

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF FRANK
DENNY WINSTON.

No. 41538

FILED

DEC 11 2003

WALTER M. ALGON
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER IMPOSING RECIPROCAL DISCIPLINE

This is a petition under SCR 114 to reciprocally discipline attorney Frank Denny Winston, based on discipline imposed upon him in California. Winston has not responded to the petition.

The California Supreme Court approved a stipulation calling for a two-year stayed suspension, placing Winston on probation for two years, and imposing a five-month actual suspension. The stipulation also requires Winston to satisfy several conditions: he must pay the costs of the disciplinary proceeding and will remain actually suspended until the costs are paid in full; he must submit quarterly reports to the California State Bar's probation unit and respond promptly and completely to any inquiries by the probation unit; he must attend the California bar's Client Trust Accounting School and provide proof of attendance to the California bar within one year; he must include specified financial reports with his quarterly probation reports; and he must submit any fee dispute with a particular client harmed by his actions to binding arbitration.

The discipline was based on Winston's violation of the California equivalents of SCR 151 (competence), SCR 154 (communication), SCR 165 (safekeeping property), and SCR 166(4)

(declining or terminating representation). In addition, Winston was found to have violated two provisions of the California Business and Professions Code. While Nevada has no similar code, the misconduct described in the stipulated facts implicates SCR 203(3) (conduct involving dishonesty, fraud, deceit or misrepresentation) and SCR 203(4) (conduct prejudicial to the administration of justice). Two aggravating circumstances were considered: prior discipline and “overreaching.”¹ Two mitigating circumstances were also considered: emotional and physical difficulties, including diabetes, and good character as demonstrated by Winston’s involvement with community organizations and his many years of pro bono service.

The California stipulation indicates that Winston’s misconduct arose from his representation of two clients, his failure to keep trust account records, and his failure to follow a previous disciplinary order. First, in September 1996, Winston agreed to represent a client in an immigration matter, and accepted a total of \$3,000 in advance fees during the representation. The advance fees were deposited directly into Winston’s personal account. Over three years later, almost nothing had been done on the case. Winston gave vague and misleading replies to the client’s inquiries, implying that he was continuing to work on the case even though he had ceased any work in December 1996. When the client obtained new counsel in June 2000, Winston failed to return the unearned

¹The basis for the “overreaching” aggravator is not specified.

fees or the client's file, and gave misleading answers to the new lawyer's inquiries. Winston finally returned the unearned fees in March 2001.

Second, Winston kept no records for his trust account. Several checks were returned for insufficient funds. Winston was unable to explain the returned checks because he lacked any records. The stipulation states that at the time Winston wrote the checks, he knew or should have known that the account did not have enough money to cover them.

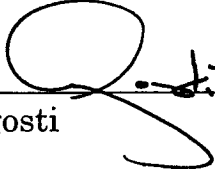
Third, Winston agreed to represent another client in an immigration matter, and accepted \$750 in advance fees. Over the next three months, Winston failed to respond to the client's many telephone and written inquiries. The client terminated Winston and requested an accounting, a refund of any unearned fees, and a copy of his file. A year later, Winston finally provided an accounting.

Fourth, Winston was required to comply with a prior disciplinary order's notice provisions within thirty to forty days. Winston failed to timely comply with the order.

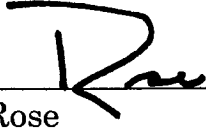
SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that one of three exceptions applies. None of the exceptions applies to this case, and so we grant the petition for reciprocal discipline. Winston shall be suspended for two years, with the suspension stayed, and Winston shall be placed on probation for two years. In addition, Winston shall serve a


five-month actual suspension.² Finally, Winston shall copy Nevada bar counsel on all reports submitted to the California State Bar probation unit. Winston and the Nevada State Bar shall comply with SCR 115.

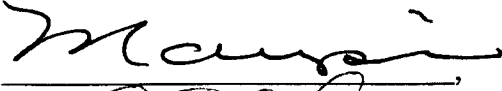
It is so ORDERED.

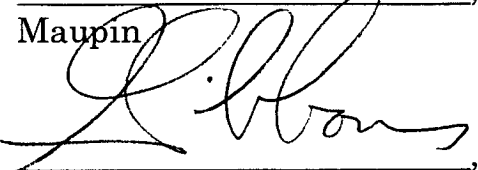

_____, C.J.
Agosti


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons

cc: Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Frank Denny Winston
Perry Thompson, Admissions Office,
Supreme Court of the United States

²Under SCR 115, the suspension is effective fifteen days from this order's date. Winston may wind up his representation of any existing clients during this time, but may not accept any new matters.