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In re Discipline of Reade, 133 Nev. Adv. Op. 87 (Nov. 16, 2017)

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PROFESSIONAL RESPONSIBILITY: ATTORNEY DISCIPLINE

Summary

The Court determined that, in this instance, an attorney should be suspended for four years after said attorney violated RPC 8.4(b). The Court further held that SRC 102 does not permit the Court to impose financial sanctions on an attorney when the Court is already suspending said attorney.

Background

Reade represented Global One and its owner Richard Young. Global one is a company that trains people to trade FOREX (a term associated with dealing with foreign currency). Global One fraudulently collected \$16 million in loans from its members. At Young's direction, Reade established a holding company that received the loan payments from Young. The holding company then used these funds to purchase a FOREX brokerage business while hiding the source of payment. This action was the basis of the United States District Court for the District of Nevada's decision to convict Young of money laundering. When the National Futures Association (NFA) interviewed Reade about Young's actions, Reade made various false statements to the NFA regarding the source of the payments, the use of the payments, and his knowledge regarding who owned Global One.

For these reasons, the United States District Court for the District of Nevada convicted Reade for accessory after the fact to money laundering pursuant to 18 U.S.C § 3. Reade subsequently entered into a plea deal with the State Bar under which Reade stipulated to violating RPC 8.4(b) and a Disciplinary Board imposed suspension of two years. A Southern Nevada Disciplinary Board approved the agreement. The Court rejected the agreement on the grounds that a two-year suspension was too lenient. On remand, Reade further stipulated to a thirty-month suspension as well as a \$25,000 fine paid to the Client's Security Fund. The following is an automatic review of the Disciplinary Board's Decision.

Discussion

While the State Bar has the burden of showing by clear and convincing evidence that Reade committed the alleged offense², Reade admitted to the offense in question. The Court therefore concluded that the record established by clear and convincing evidence that Reade had violated RPC 8.4(b).

Reade's serious criminal conduct warrants a 4-year suspension

The Court reviews decisions of the hearing panel de novo.³The Court examines four factors when determining appropriate discipline. The Court examines "the duty violated, the lawyers

¹ By Ronald Evans.

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

³ Nev. SUP. CT. R. 105(3)(b).

mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors."⁴ In examining these factors, the Court determined that Reade violated a serious duty to the legal community and the public because his violation included dishonesty within the practice of the law. Further, the Court concluded that Reade's knowingly and intentionally committed these violations. In addition, Reade had stipulated to various aggravating factors and mitigating factors. While the Court agreed with the Disciplinary Hearing Board that Reade's actions merited a suspension, the Court concluded that thirty months was not a sufficient penalty. The Court noted that it had suspended attorneys for four years for similar felony convictions combined with a violation of RPC 8.4(b). Thus, the Court determined that Reade should be suspended from the practice of law for four years.

SRC 102 does not provide for the imposition of fines when the discipline is suspension or disbarment

Reade argued that SRC 102 does not permit the Court to suspend an attorney and impose fines upon them. The Court noted that although it had imposed suspensions and fines in the past, previous attorneys had either agreed to pay the fines or had not challenged the Court's authority to impose both fines and sanctions. Thus, this was a matter of first impression. The Court agreed with Reade that a plain meaning of SRC 102 subsection 2 does not permit the Court to impose fines as well as a suspension. The Court further concluded that such a reading was consistent with both the goals of attorney discipline, as well as with other state's previous rulings.⁵ The Court further noted that the four-year suspension that Reade faced, when combined with the penalties from his criminal conviction, were sufficient to deter him and other attorneys from committing such violations in the future.

Conclusion

The Court rejected the Disciplinary Board's decision to suspend Reade for thirty months and to impose a \$25,000 fine payable to the Client's Security Fund. The Court determined that a four-year suspension was more appropriate considering the seriousness of Reade's misconduct, as well as the standard set by previous holdings. Further, the Court determined that a financial sanction was not appropriate given that Reade was already being suspended for four years.

⁴ In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

⁵ See Matter of Disciplinary Proceedings Against Laubenheimer, 335 N.W.2d 624, 626 (Wis. 1983).