

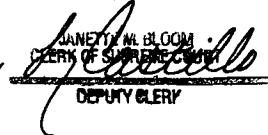
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF RICHARD L.
PIPKINS, ATTORNEY AT LAW.

No. 39408

FILED

MAY 21 2003

JY 
JANET M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DENYING PETITION TO SET ASIDE DISCIPLINE

Suspended attorney Richard A. Pipkins has filed this petition, asking that this court set aside his May 28, 1993 suspension, as modified by order dated April 28, 1995.¹ Pipkins was suspended for three years starting May 28, 1993, and reinstatement was conditioned on his successful passage of the Nevada bar examination and the Multistate Professional Responsibility Examination. In addition, the suspension order indicated that upon any application for reinstatement, the hearing panel could consider whether Pipkins' reinstatement should be conditioned on restitution for any losses caused by his conduct.

¹See Pipkins v. State Bar of Nevada, Docket Nos. 19449 and 20280 (Order of Suspension, May 28, 1993), cert. denied 114 S. Ct. 449 (1993); Pipkins v. State Bar of Nevada, Docket No. 20280 (Order Granting Rehearing and Modifying Discipline, April 28, 1995), cert. denied 116 S. Ct. 184 (1995).

Since his suspension, Pipkins has filed an “emergency petition” seeking permission to sit for the 1995 bar exam, as well as a petition seeking “immediate reinstatement.”² Both of these petitions were denied. Now, Pipkins seeks to “set aside” the suspension.³ Pipkins asserts that “newly discovered evidence” demonstrates that he is innocent of the ethical violations he was found to have committed, and that his suspension should be immediately set aside.⁴

We have reviewed the petition and its supplement, and it appears that, with one exception, all of the “new” evidence offered by Pipkins was considered in this court’s previous orders.

First, Pipkins claims that a 1995 affidavit from Judge Joseph Pavlikowski demonstrates that he did not make any misrepresentations to

²See Pipkins v. State Bar of Nevada, Docket No. 20280 (Order Denying Petition, June 29, 1995); In re: Reinstatement of Richard A. Pipkins, Docket No. 28648 (Order Denying Petition for Immediate Reinstatement, July 8, 1996).

³As authority for the petition, Pipkins cites “NRAP 60(b).” No such rule exists. We assume that Pipkins analogizes to NRCP 60(b). Pipkins also invokes the doctrine of coram nobis. We note that this writ is not recognized in Nevada. See U.S. v. Beggerly, 118 S. Ct. 1862 (1998) (noting that Fed. R. Civ. P. 60(b) replaced the writ of coram nobis in civil cases); NRCP 60(b) advisory committee’s note (stating that reference in federal rule to “writs not in use in Nevada” omitted).

⁴We note that NRCP 60(b) does not include newly discovered evidence as a basis for setting aside a judgment. Compare Fed. R. Civ. P. 60(b)(2).

the court. In the affidavit, Judge Pavlikowski states that the matter was taken off calendar because the defendants had not been served, and that nothing Pipkins said in chambers affected his decision. He also states that he is "unaware" of any misrepresentation by Pipkins. Initially, we note that an eight-year-old affidavit can hardly be considered "new" evidence. Moreover, Pipkins previously presented this affidavit in connection with his petition for immediate reinstatement, and presented a substantially similar affidavit in connection with his petition for rehearing of the suspension order. We conclude that the affidavit has been fully considered, and that relief on this basis is not warranted.

Next, Pipkins argues that the disciplinary hearing panel that sat for the proceedings resulting in his suspension was tainted by the participation of an attorney, Gary Goodheart, who was biased against him. Pipkins' arguments concerning Goodheart's bias have been fully considered in the previous proceedings in this court, and were found to be without merit. We decline to consider them yet again.

Finally, Pipkins asserts that the state bar complaint against him was triggered when First Interstate Bank secretly provided former bar counsel with a copy of a 1990 default judgment against Pipkins, of which Pipkins claims to have been unaware until after the suspension proceedings were concluded. In 1997, Pipkins successfully moved to have the default judgment set aside. Pipkins contends that as the default judgment has been set aside, so must his suspension, which would not have been imposed but for the default judgment.

The order setting aside the default judgment, entered on August 18, 1997, is the only evidence that could arguably be considered “new,” in that the order was entered following the final order in Pipkins’ last petition to this court.⁵ Nevertheless, Pipkins has not demonstrated that his suspension should be set aside on this basis.

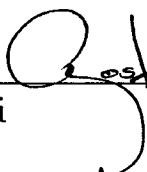
First, while the special prosecutor filed a new complaint in November 1990, following a remand by this court, the state bar’s first complaint concerning these charges was filed in late 1988 or early 1989. The disciplinary proceedings, begun at the latest in 1989, could hardly have been “triggered” by a 1990 default judgment. Also, the order setting aside the default judgment merely noted that the bank attempted service at an address for a vacant lot, and so service by publication had been improper. The default judgment was set aside so that Pipkins could be properly served. No determination on the merits, exonerating Pipkins, was made.

Accordingly, we decline to reconsider our orders of May 28, 1993, and April 28, 1995, and we deny this petition. In accord with the prior determinations of this court, Pipkins must take and pass the Nevada bar examination and the Multistate Professional Responsibility Examination before he may apply for reinstatement under SCR 116. In addition, the hearing panel may consider whether any reinstatement

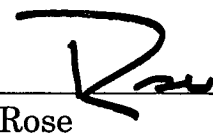
⁵See In re: Reinstatement of Pipkins, Docket No. 28648 (Order Denying Rehearing, May 22, 1997).


should be conditioned upon restitution for losses caused by Pipkins' conduct.


It is so ORDERED.⁶


_____, C.J.
Agosti


_____, J.
Shearing


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Becker

cc: Howard Miller, Chair,
Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Don P. Chairez
Theodore P. Williams

⁶The Honorable A. William Maupin, Justice, and the Honorable Mark Gibbons, Justice, voluntarily recuse themselves from participation in the decision of this matter.

On May 9, 2003, Pipkins, in proper person, submitted a motion for oral argument. We note that Pipkins' submission is improper, as he is represented by counsel in these proceedings. In addition, Pipkins has neither sought nor been granted leave to appear in proper person under NRAP 46(b). We have nevertheless considered the motion, and deny it as moot in light of this order.