snape. Consequently, Magenti filed a grievance with the bar. Snape finally returned Magenti's file in July 2000, after the state bar filed a formal complaint against her. Despite bar counsel's numerous requests, Snape failed to respond to the grievance.

A formal disciplinary complaint was filed on October 13, 1999. Snape attempted to evade service of the complaint by telling the process server that she was "Lisa Smith," and that the owner of the house, Snape, did not live there. The process server nevertheless left the complaint with her, and later, after looking at Snape's bar application photo, identified Snape as the woman who had called herself "Lisa Smith." Snape testified that she pretended to be someone else because she was a woman living alone, without a close neighbor, and because the process server was a stranger.

A formal hearing was set for April 19, 2000, and was contemplated as a default hearing, as Snape had never answered the complaint. Snape personally appeared at the hearing and indicated that she would like to defend the matter on the merits. The panel chair continued the matter so that Snape could respond to the complaint.

In her response, Snape admitted to most of the conduct alleged, except as follows. She denied that she had represented Shults; Snape asserted that the Union was her client. Also, while she admitted that she had not filed proper motions to withdraw in the Perkins and Magenti matters, she asserted that she had sent letters to those clients indicating that she was forced to withdraw because of her medical problems. She later filed an amended response stating that she had found some documents in her garage, including the retainer agreement with the

Union and other correspondence in the Shults matter, as well as the Magenti file.

The continued formal hearing was held on October 4, 2000, and the panel entered its Findings of Fact, Conclusions of Law, Decision and Recommendation on October 19, 2000. The panel found that with respect to Count I, the Shults/Beatty grievance, Snape had violated SCR 153 (diligence), SCR 154 (communication), SCR 165 (safekeeping property – failure to turn over file), and SCR 200(2) (failure to respond to disciplinary authority). With respect to Count II, the Perkins grievance, the panel found that Snape had violated SCR 151 (competence), SCR 153 (diligence), SCR 154 (communication), SCR 165 (safekeeping property – failure to turn over file), and SCR 200(2) (failure to respond to disciplinary authority). With respect to Count III, the Magenti grievance, the panel found that Snape had violated SCR 153 (diligence), SCR 154 (communication), SCR 165 (safekeeping property – failure to turn over file), and SCR 200(2) (failure to respond to disciplinary authority).

The panel recommended that Snape be suspended for one year, to protect the public. The panel further recommended that before Snape could petition for reinstatement, she should be required to:

- Pay the sanction and costs in the Shults matter;
- Pay the fee dispute arbitration award to Perkins; and
- Be evaluated by a neurologist or neurosurgeon and a neuropsychologist to obtain reports demonstrating that she was competent to resume the practice of law.

The panel further recommended that, following her reinstatement, Snape be placed on probation for two years, subject to several conditions:

- That Snape enter into a mentorship program with the state bar for the probationary period;
- That Snape maintain malpractice insurance during the probationary period;
- That Snape pay the state bar's costs in this matter by the end of the probationary period, both for the formal proceedings and for services during the probationary period;
- That Snape cooperate with the state bar and comply with all requests for information during the probationary period;
- That Snape maintain a current address with the state bar pursuant to SCR 79;

- That Snape submit quarterly reports attesting that she has maintained regular communication with her clients; and
- That any further grievances against Snape during the probationary period be brought to the panel's attention for consideration of appropriate discipline.

This automatic appeal followed. Snape filed a timely opening brief, to which the state bar filed an answering brief.

Snape first argues that her due process rights were denied because of the delay from the first hearing, in April 2000, to the conclusion of the hearing in October 2000. SCR 105(2)(c) provides that the formal hearing shall be set within 45 days of assignment to a panel, and that the chair may allow additional time, not to exceed 90 days, within which to conduct the hearing. Snape argues that the time from assignment to the panel on April 12, 2000, to the conclusion of the formal hearing on October 4, 2000, was 184 days, much longer than the time permitted by SCR 105.

