IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF BARBARA TAVES, ESQ.

No. 37547

SEP 0 6 2002

ORDER APPROVING PUBLIC REPRIMAND

This is an appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Barbara Taves be publicly reprimanded and ordered to pay the costs of the disciplinary proceeding. The panel found that Taves violated SCR 151 (competence), SCR 153 (diligence), and SCR 154 (communication) in representing a divorce client, and that she had violated SCR 153 and SCR 154 in representing a bankruptcy client. Other charges based on Taves' representation of these clients were dismissed, as well as two counts unrelated to these clients. The state bar's bill of costs includes only the costs incurred in preparing the transcripts of the hearings, not other allowable costs, and thus is substantially lower than it might have been.

We conclude that clear and convincing evidence supports the panel's findings. We further conclude that in light of Taves' previous three private reprimands, a public reprimand is an appropriate form of discipline.

Taves raises some procedural arguments that must be addressed. First, she asserts that a state bar's subpoena to her for records was burdensome and oppressive, because compiling and copying the requested documents was time-consuming (about four hours) and

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Taves next argues that the method for exercising peremptory challenges is flawed, because she was required to exercise her two challenges as to the entire eighty-four member list of Southern Nevada Disciplinary Board members and alternates, rather than as to an alreadydesignated five-member panel. Having reviewed SCR 105(2)(a), which governs peremptory challenges of board members, we conclude that the state bar's practice is based on a reasonable reading of the rule. In addition, Taves has not demonstrated how she was prejudiced, since she exercised her challenges against two members she believed would be biased against her. Also, she made no effort to disgualify any member for cause until the third day of the evidentiary hearing.¹ This was too late, as a request for disgualification must be made before the commencement of a trial or evidentiary hearing.² In addition, the grounds for disgualification asserted by Taves are without merit. Two of the panel members had previously sat on a screening panel concerning another grievance against Taves; a judge similarly situated would not be obliged to abstain simply

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¹<u>See</u> SCR 103(8) (providing that a panel member should not participate in a case in which a judge similarly situated would be obliged to abstain).

²<u>Cf.</u> NRS 1.235(2) (providing that in no event may an affidavit stating grounds for disqualification of a judge be filed after any evidence is taken or any ruling made in a trial).

because he or she had presided over another case concerning an individual.³

Taves next argues that the panel erred in receiving an affidavit setting forth her disciplinary history at the close of evidence, before the panel had found any misconduct. The record reflects that the affidavit, prepared by the state bar's custodian of records, was submitted without discussion at the close of evidence, before the panel retired to deliberate. The panel specifically stated that the affidavit would be referred to only if a finding of misconduct was made, in order to determine the appropriate discipline. A lawyer's prior discipline history is relevant to the discipline to be imposed,⁴ and so was admissible for this purpose. Other courts have concluded that the introduction of discipline history during the evidentiary portion of a hearing is not prejudicial error.⁵ Here, the panel appropriately limited its consideration of the affidavit, and no error occurred.

Finally, Taves asserts that the proceedings against her were the result of selective prosecution and gender discrimination, and that her clients were encouraged to file grievances against her. Having carefully reviewed the record, we conclude that it contains no evidence of selective

⁴See <u>In re Discipline of Schaefer</u>, 117 Nev. 496, 25 P.3d 191, <u>as</u> <u>modified by</u> 31 P.3d 365 (2001), <u>cert. denied</u> 122 S. Ct. 1072 (2002).

⁵See, e.g., <u>Stuart v. State Bar of California</u>, 710 P.2d 357, 360 (Cal. 1985); <u>People v. Distel</u>, 759 P.2d 654, 662-63 (Colo. 1988); <u>Matter of Saab</u>, 547 N.E.2d 919, 925 (Mass. 1989) (citing <u>Withrow v. Larkin</u>, 421 U.S. 35 (1975)).

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 $^{^{3}}$ <u>See</u> NRS 1.230 (setting forth grounds for disqualification of judges other than supreme court justices); Nev. Code Jud. Conduct 3(E).

prosecution. Both the divorce client and the bankruptcy client specifically denied being encouraged by anyone else to file a grievance against Taves. Also, even if Taves' claims of gender discrimination by certain members of the Las Vegas bankruptcy bar are true, they are irrelevant to a determination of whether she committed misconduct.

