

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
KERRY P. FAUGHNAN, BAR NO.  
12204.

No. 87052

FILED

OCT 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF SUSPENSION*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Kerry P. Faughnan be suspended from the practice of law in Nevada for three years, with all but six months stayed. The recommended discipline is based on Faughnan's violation of RPC 8.4 (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Faughnan committed the violation charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's findings of fact that Faughnan violated RPC 8.4 as those findings are supported by substantial evidence and are not erroneous. See SCR 105(3)(b); *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). In particular, the record shows that Faughnan pleaded guilty to conspiracy to commit theft, a gross misdemeanor, after obtaining unemployment compensation benefits that he was not entitled to receive. He has paid restitution in the amount of \$37,790.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Faughnan intentionally violated a duty owed to the profession and the public (misconduct). The public was injured by Faughnan's misconduct through his misappropriation of government money for unemployment compensation benefits. The baseline sanction before consideration of aggravating and mitigating circumstances is disbarment. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 5.11(a) (Am. Bar Ass'n 2017) ("Disbarment is generally appropriate when . . . a lawyer engages in serious criminal conduct, a necessary element of which includes . . . theft . . . or conspiracy . . . to commit any of these offenses.").

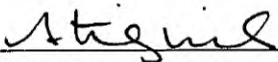
The hearing panel found, and the record supports the following aggravating circumstances under SCR 102.5(1): (1) dishonest or selfish motive, (2) pattern of misconduct, (3) substantial experience in the practice of law, and (4) illegal conduct. The panel also found, and the record supports four mitigating circumstances under SCR 102.5(2): (1) absence of prior disciplinary record, (2) personal or emotional problems in that Faughnan suffered from clinical depression and substance abuse issues while undergoing contentious divorce proceedings, (3) timely good faith effort to make restitution or to rectify consequences of misconduct, (4) full and free disclosure to disciplinary authority or cooperative attitude toward proceeding, (5) interim rehabilitation, and (6) remorse.

Considering all four factors, we agree with the hearing panel that a downward deviation from the baseline sanction of disbarment is warranted. We further agree that the recommended partially stayed suspension is sufficient to serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (noting purpose of attorney discipline is to protect the public, the courts, and the legal profession). Additionally, we agree that the recommended conditions of probation are appropriate.

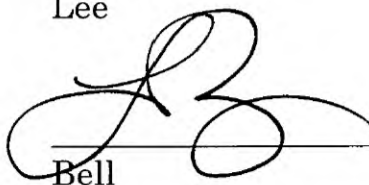
Accordingly, we hereby suspend attorney Kerry P. Faughnan from the practice of law in Nevada for three years, with all but six months stayed, retroactive to February 16, 2023, pursuant to this court's prior suspension order. *In re Discipline of Faughnan*, No. 85940, 2023 WL 3179684 (Nev. Feb. 16, 2023) (Order Imposing Temporary Suspension and Referring Attorney to Disciplinary Board). After the six-month actual suspension, Faughnan will be on probation and monitored by the State Bar for the remaining 30 months subject to the following conditions: (1) Faughnan must find a mentor that is approved by the State Bar to mentor him during the 30-month period; (2) his mentor must submit quarterly reports to the State Bar regarding Faughnan's progress; (3) Faughnan must continue receiving therapy from Debora Tretiak, M.S., or another therapist approved by the State Bar; (4) Tretiak, or an approved therapist, must submit quarterly reports to the State Bar regarding Faughnan's progress; (5) Faughnan must submit to random alcohol and drug testing; and (6) Faughnan must not open a solo practice during the three-year suspension period. Additionally, Faughnan must pay the costs of the disciplinary proceedings, including fees in the amount of \$2,500, *see* SCR 120(1), as

invoiced by the State Bar within 30 days of his receipt of the State Bar's invoice. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

 \_\_\_\_\_, C.J.  
Stiglich

 \_\_\_\_\_, J.  
Lee

 \_\_\_\_\_, J.  
Bell

cc: Chair, Southern Nevada Disciplinary Board  
Glenn Machado  
Rob W. Bare  
Bar Counsel, State Bar of Nevada  
Executive Director, State Bar of Nevada  
Admissions Office, U.S. Supreme Court