

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF DWIGHT E.  
DUNCAN.

No. 38215

FILED

JAN 08 2002

JANE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF DISBARMENT

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Dwight E. Duncan be disbarred, that he reimburse all retainers paid by the clients harmed by his misconduct, and that he be ordered to pay the costs of the disciplinary proceeding. We temporarily suspended Duncan under SCR 102(4) on November 30, 2000, pending completion of the formal disciplinary proceedings.

A five-count disciplinary complaint was filed against Duncan on November 14, 2000, and a second one-count complaint was filed on April 19, 2001. The complaints were consolidated for a formal hearing by order of the Southern Nevada Disciplinary Board chair.

A process server attempted to personally serve the complaints upon Duncan both in Nevada and Florida, but despite diligent efforts was unable to do so. Copies of all relevant documents were sent by certified mail to Duncan's last-known address in Nevada, but were returned as undeliverable. The state bar also sent copies of all relevant documents, including the complaints, notice of intent to take default, and notice of the formal hearing date, by certified mail to an address in Florida. One week before the formal hearing, a state bar employee was able to contact Duncan by telephone, in Florida, and confirmed that the Florida address was correct. Duncan indicated that he would respond to the complaints before the hearing date, but he failed to do so. He faxed a letter to the state bar on the morning of the formal hearing, in which he acknowledged

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receipt of the complaints and other documents, and stated that he would not appear personally or through counsel due to the cost of traveling from Florida on short notice. As Duncan had failed to file a responsive pleading or otherwise defend against the complaints, the formal hearing proceeded on a default basis.<sup>1</sup>

The first count of the November 14, 2000, complaint concerned Duncan's representation of John Llamas. On August 2, 1999, Llamas retained Duncan to represent him in a Chapter 7 bankruptcy. Duncan quoted a fee of \$625 and required an initial payment of \$350, which Llamas paid. Duncan told Llamas that the bankruptcy petition would be filed by the end of the week, August 6, 1999.

On August 5, Duncan told Llamas that the petition had been filed, and that Llamas had to come in and sign additional papers. They arranged to meet on August 11. Llamas arrived, and was told that Duncan's secretary had been diagnosed with cancer and the papers were not ready. Llamas later discovered that Duncan did not have a secretary. They arranged to meet on August 13. Llamas arrived but Duncan was not there. On August 16, Duncan left some blank forms on his porch for Llamas to sign.

Duncan then postponed a meeting several times, and finally admitted that he had not filed the bankruptcy petition. Duncan promised that it would be filed by August 23. He and Llamas arranged to meet on August 24 so that Duncan could give Llamas copies of the paperwork. Duncan canceled the appointment about an hour before they were to meet. Llamas asked if the bankruptcy had been filed, and Duncan said it had. Llamas was then unable to reach Duncan for the next three weeks.

Finally, on September 21, Llamas decided to see if he could find Duncan. When Llamas arrived at the trailer that served as Duncan's home and office, the door was open, the lights were on, and music was playing, but he did not see Duncan. He sat down at Duncan's desk to

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<sup>1</sup>See SCR 105(2) (providing that when no responsive pleading is filed, the charges shall be deemed admitted).

wait. After about fifteen minutes, Duncan emerged from a closet and appeared startled to see Llamas still there. He mumbled that Llamas should telephone before he visited. When Llamas asked for copies of the bankruptcy papers, Duncan told him that his law clerk had inadvertently taken the file to Oklahoma, but that the law clerk would fax copies of the papers. Llamas then contacted the bankruptcy court and found that nothing had been filed on his behalf. Duncan told Llamas that someone named "Roscoe" was on his way to Las Vegas to file the bankruptcy. They arranged to meet on September 22. When Llamas arrived, the trailer was locked. On September 23, Duncan called Llamas and told him to come pick up copies of his filed documents. Llamas did so, and asked for the rest of the documentation. Duncan said he needed more time to copy it, and that Llamas would have to come back in on September 25. Llamas did so, and Duncan could not be found. Llamas then complained to the state bar. Llamas later learned that a "skeleton" bankruptcy petition had been filed, and that substantial documentation still had to be completed and filed. The disciplinary complaint charged violations of SCR 153 (diligence), SCR 154 (communication), SCR 166(4) (declining or terminating representation), and SCR 203(3) (misconduct involving dishonesty, fraud, deceit or misrepresentation).

The second count was based on Duncan's representation of John and Carol Laird. The Lairds retained Duncan for \$155 to file "motions/paperwork" with the bankruptcy court. A hearing was supposed to be scheduled in connection with the filing. Before the hearing, Mr. Laird called Duncan and was told that Duncan would return the call within thirty minutes. The call was never returned. On the date set for the hearing, Mr. Laird went to bankruptcy court and was told that the hearing had been canceled because Duncan failed to file the necessary paperwork. The Lairds attempted to contact Duncan for several months, and were unsuccessful. They then filed a bar grievance. Duncan did not respond to the state bar's request for information. The disciplinary complaint charged violations of SCR 153 (diligence), SCR 154 (communication), and SCR 200(2) (failing to respond to disciplinary authority).

