

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

BRENT RANDALL PHILLIPS,
Bar No. 025686

Respondent.

PDJ-2017-9058

**NOTICE AND ORDER
IMPOSING RECIPROCAL
DISCIPLINE**

[State Bar Charge Nos. 17-1350-N]

FILED JUNE 30, 2017

On December 12, 2013, Brent Randall Phillips, signed a stipulation of facts and conclusions of law and disposition with the State Bar of California admitting in two nearly identical client matters, he willfully violated the Rules of Professional Conduct. Mr. Phillips was represented by counsel. Mr. Phillips stipulated as true that he willfully practiced law without a license and collected an illegal fee, both in Pennsylvania and New Jersey.

On December 23, 2013, the stipulation was accepted by order filed with the State Bar Court of California. The Supreme Court of California later accepted the recommendation. A stayed suspension of two years was imposed with probation for two years upon stated terms and conditions, which included successful passage of the Multistate Professional Responsibility Examination, (“MPRE”).

Pursuant to Rule 57(b), Ariz. R. Sup. Ct.,¹

Upon being disciplined in another jurisdiction, a lawyer admitted to practice in the State of Arizona, whether active, inactive, retired, or suspended, shall, within thirty (30) days of service of the notice of imposition of discipline from the other jurisdiction, inform the disciplinary clerk of such action, and identify every court in which the lawyer is or has been admitted to practice. Upon notification that a lawyer subject to the jurisdiction of this court has been disciplined in another jurisdiction, the disciplinary clerk shall obtain a certified copy of the disciplinary order and file it with the presiding disciplinary judge.

Under Rule 54(h), discipline imposed in another jurisdiction is grounds for discipline.

An April 18, 2017, certified copy of the Stipulation Re Facts, Conclusions of Law and Disposition and Order, (“Order”), regarding Mr. Phillips was received by the Disciplinary Clerk and filed with the office of the Presiding Disciplinary Judge on April 28, 2017. The Presiding Disciplinary Judge issued a notice, with a copy of the certified Order to Mr. Phillips and Bar Counsel on April 28, 2017, pursuant Rules 57(b)(2). Under that Rule, the notice directed Mr. Phillips or Bar Counsel to inform

¹ Unless stated otherwise, all Rule references are to the Ariz. R. Sup. Ct.

the Presiding Disciplinary Judge, within thirty days from service of the notice, why “the imposition of identical or substantially similar discipline” would be unwarranted.

On May 23, 2017, counsel for Mr. Phillips filed a notice of appearance. On May 25, 2017, Mr. Phillips, filed a memorandum citing Rules 57(b)(3)(C) and (D), that a grave injustice will result from imposing discipline and that the misconduct established warrants substantially different discipline in Arizona. On May 30, 2017, the State Bar filed its memorandum stating Mr. Phillips’ California misconduct equates with Arizona ER 1.5(a) (fees) and ER 5.5 (unauthorized practice of law). [State Bar Memorandum, Pages 5-6.]

Mr. Phillips does not assert deprivation of due process or any infirmity of proof establishing the misconduct. He asserts the matter should be dismissed as he has “completed all terms of probation ordered by the State Bar of California years ago.” Mr. Phillips further asserts that an admonition at most, should be imposed because the State Bar delayed in investigating this matter.

Rule 57(b)(3)(C), Grave Injustice

Mr. Phillips argues there is would exist a grave injustice under Rule 57(b)(3)(C) if suspension were ordered because Arizona does not have “stayed” suspension and he has completed his term of probation. [Respondent’s Memorandum, Page 5, Paragraph C.] The State Bar concedes that due to the lack of

a disciplinary sanction equivalent to a stayed suspension in Arizona, a grave injustice would result from imposing a suspension. However, the State Bar asserts that this substantiates that a different discipline is warranted under Rule 57(b)(3)(d), and that reprimand is the appropriate sanction if the conduct is negligent. [State Bar Memorandum, Pages 8.]

