

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DISCIPLINE OF
DANIEL HURT, ESQ.

No. 37162

FILED

FEB 23 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF DISBARMENT

This is an automatic appeal from a decision by a Southern Nevada Disciplinary Board hearing panel, recommending that attorney Daniel Hurt be disbarred. The hearing panel found that Hurt had violated SCR 154 (communication), SCR 158(1) (conflict of interest: prohibited transactions), and SCR 165 (safekeeping property). The panel also found that the evidence demonstrated a pattern of misconduct that should be considered as an aggravating factor. Based on these findings, the panel recommends that Hurt be disbarred, and that he be ordered to pay the costs of the disciplinary proceeding.

The violations of SCR 154 were based on the panel's finding that Hurt failed to keep his client reasonably informed, that he failed to promptly comply with the client's requests for information, and that he failed to provide the client with sufficient information concerning Hurt's investment of funds on the client's behalf. The violations of SCR 158(1) were based on the panel's finding that Hurt had invested funds in the names of both himself and his client, that he failed to discuss or disclose the terms of the investment in writing to his client, that he failed to provide the client with a reasonable opportunity to seek the advice of independent counsel, and that he failed to obtain the client's written consent to the transaction. The violations of SCR 165

were based on the panel's finding that Hurt commingled his personal funds with those in his client trust account to avoid reporting them as income, that Hurt commingled personal funds with those of his client in various "investment" accounts, that he transferred client funds out of state without the client's consent, that Hurt invested funds in which his client and third-party health care providers claimed an interest, without notifying the client or the health care providers and without providing an accounting to either the client or the health care providers, that Hurt failed to promptly deliver funds acknowledged to be owed to the health care providers, and that Hurt failed to keep disputed funds separate from his own after becoming aware of a dispute between himself and his client over their respective interests in the funds.

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.¹ Ethical violations must be proven by clear and convincing evidence. Such evidence "need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn."²

We conclude that clear and convincing evidence supports the panel's findings. We also conclude that the panel's finding of a pattern of misconduct is supported by clear and convincing evidence, and agree that this pattern is properly considered as an aggravating factor. Finally, we

¹In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984).

²In re Stuhff, 108 Nev. 629, 635, 837 P.2d 853, 856 (1992) (quoting Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

conclude that the recommended discipline is appropriate in light of the nature of Hurt's misconduct. Accordingly, we adopt the recommendation of the panel, and disbar Hurt. Hurt and the state bar shall comply with the provisions of SCR 115, and Hurt shall pay the costs of the disciplinary proceeding.

It is so ORDERED.

Maupin, C.J.
Maupin

Young, J.
Young

Shearing, J.
Shearing

Agosti, J.
Agosti

Rose, J.
Rose

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Richard J. Pocker, Chair,
Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Wayne Blevins, Executive Director
Dee Shore, Admissions Office, U.S. Supreme Court
Daniel Hurt