

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
STEPHEN R. HARRIS, ESQ., BAR NO.
1463.

No. 57507

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings that attorney Stephen R. Harris violated two rules of professional conduct and its recommendation that Harris serve a three-year suspension with two years and nine months stayed if Harris complies with certain conditions. We conclude that clear and convincing evidence supports the panel's findings concerning Harris's misconduct. We also approve the panel's recommended discipline.

Harris and the Nevada State Bar do not dispute the facts that underlie this matter. Harris has been licensed to practice law in Nevada since 1974. Between January 2008 and September 2009, Harris misappropriated approximately \$788,000 from client trust accounts and his firm's general client trust account, using the funds for his personal gain.

On November 5, 2009, Harris self-reported his misconduct to the State Bar. The State Bar received no client or third-party complaints regarding Harris's misappropriation of the client trust funds. Prior to Harris's disciplinary hearing, Harris repaid all of the money to the client

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trust accounts with interest, denied himself access to his firm's business and trust accounts, and allowed another attorney to supervise his performance on his cases. Harris continues to deny himself access to these accounts and receive supervision from another attorney. Harris also successfully completed treatment for alcoholism and other mental disorders.

The panel held Harris's disciplinary hearing on November 9, 2010. Because Harris admitted his misconduct, the panel focused on the aggravating and mitigating evidence in Harris's case and the appropriate discipline to recommend. At the hearing, Harris testified about his remorse for his behavior and his efforts at recovery. Harris's psychologist also testified that Harris's alcohol dependence and mental disorders caused his misconduct and that Harris's current treatment plan would arrest any further misconduct. Several other attorneys, including Harris's wife and law partner, testified on Harris's behalf as well. These attorneys discussed Harris's prior professionalism, his skill as a bankruptcy attorney, and the burden that a lengthy suspension would impose on Harris's family, existing clients, and the public. Finally, one of the two clients from whom Harris misappropriated funds submitted a written declaration expressing his belief that Harris should not be suspended from the practice of law and his desire to continue as Harris's client.

At the conclusion of the hearing, the panel found that Harris had violated RPC 1.15 (safekeeping of property) and RPC 8.4 (misconduct). Based upon these violations, four members of the panel recommended that Harris receive a three-year suspension with two years and nine months stayed if Harris complies with certain conditions. These conditions require that Harris (1) have no client trust account access

during the entire three-year suspension period; (2) have a mentor throughout the entire three-year suspension period, other than Jeffrey Hartman, Esq., and this mentor shall file a report with the State Bar every six months; (3) pay a \$50,000 fine to the State Bar's Client Protection Fund within one year of this order; (4) refrain from the use of alcohol or any other controlled substance, unless prescribed by a licensed medical doctor, throughout the three-year period; (5) continue with his outpatient recovery therapy and attendance at Alcoholics Anonymous, and submit to random alcohol/urinary analysis tests during the three-year suspension period, with his therapist submitting a report and test results to the State Bar on a quarterly basis; and (6) write a letter to each of the persons who had funds in the accounts which were misappropriated within 90 days of this order and include a copy of this order with the letter. The panel also recommended, pursuant to SCR 120, that Harris pay the costs of the disciplinary proceedings. The panel chair dissented from this recommendation because she was in favor of a harsher discipline.

Clear and convincing evidence supports the panel's findings of misconduct and the panel's recommended discipline is appropriate

While the findings and recommendations of a panel are persuasive, this court reviews a panel's decision recommending suspension de novo. SCR 105(3)(b); In re Stuhff, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). The findings of misconduct by the panel must be supported by clear and convincing evidence. SCR 105(2)(e); In re Stuhff, 108 Nev. at 635, 837 P.2d at 856. Because Harris admitted to the violations, we conclude that the panel's findings of misconduct are supported by clear and convincing evidence. Therefore, we must only determine the level of discipline to impose.

