

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF BARBARA
TAVES, ESQ.

No. 37547

FILED

SEP 06 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

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

expensive (about \$75). Taves argues that the panel should have granted her request to quash the subpoena. We conclude that the burden imposed was not unreasonable, and that the panel's decision was correct.

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 already-designated 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 disqualify any member for cause until the third day of the evidentiary hearing.¹ This was too late, as a request for disqualification must be made before the commencement of a trial or evidentiary hearing.² In addition, the grounds for disqualification 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

¹See 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).

²Cf. 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

³See NRS 1.230 (setting forth grounds for disqualification of judges other than supreme court justices); Nev. Code Jud. Conduct 3(E).

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

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

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.

Maupin, C.J.
Maupin

Young, J.
Young

Shearing, J.
Shearing

Agosti, J.
Agosti

Rose, J.
Rose

Leavitt, J.
Leavitt

Becker, J.
Becker

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

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

8 Based upon your misconduct in representing the Williamsons, you are hereby publicly
9 reprimanded for violation of the following Supreme Court Rules of Professional Conduct: SCR
10 153 (Diligence) for failing to act with reasonable diligence in representing the Williamsons and
11 SCR 154 (Communication) for failing to keep the Williamsons reasonably informed about the
12 status of the matter, failing to comply with reasonable requests for information and failing to
13 explain the matter to the extent reasonably necessary to permit the client to make informed
14 decisions regarding the representation.
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