

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF WAYNE
HAGENDORF, ESQ.

No. 41417

FILED

OCT 27 2003

J. A. ...
JANET E. WILSON
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER APPROVING CONDITIONAL GUILTY PLEA
IN EXCHANGE FOR STATED FORM OF DISCIPLINE

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that we approve a conditional guilty plea in exchange for a stated form of discipline.

The plea agreement resolved an amended disciplinary complaint based on two grievances received against attorney Wayne Hagendorf, both concerning the same civil litigation in which Hagendorf represented himself against a former landlord. The complaint alleged violations of several disciplinary rules, including SCR 170 (meritorious claims), SCR 172 (candor toward the tribunal), SCR 175 (relations with opposing counsel), SCR 181 (truthfulness in statements to others), SCR 184 (respect for rights of third persons), SCR 203(3) (conduct involving dishonesty, fraud, deceit or misrepresentation), and SCR 203(4) (conduct prejudicial to the administration of justice).

It appears from the record that Hagendorf leased office space from Dennis Duban, who owned an office building in Las Vegas. A dispute arose between Hagendorf and Duban over the terms of the lease, and Duban evicted Hagendorf. Hagendorf asserted several claims against Duban. During the litigation, Hagendorf learned that the recorded title to

the office building was in the name of Duban Professional Building, a California Limited Partnership, an entity that did not actually exist. Rather, Duban had registered the name Jenni Office Plaza, d/b/a Duban Professional Building, in California, and then had failed to renew the registration.

Hagendorf filed documents establishing a California limited partnership called Duban Professional Building, with himself as the general partner, and then filed a quiet title action in Nevada district court asserting that his newly created partnership owned the office building. By misleading the district court concerning where the defendants could be found, when he was aware that Duban was represented by counsel and knew counsel's address, he obtained an order for service by publication, and eventually, a default decree quieting title in the new limited partnership. Hagendorf then sent letters enclosing a copy of the judgment to all tenants in the building, instructing them to pay all future rent to him. No rents were actually paid to Hagendorf. When Duban discovered the default decree, he successfully moved to set it aside and asserted several counterclaims.

Duban also complained to the state bar, which opened a grievance file and later filed a formal disciplinary complaint. Hagendorf moved to stay the discipline proceeding pending adjudication of the civil litigation with Duban. The motion was denied.

Hagendorf then filed a federal complaint in California against the state bar. The complaint was eventually dismissed for lack of personal jurisdiction. In the meantime, a formal disciplinary hearing was continued at the state bar's request so that an amended complaint alleging additional charges could be filed. Another formal hearing was set.

Hagendorf moved to continue the hearing, asserting that he had to be in trial in United States Tax Court. A continuation was granted, and another date set.

Hagendorf filed another federal complaint against the state bar, this time in Nevada. This case was eventually dismissed for lack of subject matter jurisdiction.

As the formal hearing date approached, Hagendorf filed motions seeking formal discovery, a more definite statement, and a preliminary injunction staying the proceedings. All motions were denied. The day before the formal hearing was to commence, Hagendorf's newly retained counsel appeared and asked for a continuance so that he could adequately prepare. The request was granted, and the hearing was continued again.

At the hearing, Hagendorf and the state bar presented a conditional guilty plea agreement in exchange for a stated form of discipline under SCR 113 for the panel's approval. The agreement was part of a global settlement entered on the record in the civil litigation, with participation by Duban, Hagendorf and the state bar. The global settlement provides that all litigation would be dismissed, with each side to bear its own costs. In addition, Hagendorf would be suspended for five months. This suspension was to be stayed, and an actual suspension of 60 days served, on condition that Hagendorf pay \$25,000 to Duban by September 11, 2003. Finally, Hagendorf was to dissolve the California limited partnership he had formed.

At the hearing, Hagendorf, Duban and the state bar all stated that the settlement was conditioned on approval of the plea agreement, and that if the plea agreement were not approved, the settlement would

fall apart. Duban testified that he was satisfied with the agreement because it would end the entire matter and reimburse him, at least in part, for the expenses he incurred as a result of the litigation. The state bar professed itself satisfied with the agreement. In particular, the state bar noted that Hagendorf has no prior discipline. Finally, the district judge who was the victim of Hagendorf's lack of candor stated that he was hopeful the agreement would be approved, that he believed Hagendorf has learned a lesson, and that Hagendorf was welcome back in his court. Hagendorf's counsel argued in support of the agreement, stating that Hagendorf's conduct was not part of a pattern of unethical behavior, as demonstrated by the lack of any prior complaints about him. Rather, Hagendorf made the mistake of representing himself in an acrimonious, emotional dispute, and failed to maintain a sense of perspective. Hagendorf also presented testimony from a legal ethics professor that the discipline called for in the agreement fell within the range imposed for similar misconduct.