In determining the appropriate discipline to impose for a particular act of misconduct, we consider “all relevant factors and mitigating circumstances on a case-by-case basis.” State Bar of Nevada v. Claiborne, 104 Nev. 115, 219, 756 P.2d 464, 531 (1988) (quoting Murray v. State Bar of California, 709 P.2d 480, 485 (Cal. 1985)). Thus, we may examine any aggravating and mitigating factors that apply to a particular case when determining the degree of discipline to impose. See SCR 102.5. In doing so, we must remember that the fundamental purpose of attorney discipline is not to impose additional punishment upon the attorney, but to protect the public and maintain public confidence in the bar. Claiborne, 104 Nev. at 219, 756 P.2d at 531 (citing In re Cochrane, 92 Nev. 253, 255, 549 P.2d 328, 329 (1976)).

The State Bar relies on several cases involving an attorney’s intentional misappropriation of funds that resulted in the attorney’s long term suspension or disbarment. See, e.g., In re Belz, 258 S.W.3d 38, 44-47 (Mo. 2008) (imposing a three-year suspension on attorney for misappropriating funds over four years even though attorney self-reported, suffered from bipolar disorder, and voluntarily repaid the amounts taken prior to the disciplinary proceedings); Attorney Grievance v. Weiss, 886 A.2d 606, 610, 618-20 (Md. 2005); In re Disciplinary Action Against Rooney, 709 N.W.2d 263, 272-73 (Minn. 2006). The State Bar further suggests that the record reveals several aggravating factors, including a dishonest or selfish motive, repeated instances of misappropriation over almost two years, and substantial experience in the practice of law. See SCR 102.5(1).

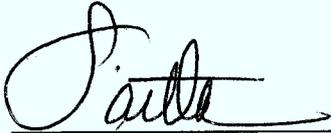
We agree with the State Bar that misappropriation of client funds is one of the most serious forms of misconduct that a lawyer can

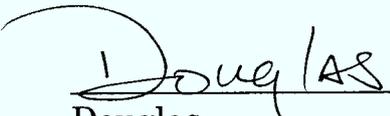
commit. See Weiss, 886 A.2d at 618 (calling the misappropriation of funds “one of the most egregious breaches of an attorney’s duty”). However, we also recognize that Harris’s case presents a unique set of circumstances involving substantial mitigating factors. Harris self-reported his misconduct, made full restitution of the misappropriated funds prior to his disciplinary proceeding, addressed his alcoholism and mental disorders, and expressed extreme remorse for his conduct. We also conclude that the State Bar’s suggestion of adopting the panel chair’s recommendation of a two-year suspension with additional conditions is not necessary to protect the public and maintain confidence in the State Bar. The panel’s recommended three-year suspension with two years and nine months stayed if Harris complies with certain conditions is appropriate to serve the purposes of attorney discipline.

Accordingly, we suspend Harris for three years from the practice of law, beginning on the date of this order, with two years and nine months stayed if Harris complies with the panel’s conditions. Given that two years and nine months of the suspension is stayed, Harris may apply for reinstatement pursuant to SCR 116 after three months. Additionally, he shall pay the \$50,000 fine within one year of this order to the State Bar’s Client Protection Fund. Harris also shall pay the costs of the disciplinary proceeding, pursuant to SCR 120, within 30 days of receipt of the State Bar’s bill of costs. Finally, Harris and the State Bar must comply with the applicable provisions of

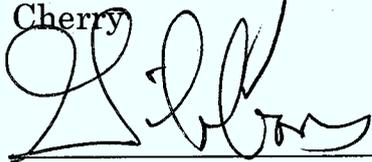
SCR 115 and 121.1.

It is so ORDERED.¹

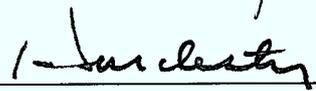

_____, C.J.
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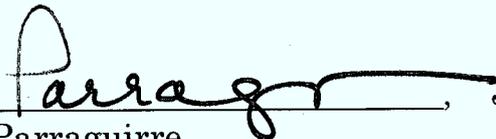

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

¹This is our final disposition of this matter. Any new proceedings concerning Harris shall be docketed under a new docket number.

cc: Thomas Susich, Chair, Northern Nevada Disciplinary Board
David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director
Lemons, Grundy & Eisenberg
Perry Thompson, Admissions Office, U.S. Supreme Court