

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF GARY E.  
GOWEN, ESQ.

No. 41780

FILED

FEB 18 2005

*[Signature]*  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER APPROVING PUBLIC REPRIMAND

This is an appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Gary E. Gowen be publicly reprimanded for violations of SCR 151 (competence), SCR 153 (diligence), and SCR 173(3) (knowingly disobeying an obligation under the rules of a tribunal), and that he pay the costs of the discipline proceedings. Gowen admits that his conduct violated SCR 153 and SCR 173(3), and he does not contest the cost award.

Gowen contends that clear and convincing evidence does not support the finding that he violated SCR 151. The state bar maintains that the record supports the panel's finding.

SCR 151 provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and

preparation reasonably necessary for the representation.

It is well-settled that competence includes knowledge of procedure and court rules.<sup>1</sup> Here, Gowen admitted that he represented criminal defendants without becoming familiar with this court's fast-track program.<sup>2</sup> Thus, the SCR 151 violation is supported by clear and convincing evidence.

Gowen further argues that a public reprimand is excessive. The state bar asserts that the recommendation is appropriate. Considering the proven misconduct, and in light of the mitigating and

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<sup>1</sup>See Matter of Dempsey, 632 F. Supp. 908 (N.D. Cal. 1986) (holding that attorney who practiced in federal court without learning federal court procedural and evidentiary rules violated his duty of competence); Attorney Grievance Comm'n v. Bailey, 408 A.2d 1330 (Md. 1979) (holding that lawyer who agreed to represent a client in a real estate transaction did not act competently when he did not know the proper method of executing a deed, did not understand the importance of prompt recording of a deed of trust and other title documents, and did not know how to obtain title insurance, and proceeded with the representation without remedying any of these deficiencies); In re Gallegos, 723 P.2d 967 (N.M. 1986) (holding that attorney who failed to take any steps to protect his client's judgment pending appeal, such as requesting a supersedeas bond or enforcing the judgment, and who admitted that he had no idea how to proceed in this regard, violated his duty of competence); Matter of Belser, 287 S.E.2d 139, 139 (S.C. 1982) (taking a "dim view" of lawyer's lack of competence demonstrated by his admitted failure to familiarize himself with rules of practice, including those requiring service upon opposing counsel).

<sup>2</sup>See NRAP 3C.

aggravating factors,<sup>3</sup> we conclude that the panel's recommendation should be approved.

Accordingly, we approve the panel's recommendation in its entirety, and issue the public reprimand attached hereto as Exhibit A. Gowen shall pay the costs of the disciplinary proceeding as set forth in the state bar's bill of costs.<sup>4</sup>

It is so ORDERED.

Becker, C. J.  
Becker

Rose, J.  
Rose

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Maupin, J.  
Maupin

Douglas, J.  
Douglas

Parraguirre, J.  
Parraguirre

<sup>3</sup>The hearing panel properly considered Gowen's lack of prior discipline as a mitigating factor. But Gowen's failure to appear at the hearing, under the circumstances reflected in the record, was not an appropriate aggravating factor. Other mitigating factors that are supported by the record include the absence of a dishonest or selfish motive, personal and emotional problems, and cooperation with the disciplinary process. Aggravating factors that are supported by the record include a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. See ABA Standards for Imposing Lawyer Sanctions 9.2 and 9.3, Compendium of Professional Responsibility Rules and Standards 352-54 (1999) (setting forth factors that may be considered in aggravation and mitigation).

<sup>4</sup>See SCR 120(1).

cc: Howard Miller, Chair, Southern Nevada Disciplinary Board  
Rob W. Bare, Bar Counsel  
Allen W. Kimbrough, Executive Director  
Gary E. Gowen

1 Case Nos: 02-144-0877 and 03-029-0877

2 STATE BAR OF NEVADA

3 SOUTHERN NEVADA DISCIPLINARY BOARD

4 STATE BAR OF NEVADA, )  
5 Complainant, )  
6 vs. )  
7 GARY e. GOWEN, ESQ., )  
8 Respondent )  
9

10 PUBLIC REPRIMAND

11 TO: GARY E. GOWEN, ESQ.

12 Two matters came before a designated Formal Hearing Panel ("Panel") of the  
13 Southern Nevada Disciplinary Board on June 17, 2003.

14 With respect to the first matter, on January 29, 2003, the State Bar of Nevada  
15 (hereinafter "State Bar") filed a formal Complaint against you pertaining to your conduct in the  
16 *Thompson Keith Yazzie v. State of Nevada* appeal pending before the Supreme Court of  
Nevada (hereinafter "Supreme Court") as Case No. 35865. On February 19, 2003, you filed  
an Answer to Complaint.