The plea agreement itself provides that Hagendorf pleads guilty to violating SCR 172 (candor toward the tribunal), SCR 175 (relations with opposing counsel), SCR 181 (truthfulness in statements to others), SCR 203(3) (conduct involving dishonesty, fraud, deceit or misrepresentation), and SCR 203(4) (conduct prejudicial to the administration of justice). The agreement further provides that for these violations, Hagendorf shall serve a five month suspension, stayed, with an actual suspension of 60 days, on the condition that Hagendorf pays restitution to Duban of \$25,000 by September 11, 2003. Failure to pay the restitution shall result in imposition of the full five month suspension. Finally, Hagendorf shall pay the state bar's costs, not to exceed \$1,000.

We consider the discipline rather lenient in light of the willful and deliberate actions taken by Hagendorf. We are particularly troubled by his lack of candor to the court in connection with the default proceedings. A court cannot effectively conduct its business if every statement by counsel must be verified, and so great reliance is placed on a lawyer's candor. Candor encompasses more than a mere absence of lies; it connotes full disclosure of all relevant information, particularly when a matter is presented with only one side present.¹ Hagendorf's failure to fulfill his duty in this regard could sustain a lengthier suspension, even without the additional violations.

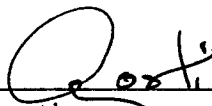
Nevertheless, we are cognizant that all of the parties to this matter have professed satisfaction with the plea agreement and the

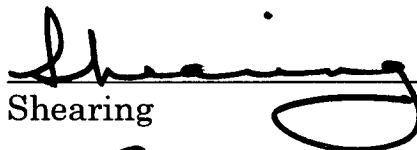
¹See, e.g., Gum v. Bradley, 505 S.E.2d 391, 401 (W. Va 1997) ("it is important to reaffirm, on a general basis, the principle that lawyers, who serve as officers of the court, have the first line task of assuring the integrity of the process. Each lawyer undoubtedly has an important duty of confidentiality to his client and must surely advocate his client's position vigorously, but only if it is truth which the client seeks to advance. The system can provide no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end. It is without note, therefore, that we recognize that the lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a duty to guard against the corruption that justice will be dispensed on an act of deceit.") (quoting United States v. Shaffer Equipment Co., 11 F.3d 450, 457-58 (4th Cir. 1993)); cf. Sierra Glass & Mirror v. Viking Industries, 107 Nev. 119, 126, 808 P.2d 512, 516 (1991) (noting that "[a]n attorney has no obligation to proffer evidence that helps the opponent. But if an attorney represents that he or she is proffering an entire document, omitting pertinent portions of that document is a blatant fraud. Omitting Aronsohn's domicile from the record was not clever lawyering, but an act which was calculated to mislead the tribunal in violation of SCR 172").

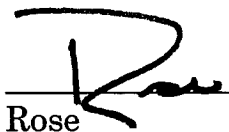
underlying settlement, including Duban, the state bar, Hagendorf, and the district judge who presides over the civil litigation. We also take note of Hagendorf's lack of prior discipline in thirteen years of practice, and his counsel's argument that Hagendorf's conduct in this matter was an isolated instance resulting from his personal involvement in an acrimonious and emotional case.


Accordingly, we approve the plea agreement in full. Hagendorf is suspended for five months, with all but sixty days to be stayed on the condition that Hagendorf pays Duban \$25,000 by September 11, 2003. In addition, Hagendorf shall satisfy the remaining requirements set forth in the plea agreement. Hagendorf and the state bar shall comply with the notice provisions of SCR 115.

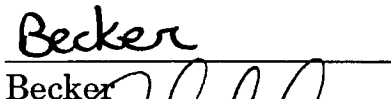
It is so ORDERED.

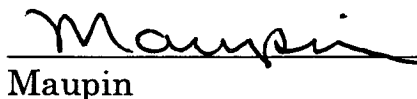

_____, C.J.
Agosti

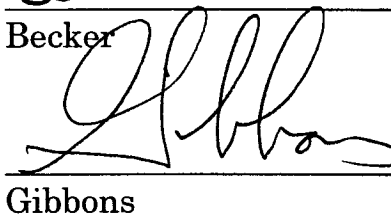

_____, J.
Shearing


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons

cc: Howard Miller, 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
Thomas F. Pitaro