

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ARRON B. NESBITT,
Bar No. 021951

Respondent.

PDJ-2018-9036

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 18-1105-RC]

FILED JUNE 26, 2018

Under Rules 54(h) and 57(b), *Reciprocal Discipline*, Ariz. R. Sup. Ct.,¹ a certified copy of the Order Approving Conditional Admission of Misconduct and Imposing Sanctions (“Order”) issued by the Supreme Court of Colorado on March 9, 2018, has been received by the Presiding Disciplinary Judge (PDJ) of the Supreme Court of Arizona. The Order imposed a one (1) year and one day suspension, with nine (9) months to be served and the remainder to be stayed upon successful completion of a two-year period of probation. The suspension was for Mr. Nesbitt making billing errors including overbilling for work performed and billing clients where no work was performed on their behalf.

Notice of the filing of that Order was issued to the parties on May 17, 2018, in compliance with Rule 57(b)(2). Under Rule 57(b)(3), the PDJ “shall impose the

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

identical or substantially similar discipline” unless Bar Counsel or Respondent establishes by preponderance of the evidence one of the four elements listed under that rule. Both the State Bar and Mr. Nesbitt filed responses.

In Colorado, a suspension greater than one year requires the lawyer to file a petition with the Presiding Disciplinary Judge for reinstatement and the lawyer must prove by clear and convincing evidence that he has been rehabilitated, has complied with all applicable disciplinary orders and is fit to practice law. C.R.C.P Rule 251.29(b). Conversely, in Arizona, a suspension greater than six months would require the lawyer to demonstrate by clear and convincing evidence that he is rehabilitated, compliant with all applicable disciplinary orders, fit to practice and competent. Rule 65(b)(2).

In this matter, it is presumed that the act of staying three months and one day of the suspension was acknowledgement that the misconduct did not require Mr. Nesbitt to go through a reinstatement hearing to demonstrate rehabilitation and fitness to practice. Instead, the process for reinstatement following a nine-month term of suspension requires Respondent to provide an affidavit avowing that he has complied with the order of suspension and applicable provisions. However, in Arizona there is no identical disciplinary sanction to that imposed by the Colorado Supreme Court. A suspension in Arizona may not be stayed in favor of probation.

Mr. Nesbitt has proven under Rule 57(b)(3)(D) that his “misconduct established warrants substantially different discipline in this state.” In Mr. Nesbitt’s Rule 57(b)(3) Response to Prospective Discipline to be Imposed (“Response”), he states that the negotiations for his sanction in Colorado were conducted with the benefit of the additional tool of a stay. The effect of the stay relieves Mr. Nesbitt of the reinstatement hearing requirement. If the case were brought in Arizona, the negotiations would have centered on a suspension of less than six-months so that the formal reinstatement process would not have been triggered.

In his Response, Mr. Nesbitt cites several cases out of Arizona where the conduct was similar or more egregious than his own, yet Arizona disciplined those lawyers less severely than Colorado. Also, Mr. Nesbitt cites cases where lawyers in Arizona were sentenced to suspensions shorter than his own for much more serious conduct. Mr. Nesbitt argues that the true equivalent discipline in Arizona would be less than six-months so as to not trigger the formal reinstatement process.

The State Bar and Mr. Nesbitt agree that the imposition of a six-month suspension with a two-year period of probation upon reinstatement serves the same purpose and is substantially similar to the Colorado discipline. Additionally, the terms of probation require that during the period of probation Mr. Nesbitt shall not engage in any further violation of the Rules of Professional Conduct and Mr. Nesbitt shall attend and successfully pass the one-day ethics school. [Conditional

Admission, pg. 9.] Mr. Nesbitt shall also be responsible for the costs associated with this matter in the amount of \$1,200.00. [Exhibit B.]

“The object of discipline proceedings is not to punish.” *In re School*, 25 P.3d at 712. Imposing a six-month suspension with a two-year period of probation serves to advise the Bar and the public that Mr. Nesbitt engaged in conduct that violated the rules of professional conduct. It serves the purpose of protecting the public, the integrity of the profession, educating other lawyers, and instilling confidence in the integrity of the disciplinary process. A six-month suspension with probation in Arizona is substantially similar discipline and has the same practical effect as Colorado Court’s decision to stay part of the suspension which removes the requirement for a full reinstatement hearing.

Now Therefore,

IT IS ORDERED imposing reciprocal discipline of six (6) month suspension with a two (2) year period of probation upon Respondent, **Arron B. Nesbitt, Bar No. 021951**, effective immediately.

IT IS FURTHER ORDERED Mr. Nesbitt shall not engage in any further violation of the Colorado Rules of Professional Conduct during the period of probation.

IT IS FURTHER ORDERED Mr. Nesbitt shall attend and successfully pass the one-day ethics school sponsored by the Office of Attorney Regulation Counsel within one year.

IT IS FURTHER ORDERED Mr. Nesbitt shall be responsible for the costs associated with this matter in the amount of \$1,200.00.

DATED this 26th day of June, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copy of the foregoing e-mailed/mailed
this 26th day of June 2018, to:

Arron B. Nesbitt
15635 E. Prentice Drive
Centennial, CO 80015-4264
Email: arron.nesbitt@yahoo.com
Respondent

Maret Vessella
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

by: AMcQueen