The state bar asserts that Snape's due process rights were not violated, and points out that the delay was caused by Snape, as the original hearing set for April 19, 2000, was continued for the sole purpose of allowing her to mount a very tardy defense to the violations charged. The state bar also relies on SCR 119(2), which specifically provides that time limits in the rules are not jurisdictional, and that failure to observe the limits is not grounds for abatement of any disciplinary proceeding.

We agree with the state bar that the delay did not violate Snape's due process rights. She has not shown that she suffered any prejudice or detriment because of the delay; instead, the delay was to her benefit, so that she could file a response to the complaint and defend the disciplinary proceedings on the merits. In addition, SCR 119(2) clearly states that delay is not grounds for abatement of a disciplinary proceeding.

Snape next asserts that a hearing panel may impose only those forms of discipline explicitly stated in SCR 102, and consequently, she argues that the conditions for reinstatement set forth in the panel's recommendation are impermissible. Snape also asserts that she does not have health insurance, or the funds to obtain medical treatment, and that the panel's conditions place an unsustainable burden on her. She also claims that neither the licensing board for psychologists nor the medical school at the University of Nevada, Las Vegas, has heard of a sub-specialty called "neuropsychology," and so the condition requiring her to see a neuropsychologist is impossible to fulfill.

The state bar responds that the conditions were permissible, for four primary reasons. First, diversion, a form of probation, is explicitly recognized as a permissible form of discipline in SCR 105.5. Second, under SCR 102, an attorney suspended for more than six months may only be reinstated upon proof that the attorney is rehabilitated, and so the state bar argues that the panel may suggest conditions as a way for the attorney to demonstrate rehabilitation. Third, the state bar notes that under SCR 116, reinstatement may only be granted upon a showing that the attorney has the appropriate moral qualifications, competency, and learning in the law to be readmitted to practice. Consequently, the state bar argues, this showing may be made if the attorney meets conditions such as those specified by the panel in this case. Finally, the state bar points out that this court has previously approved similar "remedial" conditions in other cases, and that this court's inherent authority over the legal profession provides a basis for many forms of discipline. The state bar also notes that if "neuropsychology" is not a recognized discipline in Nevada, then consultation and evaluation by a psychologist would address the panel's concerns.

Remedial conditions such as those recommended by the hearing panel can be an appropriate form of discipline in suitable cases. In the past, this court has frequently approved probationary conditions or conditions for reinstatement that bear a cognizable relationship to the misconduct at issue. For example, if an addiction impacted the lawyer's conduct, then appropriate conditions could include requiring treatment for the addiction. In addition, SCR 105.5(6)(b) contemplates that remedial programs are not limited to diversion cases, but that they may be part of formal discipline as well.

In this case, Snape asserted that her misconduct was caused by her injuries from the all-terrain vehicle accident. But she submitted no evidence other than her own testimony to show that she was even involved in an accident. She has received no treatment for her injuries, and has not been evaluated for possible continuing effects. We conclude that to protect future clients, it is entirely appropriate to require Snape to demonstrate that she is not still adversely affected by the accident.

In addition, while she claims to feel better, even she estimates herself to be only "90%" of her pre-accident self. She also testified at the disciplinary hearing that she felt a great deal of stress even before the accident, and expressed her wish to resume the practice of law slowly, so

that her stress level did not rise too fast or too high. This concern indicates that Snape may still not be functioning at full capacity; alternatively, it could mean that Snape is not suited to practice law as a solo practitioner, even at full capacity. It is well-known that members of the legal profession may be subject to very high stress levels; if Snape is not able to tolerate this stress, whether as a result of her injuries or otherwise, then the recommended conditions are appropriate to ensure that her future clients are not endangered.

