

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE DISCIPLINE OF:
R. CHRISTOPHER READE
STATE BAR NO. 6791

)
)
)
)
)
)

Electronically Filed
Oct 06 2016 01:31 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No. 70989

**STATE BAR OF NEVADA'S
ANSWERING BRIEF**

David W. Mincavage, Esq.
Assistant Bar Counsel
Nevada Bar No. 5067
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
(702) 382-2200
Attorney for State Bar of Nevada

Richard A. Wright, Esq.
Nevada Bar No. 886
WRIGHT STANISH & WINCKLER
300 South 4th St., Ste. 701
Las Vegas, NV 89101

Jay A. Shafer, Esq.
Nevada Bar No. 09184
PREMIER LEGAL GROUP
1333 N. Buffalo Dr., Ste. 210
Las Vegas, NV 89128
(702) 794-4411
Attorneys for R. Christopher Reade, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
II. STATEMENT OF THE CASE	2
1. Statement of the Case	2
2. Statement of Facts.....	2
3. The Panel's Findings and Recommendation	3
III. STANDARD OF REVIEW	4
IV. ARGUMENT	4
V. CONCLUSION.....	9
VI. CERTIFICATE OF COMPLIANCE	10
VII. CERTIFICATE OF SERVICE BY MAIL	12

TABLE OF AUTHORITIES

Cases Cited

Page(s)

<i>In re Discipline of Schaefer</i> , 117 Nev. 496, 25 P.3d 191 (1991), <i>opinion modified on denial of rehearing</i> by 31 P.3d 365 (2001), <i>cert. denied</i> by 534 U.S. 1131, 122 S. Ct. 1072 (2002).....	4
<i>Waters v. Barr</i> , 103 Nev. 694, 747 P.2d (1987).....	7
<i>Austin v. United States</i> , 509 U.S. 602, 113 S. Ct. 2801, 125 L .Ed. 2d 488 (U.S.1993).....	7
<i>United States v. Halper</i> , 490 U.S. 435, 104 L.Ed.2d 487, 109 S. Ct. 1892 (1989).....	7
<i>In re Rojas</i> , 2016 Nev. LEXIS 521 (Nev. Docket 69787 June 14, 2016) (unpublished disposition).....	8
<i>Old Aztec Mine, Inc. v. Brown</i> , 97 Nev. 49, 623 P.2d 981 (1981).....	8

Court Rules

Supreme Court Rule 105.....	4
ABA Standards for Attorney Sanctions 5.11	5
18 USC § 3.....	6
Supreme Court Rule 102(2)	6
Supreme Court Rule 39.....	6
Supreme Court Rule 76(1).....	7
Rule of Professional Conduct 8.4(b).....	2

1 I.

2 **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

3 1. Whether a suspension from the practice of law for thirty (30)
4 months, retroactive to January 16, 2014, is the appropriate length based upon
5 Reade's guilty plea and conviction pursuant to 18 USC § 3 to one count of
6 Accessory after the Fact to Money Laundering, a felony?

7 2. Whether a fine of \$25,000 to be paid to the State Bar Client Security
8 Fund as a condition of reinstatement is appropriate?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

II.

STATEMENT OF CASE

A. Statement of the Case

This is an automatic *de novo* appeal, brought pursuant to the Supreme Court Rules and applicable interpreting case law, of the Findings of Fact, Conclusions of Law and Recommendation of the duly designated Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board, filed on July 25, 2016, which recommended that this Court suspend attorney R. Christopher Reade ("Reade") for thirty (30) months, retroactive to January 16, 2014, and imposes a fine of \$25,000 to be paid to the State Bar Client Security Fund as a condition of reinstatement. *See* Record of Appeal ("ROA") Vol. I, *Findings of Fact, Conclusion of Law and Recommendation Regarding Petition for Reinstatement* ("Findings"), pp. 115-123 and ROA Vol. II, pp. 220 – 222.

