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In re Discipline of Timothy Treffinger, 133 Nev. Adv. Op. 22 (May 11, 2017)

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PROFESSIONAL RESPONSIBILITY: FELONY POSSESSION

Summary

The Court determined that (1) when a licensed Nevada attorney pleads guilty to a felony, Supreme Court Rule (SCR) 111 requires an interim suspension of the attorney’s law license and a referral to the Nevada State Bar for formal discipline; and (2) the “good cause” exception to stay an interim suspension requires the court to consider whether the attorney’s crime poses a danger to his clients, the court, and the public.

Background

Timothy Treffinger, a Nevada-licensed attorney, pleaded guilty to one count of possession of a controlled substance, which is a felony under NRS 453.336.² The court placed him on probation for three years, and he entered the diversion program created by NRS 453.3363 for first-time offenders.³

When Treffinger notified the State Bar of Nevada of his guilty plea, bar counsel sought interim suspension of his law license and referral for formal bar discipline as required by SCR 111 when an attorney is convicted of a felony. In response, Treffinger argued: (1) that his conditional guilty plea does not constitute a “conviction” triggering automatic suspension under SCR 111; and (2) even if it does, there is “good cause” to stay the suspension.

Discussion

I.

A.

The professional misconduct exception in NRS 453.3363(5) applies here. NRS 453.3363 allows courts to place first-time offenders into a diversion program without rendering a conviction. If the offender completes the program’s requirements and conditions, the court dismisses the proceedings, and the offender avoids a felony conviction. However, the exception in NRS 453.3363(5) also allows professional licensing boards, like the State Bar of Nevada, to assess suitability for licensing and to discipline a licensee for professional misconduct when the licensee is undergoing diversion-program proceedings. Because this case involves professional discipline, it triggers the professional misconduct exception in NRS 453.3363(5), and the Supreme Court Rules and Nevada-adopted Model Rules of Professional Conduct determine what effect Treffinger’s guilty plea will have on his suspension and discipline.

B.

Under SCR 111, the State Bar is not limited to final judgments of conviction, but may

¹ By Julia Barker.

² NEV. REV. STAT. § 453.336 (2015).

³ NEV. REV. STAT. § 453.3363 (2015).

suspend an attorney's law license when the attorney enters a conditional guilty plea or deferred sentencing arrangement. Moreover, interim suspension of an attorney's law license immediately follows proof that the attorney was convicted of a "serious crime," which includes felony crimes. Additionally, when a court finds an attorney guilty of a "serious crime" under Rule 19 of the Model Rules of Lawyer Disciplinary Enforcement, the attorney may be automatically suspended even if their conviction is not final.

Automatic suspension is justified because significant time delays exist between finding guilt of a serious crime and entering the ultimate judgment of conviction. Additionally, the case's serious nature creates the need to protect the public and maintain confidence in the legal profession. Here, SCR 111 mandates Treffinger's interim suspension and referral to the State Bar of Nevada for formal discipline because he pleaded guilty to a felony, a "serious crime."

II.

SCR 111's "good cause" exception states "[f]or good cause, the court may set aside its order suspending the attorney from the practice of law."⁴ However, the exception does not define "good cause." So, the Court held that good cause primarily depends "on the danger the lawyer's crime . . . suggest[s] he or she poses to clients, the courts, and the public," but also on "whether there is a substantial likelihood . . . [of] significant sanction[s] . . . at the conclusion of any disciplinary hearings." This case presented additional factors including: the interim suspension's harm to the lawyer and his current client, and the ability to monitor the lawyer's conduct "so suspension can be stayed and conditions imposed, rather than set aside outright."

The Court stayed Treffinger's interim suspension because felony possession alone did not require a legal conclusion that he was unfit to practice law. Unlike an attorney who steals from his clients, Treffinger's crime did not involve "dishonesty, theft, or serious interference with the administration of justice." Further, it would not be unduly burdensome to require Treffinger to provide quarterly reports on his diversion program and probation progress to the State Bar, and to require him to immediately advise the Bar of any probation violations while he continues to practice law. Additionally, staying the automatic suspension prevents the chance that the pre-discipline sanction would exceed the sanction that is ultimately imposed. Lastly, the stay is justified because following the conditions of Treffinger's probation does not harm existing clients.

Conclusion

The Court granted the State Bar's petition to suspend Treffinger from the practice of law and referred the case to the Southern Nevada Disciplinary Board for formal disciplinary proceedings according to SCR 111(1) and (7). The Court then stayed the suspension conditional on Treffinger's compliance with his probation's terms and conditions, his completion of the diversion program, and the absence of further disciplinary offenses.

⁴ NEV. SUP. CT. R. 111(7).