Finally, we note that several other jurisdictions have recognized that remedial conditions serve the purposes of attorney discipline, and have approved conditions similar to those recommended here. For example, the Arizona Supreme Court has noted that in addition to other purposes served by lawyer discipline, discipline can assist in the rehabilitation of the lawyer.[1] Similarly, in a case involving a lawyer's lack of diligence caused in great part by his poor office procedures, the Delaware Supreme Court held that conditions for reinstatement after a disciplinary suspension "should include specific remedial measures relating directly to [the lawyer's] lack of organizational skills and insensitivity to professional obligations."[2] Conditions that have been imposed by other courts include additional CLE requirements,[3] restitution to harmed clients,[4] letters of apology to harmed clients,[5] drug treatment,[6] and consultation with bar offices concerning office procedures.[7]

In light of this substantial authority and the facts of this case, the probationary conditions recommended by the panel are a permissible form of discipline. If, as Snape asserts, Nevada does not have neuropsychologists, then evaluation by a psychologist will suffice.

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[1]In re Scholl, 25 P.3d 710, 712 (Ariz. 2001).

[2]Matter of Mekler, 669 A.2d 655, 670, clarified by 672 A.2d 23 (Del. 1995).

[3]Matter of Hohn, 832 P.2d 192 (Ariz. 1992); Mekler, 669 A.2d at 671.

[4]People v. Smith, 937 P.2d 724 (Colo. 1997) (requiring that lawyer pay restitution before being permitted to seek reinstatement); Matter of Discipline of Babilis, 951 P.2d 207 (Utah 1997).

[5]Mekler, 669 A.2d at 671.

[6]The Florida Bar v. Temmer, 753 So. 2d 555 (Fla. 1999).

[7]Mekler, 669 A.2d at 671.

Next, Snape also argues that the medically-related conditions for reinstatement are based on questions and testimony from one of the panel members, that the panel member is not a doctor and so was unqualified to state any medical opinion, and that consequently the conditions are improper. This contention is without merit. During questioning about whether Snape had received any treatment for her injuries, one panel member commented that he had suffered a head injury, and a certain device was used in his recovery. The panel member merely suggested that perhaps something similar could help Snape, and that she should look into it. The panel member did not offer an improper medical "opinion."

Next, we must consider whether the violations found by the panel are supported by clear and convincing evidence.[8] Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment.[9]

The only defense raised by Snape is in the Shults matter; Snape contends that the union, through Beatty, was her client, not Shults. We are not persuaded by this contention, for two reasons. First, both Beatty and Shults testified at the disciplinary hearing that Snape was retained to represent Shults; the union was only paying the bill. This arrangement was similar to one commonly found in the insurance context, where the insurance company will pay a lawyer to defend the insured. The client is the insured, not the insurer. Second, even if Snape's client was the union, she still failed to communicate with Beatty, and failed to use diligence in performing the task assigned to her by Beatty -- representing Shults. She also failed to turn over the file to either Beatty or Shults, and failed to respond to bar counsel.

We conclude that the panel's findings are supported by clear and convincing evidence. Snape did not seriously contest any of the allegations against her, and the record reveals that she essentially abandoned her clients sometime between November 1997 and March 1998.

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[8]In re Stuhff, 108 Nev. 629, 635, 837 P.2d 853, 856 (1992).

[9]In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984).

Further, the discipline recommended by the panel is appropriate. The suspension serves to protect the public and provides Snape with time to address her condition. In addition, the terms of the panel's recommendation require Snape to seek medical evaluation, which is to her benefit as well as necessary to the public interest. Finally, the restitution conditions are similar to those approved in the past, and are an appropriate condition to reinstatement. Accordingly, we approve the panel's recommendation. Snape shall be suspended from the practice of law for one year.[10] Any reinstatement shall be subject to the conditions set forth by the hearing panel. Additionally, should Snape be reinstated, she shall be placed on probation for two years, subject to the hearing panel's recommended conditions.

It is so ORDERED.[11]

Maupin, C.J.

Young, J.

Shearing, J.

Agosti, J.

Rose, J.

Leavitt, J.

Becker, J.

cc: Richard J. Pocker, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Perry Thompson, Admissions Office, U.S. Supreme Court
Mona L. Snape

[10]Under SCR 115, the suspension is effective fifteen days from the date of this order.

[11]This constitutes our final disposition of this case. Any reinstatement proceedings should be filed under a new docket number.