Mr. Phillips also argues that under Rule 57(b)(3)(C), grave injustice would result from imposing discipline as the “State Bar held off on proceeding with discipline as a bargaining chip to persuade Respondent to accept its settlement offer in PDJ 2016-9128.” Mr. Phillips states Bar Counsel first knew of the California discipline of Mr. Phillips in April 2016. [Respondent’s Memorandum, Page 6, Lines 21-25.]

Mr. Phillips offers as support a September 29, 2016, email from Bar Counsel sent at 10:10 a.m., to Mr. Phillips counsel. (Present counsel did not represent Mr. Phillips at that time.) Most of the email is redacted by Mr. Phillips. It concludes with a statement by Bar Counsel offering to resolve both PDJ 2016-9128 and the alleged violation by Mr. Phillips of Rule 57(b)(1), for his failure to report his California disciplinary sanction. That email was forwarded by his prior attorney to Mr. Phillips. [Respondent’s Memorandum, Ex. E.]

Mr. Phillips concludes his argument stating, “While the State Bar was willing to refrain from *any* pursuit of reciprocal discipline” it appears that only upon the

Supreme Court stay of PDJ 2016-9128, over a year later, that the State Bar forwarded this reciprocal discipline matter to the Disciplinary Clerk.” [Respondent’s Memorandum, Page 7, Lines 9-14.]

However, Bar Counsel submitted the context of that email, which was redacted by Mr. Phillips. [State Bar Memorandum, Exhibit D.] Bar Counsel in the email also stated he had spoken with the assigned Attorney General and through additional research uncovered the California discipline imposed on Mr. Phillips. Bar Counsel stated,

I also discovered that Mr. Phillips failed to notify the Disciplinary Clerk of the Arizona Supreme Court, regarding his California disciplinary sanction, as required by Rule 57(b)(1), Ariz. R. Sup. Ct. Therefore, a reciprocal disciplinary proceeding has never been opened in Arizona. [Id.]

While Mr. Phillips attributes grave injustice to Bar Counsel, he suffers from the equitable doctrine of “unclean hands” for multiple reasons. First, under Rule 57 it was the duty of Mr. Phillips to report his discipline. Even if Mr. Phillips negligently failed to initially report his discipline, he later, at a minimum, knowingly failed to do so. Third, his initial failure to report and later failure to report after being prompted by the State Bar inured to his benefit, not to the benefit of the State Bar. Mr. Phillips argues that by failing to comply with the reporting requirements of Rule

57 that a respondent attorney should be able to put himself in a better position. This is untenable. He is not put in a worse position by the imposition of reciprocal discipline than he would have been had he reported the California discipline imposed upon him. While his completion of probation inures to his benefit, it cannot absolve him of his duty under the Rules.

Notwithstanding, the PDJ finds the interests of justice would not be served by imposing a suspension as Arizona does not have “suspended suspension.”

Rule 57(b)(3)(D), Misconduct Warranting Substantially Different Discipline

Mr. Phillips acknowledges as a fact that “On December 23, 2013, the State Bar Court of California imposed discipline” but that it was two years of probation, and passage of the MPRC because the two (2) year suspension was “stayed.” [Respondent’s Memorandum, Page 2, Lines 20-23.] It was a “stayed” suspension, which is a sanction in itself in California.

Mr. Phillips cites the Order to assert, “Importantly, Respondent fully cooperated with the California authorities during its investigation and in consenting to the discipline” [Respondent’s Memorandum, Page 3, Lines 3-4.] However, the Order makes no reference to the “cooperation” of Mr. Phillips. The first six pages of the Order comprises a pre-printed form with multiple options to designate. Under Subpart C, those options include sub-part (3), “Candor/Cooperation” as a potential mitigating circumstance. The box is not checked. Additional mitigating

circumstances are stated on an attachment on page 9. The quote by Mr. Phillips is misleading as it is listed not for “cooperation”, but rather the mitigating factor of submission of an agreement “before the filing of disciplinary charges.” [Order, page 3 and 9.] His mitigation was listed and stipulated to by the California State Bar. It has weight and was considered.