Accordingly, we approve the panel's recommendation in its entirety, and issue the public reprimand attached hereto as Exhibit A. Taves shall pay the costs of the disciplinary proceeding as set forth in the state bar's bill of costs.

It is so ORDERED.

C.J. Maupin

J. Your J. Agosti

J. Shearing J. Rose

J.

Leavitt

Becker

cc: Richard J. Pocker, Chair, Southern Nevada Disciplinary Board Rob W. Bare, Bar Counsel Allen W. Kimbrough, Executive Director Gary E. Gowen

J.

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1	IN THE SUPREME COURT OF THE STATE OF NEVADA
2	
3	IN RE: THE DISCIPLINE OF
4	BARBARA TAVES, ESQ.) Case No.:)
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6	PUBLIC REPRIMAND
7	Ms. Patricia Stutts retained you during March 1998 to handle an uncontested divorce which became contested at some point during the representation. You assigned this matter to
8	your associate, as you were admittedly uncomfortable with your ability to adequately pursue Ms.
9	Stutts' interests. Your associate subsequently left your employ. Despite your admitted unfamiliarity with this area of the law, you assumed representation of Ms. Stutts' case.
10	During the time you handled Ms. Stutts' case, there was great confusion between you and Ms. Stutts as to what you could do or were doing on her behalf. The problems with your representation were greatly exacerbated by your failure to adequately and regularly keep Ms. Stutts informed about the case. You would not communicate with Ms. Stutts for months on end, despite numerous attempts by her to contact you through your office. Although you finally procured a written support order on November 18, 1998, Ms. Stutts had received no support payments when she terminated your services in May of 1999.
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15	Based upon your misconduct in representing Ms. Stutts, you are hereby publicly reprimanded for violation of the following Supreme Court Rules of Professional Conduct: SCR
16	151 (Competence) for failing to represent Ms. Stutts with the requisite legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation, SCR 153 (Diligence)
17	for failing to act with reasonable diligence in representing Ms Stutts and SCR 154
18	(Communication) for failing to keep Ms. Stutts reasonably informed about the case, failing to promptly comply with reasonable requests for information, and failing to explain matters to the
19	extent reasonably necessary to permit Ms. Stutts to make informed decisions regarding her representation.
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20	In a second matter, you were contacted by Todd and Zola Williamson about filing for bankruptcy and filing a declaration of homestead on their residence. During the initial consultation, Mrs. Williamson informed you about her pending personal injury case and outstanding bills which required her to file for bankruptcy protection. Mrs. Williamson paid between \$600 and \$800 for a Chapter 7 petition and \$50.00 for the homestead declaration. Mrs. Williamson repeatedly had to initiate contact with your office to get services performed on her case. When your paralegal finally provided Mrs. Williamson with the bankruptcy petition for her review, Mrs. Williamson noticed several omissions. Your paralegal assured Ms. Williamson that the discrepancies would be corrected and requested that Mrs.
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26	Williamson sign the forms. Mrs. Williamson was apprehensive about the errors and later called to discuss her concerns with you about signing an inaccurate filing. During that call, you
27	informed Mrs. Williamson that the telephone conference would be billed at \$150.00 per hour. Mrs. Williamson immediately terminated the phone call as a result.
28	EXHIBIT

In December 1998, the Williamsons received their Chapter 7 Notice of Discharge. When
Mrs. Williamson spoke with her defense counsel, she was dismayed to learn that the personal
injury plaintiff was not noticed of the bankruptcy. Defense counsel tried on numerous occasions
to discuss this issue with you. Finally, defense counsel received written confirmation that you
corrected the error. Although this matter finally resolved in the Williamsons' favor, your failure
to initially address Mrs. Williamson's concern about the personal injury lawsuit unnecessarily
complicated the case, and caused your client distress.

Based upon your misconduct in representing the Williamsons, you are hereby publicly reprimanded for violation of the following Supreme Court Rules of Professional Conduct: SCR 153 (Diligence) for failing to act with reasonable diligence in representing the Williamsons and SCR 154 (Communication) for failing to keep the Williamsons reasonably informed about the status of the matter, failing to comply with reasonable requests for information and failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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