17 On April 8, 2003, the State Bar filed a second formal Complaint against you pertaining  
18 to your conduct in the *Ronald Earl Williams v. State of Nevada* appeals pending before the  
Supreme Court as Case Nos. 40340, 40341, and 40343. The second Complaint was  
consolidated with the first Complaint by Stipulation to Consolidate with Formal Hearing.

19 On June 17, 2003, the Panel and Ms. Galati convened for the Formal Hearing at 9:00  
20 a.m. You failed to appear for the Formal Hearing. The Panel waited until 9:30 a.m. for you  
21 to appear. You failed to do so. The State Bar attempted to contact you and left a voice  
message at your office. The State Bar received no messages from you prior to the  
conclusion of the Formal Hearing.

22 The record reflected that the State Bar provided written notice to you of the June 17,  
23 2003, 9:00 a.m. hearing. The State Bar provided further notice of the Formal Hearing by  
24 contacting you on June 16, 2003, the day before the hearing, to determine how long your  
case in defense would take. You left Ms. Galati a message indicating how long you expected  
25 your case to take the following day. Finally, in the May 7, 2003 teleconference concerning

EXHIBIT  
A

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1 your Motion to Continue or Accelerate Hearing (the Formal Hearing having been previously  
2 set for May 15, 2003 at 9:00 a.m.), you were advised of and agreed to June 17, 2003 at 9:00  
3 a.m. as the Formal Hearing date, which is confirmed by the Order to Continue Formal  
4 Hearing (among other notices confirming the date and time of hearing). Given all of the  
5 above, the State Bar properly noticed you of the Formal Hearing, and you were afforded due  
6 process in this case. The evidence admitted at the Formal Hearing confirms that you  
7 received ample notice of the date, time and place that your Formal Hearing would be  
8 conducted. You had sufficient time to appear or otherwise defend this action. You did not  
9 seek to continue the Formal Hearing or otherwise justify your failure to appear at the Formal  
10 Hearing.

11  
12 With respect to the first formal Complaint filed and based upon your conduct in the  
13 *Thompson Keith Yazzie v. State of Nevada* appeal pending before the Supreme Court as  
14 Case No. 35865, on or about February 22, 2001, you were appointed as counsel in that  
15 appeal, which order was filed in the Supreme Court on March 19, 2001.

16  
17 On May 11, 2001, the Supreme Court entered an order directing full briefing of the  
18 underlying appeal. Pursuant to that order, the appellant was directed to file and serve the  
19 opening brief and appendix within forty (40) days of that order. Accordingly, the opening brief  
20 and appendix were due by June 20, 2001. You failed to do so.

21  
22 On July 16, 2001, the Supreme Court entered an order directing appellant to file and  
23 serve the opening brief and appendix within twenty (20) days of that order. Accordingly, the  
24 opening brief and appendix were due by August 6, 2001. You were cautioned that failure to  
25 comply timely with that order might result in the imposition of sanctions. You failed to do so.

26  
27 Instead, on August 16, 2001, you filed an untimely Motion to Enlarge the Time within  
28 which to file the opening brief and appendix. On August 22, 2001, the Supreme Court  
29 entered an order granting that Motion and directing appellant to file and serve the opening  
30 brief and appendix within thirty (30) days of that order. Accordingly, the opening brief and  
31 appendix were due by September 24, 2001. You failed to do so.

32  
33 On November 13, 2001, the Supreme Court entered its order directing appellant to file  
34 and serve the opening brief and appendix within fifteen (15) days of that order. Accordingly,  
35 the opening brief and appendix were due by November 28, 2001. You failed to do so.

36  
37 On August 20, 2002, the Supreme Court entered an order directing appellant to file  
38 and serve the opening brief and appendix within twenty (20) days of that order or show cause  
39 why sanctions should not be imposed. Accordingly, the opening brief and appendix were  
40 due by September 9, 2002. You failed to do so.

41  
42 On October 31, 2002, the Supreme Court entered an order imposing sanctions  
43 against you in the amount of \$500.00 payable to the Supreme Court Law Library and copied  
44 the State Bar with its order. The Supreme Court indicated in that order that it had received  
45 no communication from you regarding the underlying appeal since August 16, 2001. The  
46 Supreme Court noted that your "failure to file the opening brief and appendix has caused a  
47 significant delay in the briefing of this appeal. We remind Mr. Gowen that failure to  
48 communicate with this court will not be tolerated." You were directed to file and serve the

1 opening brief and appendix within fifteen (15) days of that order. Accordingly, the opening  
2 brief and appendix were due by November 15, 2002. You failed to do so.

