

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
ALEX B. GHIBAUDO, BAR NO. 10592

No. 85676

FILED

MAR 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from findings of fact and conclusions of law issued by a hearing panel of the Southern Nevada Disciplinary Board. The panel recommended that attorney Alex Ghibaudo be issued a letter of caution and required to satisfy certain conditions for a period of not less than 10 years.

Mr. Ghibaudo has filed a motion to dismiss this appeal for lack of jurisdiction. He asserts that a notice of appeal from a decision of a hearing panel recommending a letter of caution is governed by SCR 105(3)(a). SCR 105(3)(a) states that a decision is final and effective 30 days after service unless an appeal is taken within that time. However, the State Bar did not file its notice of appeal until 31 days after service of the decision.¹

The State Bar opposes the motion to dismiss. It concedes that the notice of appeal was filed one day after directed by NRAP 4(a)(1) and SCR 105(3)(a). However, dismissal is not required, it asserts, because (1) SCR 119 provides that failure to abide by time limitations does not justify

¹The notice of appeal was filed with the State Bar but has not been formally transmitted to this court. A copy is attached to the motion to dismiss.

abatement of disciplinary hearings, and (2) public policy favors matters being heard on their merits. We agree with Mr. Ghibaudo.

“Except as provided in Rule 105(3)(b), a decision [of a hearing panel] is final and effective 30 days from service, unless an appeal is taken within that time.” SCR 105(3)(a). To the extent it is not inconsistent with the Supreme Court Rules, an appeal from a hearing panel decision shall be treated the same as an appeal from a district court judgment in a civil matter and is governed by the Nevada Rules of Appellate Procedure. *Id.* A notice of appeal in a civil matter must be filed within 30 days after service of written notice of entry of an order. NRAP 4(a)(1).

The panel’s decision was electronically served on Mr. Ghibaudo’s counsel on October 17, 2022. Service of the decision is deemed notice of entry of decision for purposes of appeal. SCR 105(3)(a). Therefore, the decision became final and effective on November 16, 2022.² *Id.* The State Bar of Nevada untimely filed the notice of appeal on November 17, 2022. *Id.*; NRAP 4(a)(1). In accordance with the Nevada Rules of Appellate Procedure, an untimely filed notice of appeal fails to vest jurisdiction in this court. *See* NRAP 4(a)(1); *Morrell v. Edwards*, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982); *see also* NRAP 3(a)(1) (except as otherwise provided, an appeal “may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4”).

The State Bar of Nevada’s reliance on SCR 119 is unavailing. The State Bar correctly represents that SCR 119(2) provides that time and time limitations are not jurisdictional. Further, “[f]ailure to observe

²The State Bar does not dispute that SCR 105(3)(a), rather than SCR 105(3)(b) applies. SCR 105(3)(b) governs decisions recommending a public reprimand, suspension, or disbarment.

directory time intervals may result in contempt of the appropriate disciplinary board or hearing panel having jurisdiction, but will not justify abatement of any disciplinary investigation or proceeding.” SCR 119(2). However, SCR 119(2) only applies “[e]xcept as is otherwise provided in these rules” And, as described above, SCR 105(3)(a) specifically otherwise provides—“[A] decision [of a hearing panel] is final and effective 30 days from service, unless an appeal is taken within that time.”³

The State Bar’s appeal to public policy is also unavailing. The State Bar points out that the overarching purpose of disciplinary proceedings is to protect the public from those persons unfit to serve as attorneys and to maintain public confidence in the bar. The State Bar also cites this court’s policy to decide cases on their merits. But the timely filing of a notice of appeal is mandatory and jurisdictional. *Winston Prod. Co. v. DeBoer*, 122 Nev. 517, 519, 134 P.3d 726, 728 (2006). This court is unable to extend the time to file a notice of appeal. NRAP 3(a)(2) (“An appellant’s failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court to act as it deems appropriate, including dismissing the appeal.”); NRAP 26(b)(1)(A) (“[T]he court may not extend the time to file a notice of appeal except as provided in Rule 4(c).”). For this same reason, to the extent the State Bar contends that its untimely filing of the notice of

³The State Bar’s reliance on this court’s unpublished decisions in *In re Discipline of Donohue*, Docket No. 69228 (*Order of Suspension*, July 22, 2016), and *In re Discipline of Stuhff*, Docket No. 33875 (*Order of Suspension*, January 19, 2000) is misplaced as those cases did not involve time limitations to file the notice of appeal.

appeal should be overlooked based on a finding of excusable neglect, this court is unable to do so.

Because the notice of appeal was untimely filed, this court lacks jurisdiction over this appeal. The motion to dismiss is granted, and this court

ORDERS this appeal DISMISSED.⁴


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Reisman Sorokac
Rob W. Bare
State Bar of Nevada/Las Vegas

⁴The parties have filed a joint motion to seal medical records located at pages 730-825, 1048-1080, and 1298-1318 of the record of bar proceedings. The record transmitted to this court ends on page 632. Therefore, the motion is denied without prejudice.