B. Statement of Facts

Petitioner's Opening Brief provides a comprehensive narrative of the procedural history of the disciplinary and criminal matters in this case. *See, Reade Opening Brief*, pp. 1-12. On October 20, 2014, Reade entered into a Conditional Guilty Plea to a violation of Rule of Professional Conduct ("RPC") 8.4(b) (Misconduct) for stated discipline of a suspension of twenty-four (24) months retroactive to January 16, 2014. (ROA Vol. I pp.83 – 91). On October 9, 2015, this Court entered an ORDER REJECTING CONDITIONAL GUILTY

1 PLEA AGREEMENT AND REMANDING FOR FURTHER PROCEEDINGS,
2 finding a suspension to be appropriate, but that the term length of twenty- four
3 (24) months was insufficient in relation to Reade's admitted conduct, and
4 ordered a new Formal Hearing. (ROA Vol. I, pp. 92-94). Furthermore, this
5 Court made reference to two cases: In re Discipline Noel Gage, Docket No.
6 64988 (Order Approving Conditional Guilty Plea, May 28, 2014) and In Re
7 Discipline Harvey Whittemore, Docket No. 66350 (Order of Suspension, March
8 20, 2015) in a footnote of the Order Rejecting Conditional Guilty Plea. (ROA
9 Vol. I, p. 93). Both the Gage and Whittemore cases involved felony convictions
and a four (4) year suspension from the practice of law.

10 **C. The Panel's Findings and Recommendation**

11 Based upon the pleadings and papers on file herein, the evidence
12 admitted and the foregoing Findings of Fact and Conclusions of Law, the Panel
13 recommended by a majority decision (two to one vote) (ROA Vol. II, p. 220) the
14 following discipline:

15 1. **SUSPENSION:** The Panel recommended that
16 Respondent be suspended from the practice of law for a period of (30) thirty
17 months retroactive to January 16, 2014, the date Respondent voluntarily
18 transferred to inactive status. Respondent must petition for reinstatement. (ROA
19 Vol. II, p. 221).
20

2. **FINE:** \$25,000.00 to be paid to the State Bar of Nevada Client Security Fund as a condition of reinstatement. (ROA Vol. II, p. 222).

3. **COSTS:** Respondent is assessed the costs of these proceedings, excluding staff salaries, due within thirty (30) days of invoicing from the State Bar of Nevada. (ROA Vol. II, p. 221).

III.

STANDARD OF REVIEW

This Court has held, in regards to a disciplinary hearing conducted pursuant to Supreme Court Rule ("SCR") 105, that “[a]lthough the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel’s findings and recommendation, and must examine the record anew and exercise independent judgment.” *In re Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001), *cert. denied*, 534 U.S. 1131 (2002).

IV.

ARGUMENT

1) Appellant's Criminal Conduct is Deserving of a Substantial Suspension

This Court expressed concern regarding the serious nature of Appellant's conviction in the ORDER REJECTING CONDITIONAL GUILTY PLEA AGREEMENT AND REMANDING FOR FURTHER PROCEEDINGS by

1 stating: "Based on our review of the record, we agree that a suspension is
2 warranted but conclude the length of the suspension is insufficient in relation to
3 Reade's admitted conduct." (ROA Vol. I p. 93). Furthermore, this Court made
4 reference to two cases: In re Discipline Noel Gage, Docket No. 64988 (Order
5 Approving Conditional Guilty Plea, May 28, 2014); and In Re Discipline
6 Harvey Whittemore, Docket No. 66350 (Order of Suspension, March 20, 2015)
7 in a footnote directly following this quote. Id. at p. 93. Both the Gage and
8 Whittemore cases involved felony convictions and the imposed discipline was a
four (4) year suspension from the practice of law.