The third count concerned Duncan's representation of a Mr. Killion. Killion retained Duncan to help him with a property matter, and entrusted several original documents to Duncan for his review. Killion later sought a return of his file from Duncan, but Duncan failed to turn over the file. Killion then filed a bar grievance. Duncan did not respond to the state bar's request for information. The disciplinary complaint charged violations of SCR 166(4) (declining or terminating representation) and SCR 200(2) (failing to respond to disciplinary authority).

The fourth count related to Duncan's representation of Stacy Dockwell. In July 1999, Dockwell retained Duncan to represent her in a divorce and other matters, for \$300. Duncan told her that he would be able to obtain an immediate order for child support. However, it was not until September that Duncan told Dockwell that he had filed the divorce complaint. He told her that a hearing was set for October, then repeatedly told her it had been postponed. After December, Duncan failed to communicate with Dockwell. Dockwell finally called the court, and was told that nothing had been filed on her behalf. Dockwell and a friend went to Duncan's trailer unannounced, at about 3:45 p.m. Duncan was upset that they had come without an appointment. Duncan told Dockwell that he could not meet with her at that time, as he was leaving for court in a few minutes for a 4:00 p.m. hearing. Dockwell and her friend drove a short distance down the road and watched the trailer. By 4:15 p.m., Duncan still had not left for his supposed court hearing. Duncan did not respond to the state bar's request for information. The disciplinary complaint charged violations of SCR 153 (diligence), SCR 154 (communication), SCR 200(2) (failing to respond to disciplinary authority), and SCR 203(3) (misconduct involving dishonesty, fraud, deceit, or misrepresentation).

The fifth count concerned Duncan's representation of Irvin and Margaret Kelly. The Kellys retained Duncan for \$219 to defend them in an action, beginning with filing the answer to the complaint. Duncan apparently prepared a draft answer, but did not file it. Consequently, a default and default judgment were entered against the Kellys, and their wages were garnished. The Kellys have retained new counsel and have

been forced to consider filing bankruptcy. Duncan did not respond to the bar's request for information. The complaint charged violations of SCR 153 (diligence) and SCR 200(2) (failing to respond to disciplinary authority).

The bar's April 19, 2001 complaint added one more count, related to Duncan's representation of Leslee Lang. Lang retained Duncan in March 2000 to defend an action filed by Lang's brother, Scott Zieske, concerning a family partnership. Duncan failed to inform Lang that Zieske's counsel had previously represented Duncan in a criminal case, in which Duncan was charged with driving under the influence. Duncan failed to advise Lang of telephone conferences with Zieske and his counsel. He also told Lang that pursuing the relief she sought would require many court hearings for more than a year, and that she would incur significant attorney fees. The state bar's letter requesting a response to Lang's grievance, sent to Duncan's address on file with the bar, was returned as undeliverable, and an investigator was unable to locate Duncan. The complaint charged violations of SCR 79 (address of member), SCR 151 (competence), SCR 153 (diligence), SCR 154 (communication), SCR 157 (conflict of interest), and SCR 200(2) (failing to respond to disciplinary authority).

Under SCR 105(2), the charges were deemed admitted when Duncan failed to answer the complaints. The panel found that the state bar had met and exceeded its duty to serve Duncan under SCR 109, and that Duncan had actual notice of the proceedings. Based on the charges, the panel recommended that Duncan be disbarred. This automatic appeal followed. Duncan did not file a brief and has not communicated with this court in any way.

Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation; we must examine the record anew and exercise

independent judgment.<sup>2</sup> Having reviewed the record, we conclude that the panel's recommendation should be approved in its entirety.

The record reflects that the state bar exercised diligent efforts to inform Duncan of the proceedings against him, well in excess of SCR 109's requirements.<sup>3</sup> Duncan failed to file a responsive pleading to the complaint, failed to appear at the formal hearing personally, through counsel or telephonically, and did not request a continuance. Accordingly, proceeding on a default basis was appropriate. The record also demonstrates a pattern of misconduct by Duncan, and an outright abandonment of his clients and his practice. In light of these factors, disbarment is warranted.

Accordingly, Duncan is disbarred. In addition, Duncan shall reimburse the full amount of all retainers paid by the clients described in the complaints, and shall pay the costs of the disciplinary proceedings. Duncan and the state bar shall comply with the notice requirements of SCR 115.

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

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<sup>2</sup>In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984).

<sup>3</sup>See SCR 109(1) (providing that service of the complaint shall be made by personal service or by registered or certified mail at the current address shown in the state bar's records or other last-known address).

cc: Richard J. Pocker, Chair,  
Southern Nevada Disciplinary Board  
Rob W. Bare, Bar Counsel  
Allen W. Kimbrough, Executive Director  
Perry Thompson, Admissions Office,  
Supreme Court of the United States  
Dwight E. Duncan