

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN R. SHOEN,)
)
Petitioner,)
)
vs.)
)
STATE BAR OF NEVADA,)
)
Respondent.)
_____)

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Case No. 79288

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

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Court Rules

Page(s)

Supreme Court Rule 116 (Reinstatement)

1, 5, 6

1 **I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

2 1. Whether striking the Petition for Reinstatement was proper in light of
3 Petitioners failure to satisfy a condition precedent which was imposed by the Nevada
4 Supreme Court.

5 2. Whether the Southern Nevada Disciplinary Board was required to consider
6 and apply the entirety of Supreme Court Rule (“SCR”) 116 (Reinstatement) before
7 striking the Petition for Reinstatement.

8 **II. STATEMENT OF CASE**

9 Lynn R. Shoen (“Shoen”) was suspended from the practice of law on April
10 22, 2016. The suspension of four (4) years and six (6) months was retroactive to
11 April 24, 2014.

12 Shoen petitioned for reinstatement to the practice of law on April 23, 2019.

13 The State Bar of Nevada (“State Bar”) filed a Motion to Strike Shoen’s
14 petition on May 7, 2019.

15 The Southern Nevada Disciplinary Board granted the State Bar’s motion to
16 strike on May 28, 2019.

17 On July 29, 2019, Shoen filed the Writ of Mandamus which underlies this
18 matter.

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1 **III. STATEMENT OF FACTS.**

2 **A. Initial Suspension**

3 On April 22, 2016, this Court entered an Order Approving a Conditional
4 Guilty Plea (“CGP”) previously approved by a Formal Hearing Panel of the Southern
5 Nevada Disciplinary Board. *See Exhibit 1, Order Approving Conditional Guilty Plea*
6 *Agreement, p. 1; Appendix p. 002.*

7 In her guilty plea, Shoen admitted to more than forty (40) disciplinary
8 violations, including Rule of Professional Conduct (“RPC”) 1.3 (Diligence), RPC
9 1.4 (Communication), RPC 1.8 (Conflict of Interest: Current Clients: Specific
10 Rules), RPC 1.15 (Safekeeping Property), RPC 3.4 (Fairness to Opposing Party and
11 Counsel), RPC 8.1(a) (Bar Admission and Disciplinary Matters) and RPC 8.4
12 (Misconduct). *Id.*

13 This Court followed the recommendation of the Formal Hearing Panel and
14 imposed a suspension of four (4) years and six (6) months, retroactive to April 24,
15 2014. *Id at page 2; Appendix p. 003.*

16 This Court ordered Shoen to pay \$25,100 dollars in restitution. She was
17 directed to pay the money back in monthly installments and complete the refund
18 within one (1) year. This Court also ordered that, “The payment of restitution is a
19 *condition precedent* to the submittal of an application for reinstatement.” *Id.*
20 (Emphasis added).

1 This Court also ordered Shoen to pay to the State Bar the costs of her
2 disciplinary proceedings, excluding Bar Counsel and staff salaries, within 180 (one
3 hundred eighty) days of receipt of a billing from the State Bar. *Id. at page 3;*
4 *Appendix p.004.*

5 In her underlying Petition For a Writ of Mandamus, Shoen acknowledged that
6 she had neither paid the \$25,100 in restitution nor the costs of her disciplinary
7 proceedings. She said the payments had not been make because of “insufficient
8 funds.” *See Exhibit 2, Petition For a Writ of Mandamus, page 5; Appendix p. 010..*

9 **B. Petition for Reinstatement**

10 Shoen filed a Petition for Reinstatement to the practice of law on April 23,
11 2019. *See Exhibit 3, Petition for Reinstatement, page 1; Appendix p. 019.*

12 In her petition, Shoen acknowledged that she had not paid the \$25,100 in
13 restitution as ordered by this Court. *Id. at page 8; Appendix p.026.*

14 On May 7, 2019, the State Bar filed a Motion to Strike Lynn R. Shoen’s
15 Petition for Reinstatement with the Southern Nevada Disciplinary Board. *See*
16 *Exhibit 4, State Bar of Nevada’s Motion to Strike Lynn R. Shoen’s Petition for*
17 *Reinstatement, page 1; Appendix p.033.*

18 In its Motion to Strike, the State Bar argued that the payment of restitution
19 had been a condition precedent to filing a petition seeking reinstatement. When this
20 Court suspended Shoen, it was clear that she had to pay restitution *before applying*

1 for reinstatement. However, she failed to meet that condition precedent and even
2 acknowledged that she had not done so. *Id. at page 4; Appendix p. 036.*

3 After considering the parties' pleadings and oral arguments, Luke Pusching
4 ("Puschnig"), chair of the Southern Nevada Disciplinary Board, issued an Order
5 Granting State Bar's Motion to Strike. In the Order, which was filed on May 29,
6 2019, Puschnig ruled that neither he nor the State Bar had the authority to consider
7 her application for reinstatement until the restitution had been paid. *See Exhibit 5;*
8 *Appendix p. 037.*

9 IV. ARGUMENT.

10 1. Striking the Petition for Reinstatement was appropriate because Shoen 11 did not satisfy a Condition Precedent imposed by this Court.

