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In the Matter of Discipline of Paul Droz, 123 Nev. Adv. Op. 20 (June 28, 2007)¹

PROFESSIONAL RESPONSIBILITY – DISCIPLINE OF ATTORNEY

Summary

Nevada Supreme Court concluded that jurisdiction over Droz was appropriate under Supreme Court Rule 99,² and affirmed disciplinary action recommended against Utah attorney Paul Droz.

Disposition/Outcome

The Nevada Supreme Court affirmed the Southern Nevada Disciplinary Board's recommendation that Utah attorney Paul Droz be enjoined from practicing law in Nevada or appearing in any Nevada court, that he be fined \$3,000 and assessed the disciplinary proceeding's costs, and that the state bar be directed to refer this matter to appropriate law enforcement authorities for possible criminal investigation and to report the matter to the Utah and Arizona bars and the National Discipline Data Bank.

Factual & Procedural History

Droz was admitted to the Utah bar in 1978 and disbarred in Utah on June 1, 2006. Droz neither responded to the Utah disciplinary authorities' inquiries nor appeared at the Utah disciplinary hearing. After his Utah clients complained to the Utah disciplinary authorities, but before the Utah formal disciplinary complaint was filed, Droz rented office space in Mesquite, Nevada, and proceeded to continue his misconduct with respect to at least six matters.

A formal disciplinary complaint was filed by Nevada bar counsel on April 18, 2006, shortly before the Utah disbarment order was entered. Droz was charged with one violation of SCR 153 (diligence), two violations of SCR 154 (communication), four violations of SCR 165 (safekeeping property), one violation of SCR 172 (candor toward the tribunal), six violations of SCR 181 (truthfulness in statements to others), two violations of SCR 184 (respect for rights of third persons), six violations of SCR 189 (unauthorized practice of law), six violations of SCR 195 (communications concerning a lawyer's services), five violations of SCR 200(2) (failure to respond to disciplinary authority), two violations of SCR 203(2) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer), six violations of SCR 203(3) (conduct involving fraud, deceit, dishonesty, or misrepresentation), and two violations of SCR 203(4) (conduct prejudicial to the administration of justice).³

¹ By Michelle L'Hommedieu

² The former version of the Supreme Court Rules concerning professional misconduct is cited as Droz's actions occurred prior to the 2006 renumbering and amendment of the Rules. *See Nevada Pay TV v. District Court*, 102 Nev. 203, 205 n.2, 719 P.2d 797, 798 n.2 (1986), superseded by rule as acknowledged in *State, Dep't Mtr. Veh. v. Dist. Ct.*, 113 Nev. 1338, 948 P.2d 261 (1997).

³ *Id.*

The state bar's early correspondence concerning the grievances was served upon Droz at his Mesquite office address, which was also the address on file with the Utah bar, and, on one occasion, at his residence address as listed on his joint petition for divorce, filed in the Eighth Judicial District Court. But the state bar was unable to effect personal service of the formal discipline complaint upon Droz at either of these addresses, and so the state bar hired an investigator in an attempt to locate Droz. The investigator was unable to confirm Droz's whereabouts, although some information indicated that Droz may have gone to Scottsdale, Arizona. The state bar eventually served the complaint by sending it via certified mail, return receipt requested, to the Mesquite office address, in accordance with SCR 109(1).⁴ Droz failed to file an answer, and bar counsel filed a notice of intent to proceed on a default basis; this notice was also sent via certified mail to Droz's Mesquite office address. Droz failed to respond. Notice of the formal hearing was served the same way. Droz failed to appear for the hearing.

The hearing panel considered the complaint's allegations to have been deemed admitted under SCR 105(2),⁵ and it proceeded to consider what discipline could be imposed since Droz was not licensed in Nevada. The panel eventually decided on a recommendation to this court that Droz be barred from ever being admitted to the Nevada bar, that he be enjoined from practicing law in Nevada or appearing in any Nevada court, that he be fined \$500 per count, for a total of \$3,000, and that he be assessed the costs of the discipline proceeding, in the amount of \$987.45. It also recommended that the state bar be directed to refer the matter to the appropriate law enforcement agencies for possible criminal proceedings and to report the matter directly to the Arizona and Utah bars. The court automatically reviewed the panel's recommendation. Droz did not file a brief or other response to contest the panel's recommendation.

Discussion

The court first analyzed whether the Nevada court had jurisdiction over Droz, then whether the panel's findings are supported by clear and convincing evidence, and last whether the recommended discipline is appropriate.

Jurisdiction

SCR 99(1) provides, in pertinent part, "Every attorney . . . practicing law here, whether specially admitted or not, is subject to the exclusive disciplinary jurisdiction of the supreme court and the disciplinary boards and hearing panels created by these rules." Other jurisdictions with similar rules have uniformly held that a lawyer not admitted in the jurisdiction, but who nevertheless practiced law in that jurisdiction, is properly subject to discipline where he or she practiced.⁶

⁴ The rules governing procedure in lawyer discipline cases were amended effective March 1, 2007. Since the formal complaint in this matter was filed before that date, the former version applies. *See* SCR 122 (2006).

⁵ *See supra* note 2.