Mr. Phillips also certifies, “Most critically-Respondent successfully completed all his probation terms nearly three years ago-in 2014.” [Respondent’s Memorandum, Page 3, Line 19 to Page 4, Line 6.] This is clearly untrue. As pointed out by the State Bar, Respondent own exhibit conclusively establishes Mr. Phillips did not complete his probation until August 11, 2016. [Respondent’s Memorandum, Exhibit B.]

Mr. Phillips argues for dismissal but alternatively states “admonition is an appropriate sanction” for the negligent unauthorized practice of law. He submits under ABA *Standard 7.4* that an admonition is appropriate, “when a lawyer engages in an isolated instance of negligence” where there is “little or no actual or potential injury to a client, the public or the legal system.” [Respondent’s Memorandum, Page 3, Line 19 to Page 4, Line 6.] The State Bar argues *Standard 7.3* is the most relevant, which states a reprimand is generally appropriate. [State Bar Memorandum, pages 8-9.]

Ruling

Attached to the Respondent's Memorandum, is a copy of pages 146-148 of the California Title IV, Standards for Attorney Sanctions for Professional Misconduct.² California defines the degrees of sanctions available for professional misconduct under sub-section 1.3:

- (a) Disbarment;
- (b) Actual suspension;
- (c) Stayed suspension; (defined under 1.2 as generally at least one year.)
- (d) public reproof, (defined under 1.2 as a public censure or reprimand and
- (e) private reproof, (defined as a censure or reprimand that is not a matter of public record.

[Respondent's Memorandum, Exhibit D.]

Rule 57(b)(3) provides in part that the PDJ "shall impose the identical or substantially similar discipline" unless bar counsel or Respondent establishes by preponderance of the evidence a basis under that rule not to impose such discipline. The mental state of Mr. Phillips was stipulated by him to be "willful" not negligent.

The degree of the sanction Mr. Phillips received was more severe than a "public reproof." [Id., page 148, Section 1.3(c) and (d).] By definition, a stayed

² The attachment appears to be that Title as amended in 2013. However, the prior Title also provides for "stayed suspension."

suspension “is generally for a period of at least one year.” [Id., Page 147, Section 1.2(c)(2).] Mr. Phillips stayed suspension was for two years.

Mr. Phillips stipulated to both the findings of fact and the conclusions of law. That stipulation states, “Standard 2.10 states a member’s culpability of violation of any provision of the Business and Professions Code not specified in these standards, or of a *willful* violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension *according to the gravity of the offense or harm to the victim...*” (Emphasis added.) [Order, page 9, final paragraph.] The stipulation provides Standard 2.10 applies. While public reproof was available under Standard 2.10, the parties stipulated that a higher degree of sanction than a public reprimand best served the interests of the public.

Dismissal is not warranted. The PDJ gives little weight to the sworn statement of facts of Mr. Phillips attached as Ex. C to his Memorandum. Facts do not change. Mr. Phillips stipulated that he violated the California Rules of Professional Conduct on two separate occasions and stipulated that his violations warranted a stayed suspension and two years of probation. It is presumed he either offered the same statements or part of them to the California Bar or elected to stay silent. Whatever the case, the PDJ is not inclined to consider what equates to a collateral attack on the California proceedings. They were concluded by a stipulation to the stated facts and

conclusions of law. Mr. Phillips was represented by counsel at the time who also signed the stipulation. Less than suspension is warranted but more than admonition.

Now Therefore,

IT IS ORDERED imposing reciprocal discipline of Reprimand upon **Brent Randall Phillips, Bar No. 025686.**

DATED this 30th day of June, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copy of the foregoing e-mailed this 30th day of June, 2017, and mailed July 3, 2017, to:

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