12 When this Court suspended Shoen in April 2016, it ordered her to pay \$25,100
13 in restitution. This Court went on to make payment of restitution a condition
14 precedent to filing a petition for reinstatement.

15 Shoen, however, has acknowledged that she did not pay the restitution
16 because she could not afford it.

17 The language of this Court's order of suspension was clear: "The payment of
18 restitution is a condition precedent to the submittal of an application for
19 reinstatement."

20 This Court did not state that the restitution requirement could be unilaterally
waived by a petitioner if she could not afford it or if such payments were

1 inconvenient. Shoen did not pay the restitution so, pursuant to this Court's order,
2 she was not permitted to petition for reinstatement.

3 Accordingly, the Southern Nevada Disciplinary Board had no choice but to
4 strike her petition. To do otherwise would have violated this Court's order.

5 **2. The Disciplinary Board was not required to consider all of SCR 116**
6 **before striking the Petition for Reinstatement.**

7 Shoen essentially argued in her Writ of Mandamus that the Southern Nevada
8 Disciplinary Board, through then-Chair Puschnig, had a "duty" to consider all of
9 SCR 116 (Reinstatement) but failed to do so. *See Exhibit 2 at p. 4; Appendix p. 009.*

10 Shoen's rationale, however, is incorrect. Her petition was properly stricken
11 because she did not satisfy requirements which this Court set as conditions precedent
12 for filing such a request.

13 SCR 116 sets forth the process for handling applications for reinstatement.
14 SCR 116(2) sets forth criteria which disciplinary panels must consider when
15 deciding whether a suspended attorney should be recommended for reinstatement.
16 However, the process cannot reach the required "hearing stage" absent a valid,
17 appropriate petition requesting reinstatement.

18 Her now-stricken reinstatement petition and the instant Writ of Mandamus
19 included references to Shoen's apparent good works and her rehabilitation since she
20 misappropriated client funds. But SCR 116(2) requires her to prove those probably

1 favorable facts by clear-and-convincing evidence before a properly constituted
2 hearing panel of the Southern Nevada Disciplinary Board.

3 Shoen appears to be argue that even if she has not satisfied this Court's
4 condition precedent to seeking reinstatement, a hearing panel still must be appointed
5 to consider whether she has met the requirements of SCR 116(2). Of course, SCR
6 116 contains no language which would allow Shoen to go directly to a reinstatement
7 hearing despite her failure to comply with this Court's directives.

8 If a pleading is stricken, it no longer exists legally. As such, unless it is
9 resurrected by this Court, her currently stricken reinstatement petition no longer
10 legally exists. And without the valid petition required by SCR 116(2), the
11 reinstatement process cannot move forward to the stage which Shoen mistakenly
12 believes is required.

13 The disciplinary board, through its chair, did not have a "duty" to consider all
14 of SCR 116 as Shoen contended. Shoen's interpretation of the reinstatement process
15 would make petitions only *pro forma* exercises and this Court's orders irrelevant.

16 The disciplinary board's chair had no option but to strike her reinstatement
17 petition. Pursuant to this Court's ruling when Shoen was suspended, the State Bar
18 and its disciplinary board have no authority to consider her petition until she satisfies
19 all the requirements mandated by this court.

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V. CONCLUSION.

This Court set as a condition precedent Shoen's payment of restitution before being permitted to file a reinstatement petition. Shoen has acknowledged that she failed to pay restitution or the costs of her prior disciplinary proceedings.

Accordingly, the State Bar respectfully requests that this Court deny Shoen's Writ of Mandamus and prohibit her from applying for reinstatement to the practice of law until this Court's directives have been met.

DATED this 22st day of November, 2019.

STATE BAR OF NEVADA
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1 **VII. CERTIFICATE OF COMPLIANCE**

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

6 2. I further certify that this brief complies with the page or type volume
7 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
8 NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or more and
contains 1,309 words.

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

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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 22nd day of November, 2019.

4 **STATE BAR OF NEVADA**
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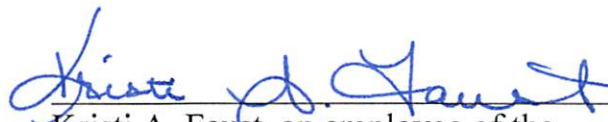
VIII.

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 placed in a sealed
envelope and sent by U.S. regular mail in Las Vegas, Nevada, postage fully prepaid
thereon for first class mail, addressed to:

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Dated this 22 day of November, 2019.



Kristi A. Faust, an employee of the
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