⁶ *See In re Bagdade*, 334 F.3d 568 (7th Cir. 2003); *In re Murgatroyd*, 741 N.E.2d 719 (Ind. 2001); *Matter of Fletcher*, 655 N.E.2d 58 (Ind. 1995); *Kentucky Bar Ass'n v. Shane*, 553 S.W.2d

NRS 7.285 prescribes criminal penalties for the unauthorized practice of law. But as a practical matter, such a complaint to law enforcement, which is also responsible for investigating matters such as violent crimes and drug offenses, would almost certainly be accorded a lower priority. Given this lower priority, by the time law enforcement could devote resources to an unauthorized practice of law complaint, several more clients could be harmed. Also, while NRS 7.285(3) permits the state bar to file a civil action and seek an injunction against a person engaging in the unauthorized practice of law, this court, as the ultimate authority over attorneys as officers of the court, has a special interest in enforcing its rules governing the legal profession.⁷ And although an injunction as provided in NRS 7.285(3) may prevent future harm, it cannot punish past misconduct.

Moreover, Droz's actions clearly illustrate why this court should exercise jurisdiction over his conduct: Droz is already disbarred in Utah and so very little more disciplinary action could be imposed upon him there, and his misconduct affected several Nevada citizens, a Nevada lawyer, and the Nevada court system. Droz has apparently fled the jurisdiction, and so an injunction at this point would be ineffective. Criminal penalties against Droz are likewise of questionable effect, at least unless and until he is located and subject to arrest.

Accordingly, while the sanctions to be imposed must be tailored to Droz's lack of a Nevada law license, the Nevada court has jurisdiction to impose professional discipline upon him and should exercise that jurisdiction.

Panel's recommendation

The Nevada Supreme Court recognized in *In re Stuhff*, "[t]hough persuasive, the [panel's] findings and recommendations are not binding on this court. This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted."⁸ The panel's misconduct findings must be supported by clear and convincing

467 (Ky. 1977); *see also* *Lawyer Disciplinary Bd. v. Allen*, 479 S.E.2d 317, 335-36 (W. Va. 1996) (applying the jurisdictional rule existing at the time of the alleged conduct, respondents did not "regularly" practice law in West Virginia and thus could not properly be sanctioned, but noting that under the new rule, requiring only the "practice of law," respondents would be subject to sanctions). A similar conclusion was reached in *Waters v. Barr*, 103 Nev. 694, 747 P.2d 900 (1987).

⁷ SCR 39 ("Attorneys being court officers and essential aids in the administration of justice, the government of the legal profession is a judicial function. Authority to admit to practice and to discipline is inherent and exclusive in the courts. [The Supreme Court Rules] are the exclusive rules for the governing of the legal profession in Nevada."); NRS 7.275(1) ("The State Bar of Nevada, a public corporation heretofore created by statute, is hereby continued under the exclusive jurisdiction and control of the Supreme Court.").

⁸ 108 Nev. 629, 633, 837 P.2d 853, 855 (1992).

evidence.⁹ The court concluded that clear and convincing evidence supports the panel's findings.¹⁰

The court's analysis of the panel's recommendation discipline referenced similar situations in other jurisdictions. The Indiana Supreme Court has noted that, while a law license issued by California was not subject to sanction by the Indiana court, the Indiana court "may impose penalties appropriate to punish or prevent misconduct that occurs in Indiana."¹¹ Examples of penalties considered or imposed by other courts in situations similar to this case include public reprimands, a temporary or permanent prohibition on future admission, including *pro hac vice* admission, injunctive relief, contempt sanctions, fines, and payment of costs.¹²

Here, the hearing panel recognized the limitations on the discipline it could impose, since Droz did not have a Nevada law license. Thus, it tailored its recommendations to the specific facts. First, the panel recommended that the court enjoin Droz from practicing law in Nevada or appearing in any Nevada court. The court deemed the panel's recommendation appropriate.

Second, the panel recommended a fine of \$500 per count, for a total of \$3,000. In light of the harm caused by Droz to Nevada's justice system and to several Nevada citizens, a \$3,000 fine is warranted.

Third, in view of the apparently criminal nature of Droz's fraudulent arbitration scheme, the panel recommended that the matter be referred to the appropriate law enforcement authorities. The court agreed that a referral to law enforcement was appropriate. However, the court modified the panel's recommendation to include federal authorities. Accordingly, this recommendation, with one slight modification, was deemed proper.

Finally, the panel recommended that bar counsel be directed to provide a copy of the court's opinion directly to the Utah and Arizona bars. This was also deemed appropriate because if Droz has in fact relocated to Scottsdale, he may very well be perpetrating similar misconduct there, and so expedited notice to Arizona is proper. Also, since Droz was licensed in Utah, that state also has a particular interest in this matter.

Conclusion

The court concluded that the panel's recommended discipline is appropriate "to punish or prevent misconduct that occurs" in Nevada, and that it should be approved, with the one slight modification of including notice to federal law enforcement authorities.

⁹ In re Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

¹⁰ See SCR 105(2)(e).

¹¹ Murgatroyd, 741 N.E.2d at 722; see also Bagdade, 334 F.3d at 571-72.

¹² See Bagdade, 334 F.3d at 571-72; Murgatroyd, 741 N.E.2d at 722-23; Fletcher, 655 N.E.2d at 61; Shane, 553 S.W.2d at 468.

Accordingly, Paul Droz is prohibited from practicing law in Nevada and from appearing in any Nevada court. Additionally, Droz shall pay the costs of the disciplinary proceeding and a fine of \$3,000. Further, the state bar was directed to refer this matter to any appropriate federal, state, or county law enforcement authorities for possible criminal investigation. The state bar was also directed to serve a copy of this opinion upon the Utah and Arizona bars. Finally, the state bar shall serve a copy of this opinion upon Droz at his last-known address.