9 Similar to Gage and Whittemore, Appellant received prison time
10 for his felony conviction. More importantly, in this case like in Gage,
11 Appellant's felony conviction directly involved his law license. Assistant Bar
12 Counsel at the Formal Hearing asked for a five (5) year suspension based upon
13 the Annotated Standards for Imposing Lawyer Sanctions. Specifically, ABA
Standard 5.11 provides:

14 **Disbarment is generally appropriate when:**

- 15 **(a) a lawyer engages in serious criminal conduct a necessary**
16 **element of which includes intentional interference with the**
17 **administration of justice, false swearing, misrepresentation,**
18 **fraud...or an attempt or conspiracy or solicitation of another to**
19 **commit any of these offenses; or**
20 **(b) a lawyer engages in any other intentional conduct involving**
dishonesty, fraud, deceit, or misrepresentation that seriously
adversely reflects on the lawyer's fitness to practice of law. *See ABA*
Annotated Standards for Imposing Lawyer Sanctions Standard 5.11 and
argued at ROA. Vol. II p. 195 - 197.

1 On July 15, 2014, Appellant was convicted pursuant to 18 USC § 3 of one count
2 of Accessory after the Fact to Money Laundering, a felony. *See Transcript of*
3 *proceeding United States of America v. Robert Christopher Reade, Case no.*
4 *2:14-cr-22-KJD CWH* dated July 15, 2014. (ROA Vol. I pp. 36 – 70). Appellant
5 caused actual injury to the public by helping fraudsters circumvent laws designed
6 to assist in the detection of crime. Furthermore, he actively attempted to mislead
7 an investigation by the National Future Association a regulatory commission
8 specifically designed to protect the public. Indeed, since this record is before the
9 Court *de novo*, the Court will also weigh the record against its own concept of
10 appropriate discipline under these circumstances.

11 **2. A Fine Paid to the State Bar Client Security Fund is Appropriate**
12 **Discipline**

13 The recommended fine of \$25,000 as a condition of reinstatement is
14 appropriate. Appellant's reliance on the argument that SCR 102(2) limits the
15 authority of this Court is misplaced. Nevada Supreme Court Rule ("SCR") 39
16 states:

17 **Rule 39. Inherent Powers of Courts**

18 Attorneys being court officers and essential aids in the administration of
19 justice, the government of the legal profession is a judicial function.
20 Authority to admit to practice and to discipline is inherent and exclusive
in the courts. SCR 39.

1 In *Waters v. Barr*, 103 Nev. 694, 747 P. 2d 900 (1987), the Nevada Supreme
2 Court held, "...this court nevertheless has inherent supervisory authority over
3 the State Bar of Nevada, and a strong interest in assuring that not only bar
4 counsel, but all members of the State Bar of Nevada, and all its functionaries
5 perform their duties properly. See SCR 39, SCR 76(1)." Id. at 901. Clearly the
6 ability to assess a fine payable to the State Bar Client Security Fund is an
7 inherent power of the Court under SCR 39.

8 Appellant's reliance on *Austin v. United States*, 509 U.S. 602, 113 S. Ct.
9 2801, 125 L. Ed. 2d 488 (1993) and *United States v. Halper*, 490 U.S. 435, 109
10 S. Ct. 1892, 104 L. Ed. 2d 487 (1989) is easily distinguishable from the case at
11 hand. Both *Austin* and *Halper*, involve the government extracting monetary
12 penalties from citizens. The State Bar of Nevada is a public corporation created
13 under SCR 76(1). SCR 76(1) states:

14 The State Bar of Nevada, a public corporation heretofore created by
15 statute, shall govern the legal profession in this state, subject to the
16 approval of the supreme court. The state bar is under the exclusive
jurisdiction and control of the supreme court and is an association of
persons now or hereafter regularly licensed to practice law in the State
of Nevada.

17 SCR 39 and SCR 76 grant the inherent power of the Nevada Supreme Court to
18 hand out appropriate discipline as a self- regulating governance of the legal
19 profession.
20

1 Incidentally, Appellant places a strong emphasis on *In Re Rojas*, 2016
2 Nev. LEXIS 521 (Nev. Docket 69787 June 14, 2016) (unpublished disposition)
3 to justify the suspension recommended by the Panel, yet in his own brief
4 acknowledges that this court, in *Rojas*, affirmed the Panel's findings that
5 included a \$25,000 fine to the State Bar of Nevada Client Security Fund as a
6 condition of reinstatement. *Reade Opening Brief* pp. 16- 17. Specifically,
7 *Rojas*, like Appellant, was assessed the exact same fine amount as a condition of
8 reinstatement, which did not involve any restitution.

