

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF DAVID LEE)
PHILLIPS.)

No. 22164

FILED

DEC 06 1991

ORDER OF SUSPENSION

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

This is an automatic appeal from a decision of the Southern Nevada Disciplinary Board of the State Bar of Nevada recommending that attorney David Lee Phillips be suspended from the practice of law in this state for a period of six months and one day. See SCR 105(3)(b) (an appeal of a decision of the disciplinary board recommending suspension shall be automatically commenced in the supreme court by the filing of the record of the disciplinary proceedings within thirty days of the board's decision). Further, the board recommends that prior to his reinstatement, Phillips take and pass the Multi-State Professional Responsibility Examination, complete ten hours of continuing legal education in the field of law office management, and establish a proper trust account system satisfactory to bar counsel. The board also recommends that the State Bar of Nevada be allowed to inspect Phillips' business accounts and records for a period of one year after reinstatement, and that Phillips be assessed all costs of the disciplinary proceedings. Having reviewed the record and the briefs of the parties, we conclude that the findings of the board are supported by clear and convincing evidence, and we approve the board's recommendations.¹

First, we note that the evidence before the panel clearly demonstrates that on September 26, 1989, Phillips issued client Trenise Ratcliff a check drawn on his trust

¹ Pursuant to this court's order of May 20, 1991, we have determined that oral argument of this appeal is not warranted.

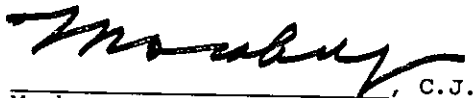
account in the amount of \$869.00. The check was returned because Phillips had not kept sufficient funds in his trust account. From these facts, it is clear that Phillips failed to keep all of his client's money in the trust account. We reject Phillips' contention that in order to find a violation of SCR 165, it was necessary for the panel to find an intentional commingling or misappropriation. The panel correctly concluded that Phillips failed "to hold property of clients or third persons . . . separate from [his] own property." See SCR 165(1).

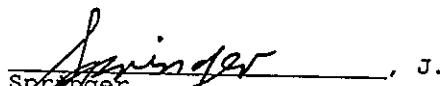
Second, the evidence clearly established that the \$19,000 received by Phillips on behalf of James Carson belonged to James Carson and not to Phillips. Phillips deposited this money in his trust account and represented to third parties that he was holding this money in trust for client James Carson. Testimony and evidence before the panel established that Phillips failed to maintain this money in his trust account and failed to promptly account for and return the money when requested. The panel correctly concluded that Phillips thereby violated SCR 165(1) and 165(2).


Third, we reject Phillips' contention that the hearing panel deprived him of due process. Specifically, we conclude that Phillips was not denied fair notice of the charge against him because the complaint referred to the Carson funds as being retainer fees. Further, Phillips was not deprived of due process by the panel's refusal to allow him to file a post-hearing brief. In this regard, we note that pursuant to SCR 105(2)(d), the panel has discretion whether to allow the filing of post-hearing briefs. Phillips' counsel had an opportunity during closing argument to cite legal authority if he wished. Thus, we conclude that Phillips' contentions on appeal are without merit.

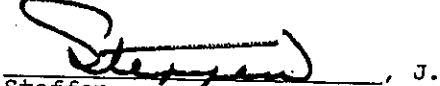
Accordingly, we approve the board's recommendations, and we suspend Phillips from the practice of law in this state for a period of six months and one day. Reinstatement shall be subject to Phillips' compliance with the terms set forth in the board's findings and recommendations, and any future application for reinstatement shall be made in accordance with SCR 116. Finally, the parties shall comply with the notice provisions of SCR 115.

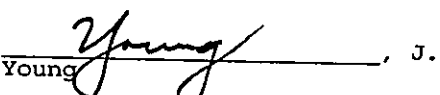
It is so ORDERED.


Mowbray, C.J.


Springer, J.


Rose, J.


Steffen, J.


Young, J.

cc: William B. Terry, Chairman, Southern Nevada
Disciplinary Board
~~Rosalie Small, Executive Director~~
~~Sheldon A. Breskow, Bar Counsel~~
Louis Wiener
Potter Law Offices