

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE
OF BRIAN DAVID GREEN.

No. 43910

FILED

NOV 05 2004

[Signature]
DEPUTY CLERK

ORDER IMPOSING RECIPROCAL DISCIPLINE
AND DENYING MOTION TO SEAL RECORD

This is a petition for reciprocal discipline under SCR 114 against attorney Brian David Green, based on discipline imposed upon him in Colorado. Green did not respond to the petition in any way.

On May 24, 1999, the Colorado Supreme Court suspended Green for one year and one day, with conditions, for Green's failure to pay court-ordered child and spousal support. At that time, Green's child support arrearages totaled approximately \$11,000, and his spousal support arrearages totaled approximately \$24,000. Green's conduct violated Colorado Rules of Professional Conduct 8.4(d) (engaging in conduct prejudicial to the administration of justice) and Rule 8.4(h) (engaging in conduct adversely reflecting on a lawyer's fitness to practice law).¹ The Colorado Supreme Court noted three aggravating circumstances: selfish motive, refusal to acknowledge the wrongfulness of

¹The Nevada counterpart of Rule 8.4(d) is SCR 203(4); Rule 8.4(h) has no Nevada counterpart.

EFFECTIVE DATE: NOV 20, 2004
Bar Number: 4621

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his conduct, and vulnerability of the victims, Green's children. The only mitigating circumstance found by the court was Green's lack of prior discipline. The court ordered that Green would be reinstated if he demonstrated that he had paid the support arrearages or that he had entered into a payment plan for the arrearages, approved by the appropriate court. If Green was reinstated earlier than one year and one day, then he would be subject to a three-year probation period, with two conditions: (1) Green would be required to certify to the Colorado bar counsel each month that he is current on his support obligations, and (2) Green could not violate any disciplinary rules. If Green was not reinstated within one year and one day, then he was required to petition for reinstatement, which could not be granted unless Green was current on his support obligations. Documentation attached to the petition reflects that Green has never been reinstated to practice in Colorado.

Green failed to notify the Nevada state bar of the Colorado discipline as required by SCR 114(1). The state bar learned of the Colorado discipline in June 2004, when it received an anonymous facsimile transmission indicating that Green had been suspended in Colorado. The state bar's subsequent investigation revealed the 1999 Colorado suspension order, and this petition followed. Green did not respond to the petition.

SCR 114(4) provides that this court shall impose identical reciprocal discipline unless the attorney demonstrates or this court finds that one of three exceptions applies. None of the exceptions applies to this case, and so we grant the petition for reciprocal discipline.


Green shall be suspended for one year and one day. If within that time, Green demonstrates that he has satisfied his outstanding support obligations or that he is current on a court-approved payment plan, he shall be reinstated, subject to a three-year probation period with the following conditions: (1) he shall certify to bar counsel each month that he is current on his support obligations, and (2) he shall not violate any professional conduct rules. If Green is not reinstated within one year and one day, then he must file a petition for reinstatement under SCR 116, and must demonstrate prior to reinstatement that he has either satisfied his support obligations or that he is current on a court-approved payment plan. Green and the state bar shall comply with the requirements of SCR 115.


The state bar has filed a motion to seal the record in this matter. The state bar notes that SCR 121, governing confidentiality in bar matters, does not expressly address reciprocal discipline, but provides that a discipline matter is confidential until a formal complaint is filed. Since no formal complaint has been filed against Green in Nevada, and exhibits to the petition for reciprocal discipline included correspondence with Green concerning a grievance for which no formal complaint has yet been filed, the state bar asks that the record in this matter be sealed.

It is not clear why the correspondence was attached to this petition. It was not part of the record before the Colorado court, and appears to be irrelevant to the instant reciprocal discipline petition. We conclude that it is not properly before us in this proceeding, and we have not considered it in reaching our decision in this case. We deny the motion

to seal the record, and instead direct the clerk to detach Exhibits 3 and 4 from the state bar's petition and return them to the state bar.²

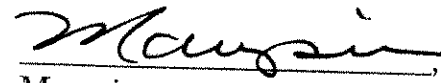
It is so ORDERED.


 C.J.
Shearing

 _____, J.
Agosti

 _____, J.
Rose

 _____, J.
Becker

 _____, J.
Maupin

 _____, J.
Gibbons

 _____, J.
Douglas

cc: Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Perry Thompson, U.S. Supreme Court Admissions Office
Brian David Green

²We note that the state bar remains free to pursue the grievance through normal proceedings under SCR 105, and we make no comment on its merits at this time.