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Shoen v. State Bar of Nev., 136 Nev., Adv Op. 30 (May 28, 2020)

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NEVADA SUPREME COURT RULES – REINSTATEMENT OF SUSPENDED
ATTORNEYS

Summary

In January 2018, the amended Nevada Supreme Court Rule 116 governing the reinstatement of suspended attorneys became effective.² The amended rule states that an attorney can be reinstated if they can show by clear and convincing evidence “compliance with the terms and conditions of all prior disciplinary orders.”³ Irrespective of when a suspension was imposed, the amended rule applies to petitions for reinstatement filed after the amendment’s effective date.

Background

In 2016, this court suspended attorney Lynn R. Shoen from practicing law for four years and six months beginning retroactively in 2014. Shoen was ordered to pay restitution and the costs of the disciplinary hearing as conditions precedent to submitting a petition for reinstatement. In 2019, once her suspension period ended but before she had paid restitution, Shoen submitted a petition for reinstatement. The State Bar moved to strike the petition because the conditions precedent had not been met and the Southern Nevada Disciplinary Board (the Board) granted the motion to strike. Shoen petitioned for a writ of mandamus to direct the Board to vacate its previous order and hear her petition under the merits of the amended Supreme Court Rule 116(2) because she asserts that the amendment allows reinstatement without fulfillment of the prior disciplinary orders.

Discussion

We elect to consider the petition for a writ of mandamus

The Court may issue a writ of mandamus to “compel the performance of an act.”⁴ The Court has discretion to issue a writ.⁵ However, a writ will be issued when “there is not a plain, speedy and adequate remedy in the ordinary course of law.”⁶ Here, Shoen has no other remedy in the ordinary course of law and therefore the Court chose to entertain the writ petition.

A reinstatement petition is governed by the rules in effect when the petition is filed

In Nevada, statutes act proactively unless the Legislature clearly manifests an intent to apply the statute retroactively.⁷ Since Shoen did not seek reinstatement until after SCR 116(2) was amended and was disciplined before the Rule was amended, the disciplinary action and the

¹ By Cecilia Diaz.

² In re Amendments to Supreme Court Rule 116, ADKT 525 (Order Amending Supreme Court Rule 116, Dec. 11, 2017).

³ Nev. Sup. Ct .R. 116(2)(a) (2018).

⁴ NEV. REV. STAT. § 34.160 (2017).

⁵ *Okada v. Eighth Jud. Dist. Ct.*, 134 Nev. 6, 8, 408 P.3d 566, 569 (2018).

⁶ NEV. REV. STAT. § 34.170 (2017).

⁷ *Pub. Emps.’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008).

reinstatement action are two different proceedings. Since SCR 116 is specific to reinstatement proceedings and Shoen's petition was filed after the amendment took effect, the amended rule applies to her petition without violating the general rule against retroactivity.

Given the amendment to SCR 116(2), Shoen may file a petition for reinstatement regardless of the condition precedent to reinstatement imposed in the prior disciplinary order

Shoen's 2016 disciplinary order required that Shoen pay restitution.⁸ In 2016, SCR 116 did not provide specific criteria for a suspended attorney to meet for reinstatement. Because the Rule did not include specific criteria, the Court sometimes provided them in its disciplinary orders. Since the Rule has been amended, the Court will no longer be doing this. The Court will also not enforce conditions imposed prior to the Rule's amendment.⁹

Conclusion

The Court concluded that regardless of when an attorney's suspension was imposed, the amended SCR 116 rule will apply to petitions filed after the amendment's effective date. Since Shoen has no other avenue for relief, writ relief is appropriate. The Court issued a writ of mandamus directing the Board to vacate the order striking Shoen's reinstatement petition.

⁸ In re Discipline of Shoen, Docket No. 69697 (Order Approving Conditional Guilty Plea Agreement, Apr. 22, 2016).

⁹ See Nev. Sup. Ct. R. 116(2) (2018) (allowing an attorney to be reinstated despite failing to fully comply with the terms of a previous disciplinary order).