3 Instead, on November 18, 2002, you filed an untimely Motion to Extend Time. On  
4 December 4, 2002, the Supreme Court entered an order granting that Motion and directed  
5 the appellant to file and serve the opening brief and appendix within ten (10) days of that  
6 order. Accordingly, the opening brief and appendix were due by December 16, 2002. You  
7 failed to do so.

8 In January 2003, the State Bar contacted the Supreme Court and confirmed with the  
9 Clerk's Office that you paid the sanctions but had failed to file the opening brief and  
10 appendix. Ultimately, in February 2003, you untimely filed the opening brief and appendix.

11 In all, you caused a delay of over one (1) year and seven (7) months from the first  
12 date the opening brief and appendix were due (June 20, 2001) and the date the Supreme  
13 Court actually received the opening brief and appendix (February 7, 2003).

14 With respect to the second formal Complaint filed and based upon your conduct in the  
15 *Ronald Earl Williams v. State of Nevada* appeals pending before the Supreme Court, by  
16 Order filed on December 16, 2002 in Case Nos. 40340 and 40343 and by Order filed on  
17 December 18, 2002 in Case No. 40341, you were ordered to file and serve the fast track  
18 statements and appendices within ten (10) days of those orders or show cause why you  
19 should not be sanctioned. You failed to do so.

20 On January 31, 2003, the Supreme Court entered an order removing you as counsel  
21 in all of the above matters and copied the State Bar with its order. The Supreme Court noted  
22 that each appeal was docketed on October 15, 2002, and the fast track statements and  
23 appendices were therefore due on or before November 25, 2002. Because no fast track  
24 statements had been filed, the Supreme Court then ordered you to file the fast track  
25 statements and appendices on or before December 28, 2002, or show cause why you should  
not be sanctioned. You failed to respond to the Supreme Court's orders.

On March 18, 2003, the Supreme Court entered an order, in part, denying your  
request to be reinstated as counsel in the above matters and determining that the appeals  
shall be consolidated for all appellate purposes. The Supreme Court reviewed your  
representations in your request for reinstatement, including: the unforeseen domestic  
dispute; the delay in moving into your new office; and your hospitalization, and determined  
that it did not agree with you that you diligently complied with all your obligations to your  
clients and the Court. The Supreme Court noted that inordinate delay and a complete failure  
to communicate with the Court are unacceptable practices under any circumstances and will  
not be tolerated in the future. Further, the Supreme Court noted that while it is not  
unsympathetic to your personal misfortunes experienced over the years, it could no longer  
tolerate repeated delay and disregard for the Court's procedural rules and direct orders.

A review of the reasons why you had not been diligent do not really bear out under  
scrutiny when you said you did not get things filed on time because something happened.

1 In light of all of the foregoing, the Panel finds that you violated SCR 151  
2 (Competence). You admitted in your Answer that you were not familiar with the Supreme  
Court's Rule. Further, the Supreme Court made a finding that you had not obeyed its orders.

3 The Panel further finds that you violated SCR 153 (Diligence). The record is replete  
4 with instances of you not following through or not timely filling things. Further, the Supreme  
Court itself made a finding that you failed to diligently comply with your obligations to your  
5 clients and the Court in the *Williams* appeals.

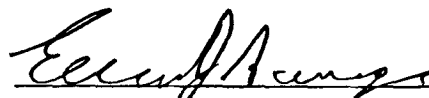
6 Finally, the Panel finds that you violated SCR 173(3) (Fairness to opposing party and  
7 counsel: knowingly disobeying an obligation under the rules of a tribunal). Time and time  
again you violated the Rules and specific orders of the Supreme Court.

8 The Panel finds as mitigating factors that you have been licensed since 1978 without  
9 any prior discipline. The Panel finds as an aggravating factor that you failed to appear for the  
Formal Hearing demonstrating that you do not take this proceeding very seriously, which  
hearing was initially continued to accommodate you.

10 Pursuant to SCR 120, you are ordered to pay all costs of these proceedings within  
11 thirty (30) days of your receipt of the State Bar's Bill of Costs in this matter.

12 For the misconduct and ethical violations described above, you are hereby **PUBLICLY**  
**REPRIMANDED.**

13  
14 Dated this 24<sup>th</sup> day of June, 2003

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16 

17 Edward J. Hanigan, Esq.  
18 Formal Hearing Panel Chair  
Southern Nevada Disciplinary Panel