9 Furthermore, Appellant failed to raise the inappropriate fine issue at the
10 Formal Hearing on June 23, 2016. *See Transcript of Proceedings* ROA. Vol. II,
11 pp. 130- 249. In *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 623 P.2d 981
12 (1981) the Nevada Supreme Court held: "A point not urged in the trial court,
13 unless it goes to the jurisdiction of the court, is deemed to have been waived and
14 will not be considered on appeal." *Id.* at 983. On June 23, 2016, the Panel
15 provided its recommendation of discipline, which included a fine of \$25,000 as a
16 condition of reinstatement, without objection by Appellant. In fact, Appellant's
17 counsel argued extensively drawing a comparison between the discipline in
18 *Rojas* and Appellant without ever arguing the fine in *Rojas* was inappropriate.
19 *See Transcript of Proceedings* ROA Vol. II, pp. 209 - 213. The recommended
20 fine of \$25,000 as a condition of reinstatement is appropriate.

1 V.

2 **CONCLUSION**

3 It is especially important for attorneys to use their legal expertise to
4 discourage rather than encourage or further fraud on the public. In the end the
5 Court must, based upon the record, the recommendation of the Panel in a two to
6 one (2 to 1) finding, and its own assessment determine the length of the
7 suspension from the practice of law that is appropriate discipline for Appellant.
8 Clearly the imposition of a fine as a condition of reinstatement is appropriate.

9 DATED this 5 day of October, 2016.

10
11 STATE BAR OF NEVADA
12 C. STANLEY HUNTERTON, BAR COUNSEL

13 By: 

14 DAVID A. MINCAVAGE, ESQ.

15 Assistant Bar Counsel

16 Nevada Bar No. 5067

17 3100 West Charleston Boulevard, Ste. 100

18 Las Vegas, Nevada 89101

19 (702) 382-2200
20

1 VI.

2 **CERTIFICATE OF COMPLIANCE**

3 1. I hereby certify that this brief complies with the formatting
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
5 and the type style requirements of NRAP 32(a)(6) because this brief has been
6 prepared in a proportionally spaced typeface using Word 2010 in Times New
Roman 14 point font size.

7 2. I further certify that this brief complies with the page or type volume
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
9 by NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or
more and contains 2,423 words.

10 3. Finally, I hereby certify that I have read the foregoing Answering
11 Brief of the State Bar of Nevada, and to the best of my knowledge, information
12 and belief, this brief is not frivolous or interposed for any improper purpose. I
13 further certify this brief complies with all applicable Nevada Rules of Appellate
14 Procedure, including the requirement of NRAP 28(e), which requires every
15 assertion in the brief regarding matters in the record to be supported by
appropriate references to the record on appeal. I understand that I may be subject

16 ///

17 ///

18 ///

19 ///

20 ///

///

1 to sanctions in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.

3 DATED this 5 day of October, 2016.

4 STATE BAR OF NEVADA
5 C. STANLEY HUNTERTON, BAR COUNSEL

6 By: 

7 DAVID W. MINCAVAGE, ESQ.

8 Assistant Bar Counsel

9 Nevada Bar No. 5067

10 600 East Charleston Boulevard

11 Las Vegas, Nevada 89101

12 (702) 382-2200
13
14
15
16
17
18
19
20

VII.

CERTIFICATE OF SERVICE BY MAIL.

The undersigned hereby certifies that a true and correct copy of the foregoing **STATE BAR OF NEVADA'S ANSWERING BRIEF** was served on the following parties by electronic service addressed to:

R. Christopher Reade
c/o Richard A. Wright, Esq.
WRIGHT STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101

Dated this 5th day of October, 2016.



An employee of the State Bar of Nevada