IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF WILLIAM W. SEEGMILLER, ESQ.

No. 45537

FILED

DEC 08 2005

DEPUTY CLERK

ORDER IMPOSING PUBLIC REPRIMAND

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney William Seegmiller be publicly reprimanded and assessed the disciplinary proceeding's costs, based on its conclusion that Seegmiller violated SCR 154 (communication), SCR 187 (responsibilities regarding nonlawyer assistants) and SCR 189 (unauthorized practice of law).

As a preliminary matter, Seegmiller argues that several procedural irregularities require dismissal of the disciplinary proceedings against him. We reject Seegmiller's procedural arguments. First, SCR 119(2) provides that the timelines provided for in the disciplinary rules are not jurisdictional unless specifically stated otherwise. SCR 105(2)(d) does not state that the panel's duty to file its written decision impacts this court's jurisdiction to review that decision. Second, the transcript clearly shows that the panel's decision in this matter was unanimous. Nothing in the rules requires that all five panel members sign the written decision, and Seegmiller points to no inconsistency between the written decision and the transcript. Third, while the documents pertaining to Seegmiller's peremptory challenges from the packet supplied to the panel were irrelevant to the discipline hearing and should not have been provided to

the panel with other routine documents such as the complaint and hearing notice, Seegmiller has not demonstrated or even alleged any prejudice from their inclusion. Finally, Seegmiller waived any argument that the panel should have bifurcated the proceedings by failing to make any such request before the hearing.

As we recognized in In re Stuhff, "[t]hough persuasive, the [panel's] findings and recommendations are not binding on this court. This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted."[1] The panel's findings must be supported by clear and convincing evidence.[2] Clear and convincing evidence is

> "satisfactory" proof that is:
>
> "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest. It need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn."[3]

Seegmiller maintains that the violations found by the panel are not supported by clear and convincing evidence and that the recommended discipline is too harsh.

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[1]108 Nev. 629, 633, 837 P.2d 853, 855 (1992).

[2]In re Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

[3]Id. at 1566-67, 908 P.2d at 715 (quoting Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

Having reviewed the briefs and the record, we conclude that the violations found by the panel are supported by clear and convincing evidence. In particular, the record demonstrates that Seegmiller failed to exercise adequate control over his firm's initial contacts with potential clients and impermissibly delegated to nonlawyer staff the tasks of initiating the lawyer-client relationship and maintaining client communication. Also, in light of aggravating factors, particularly Seegmiller's discipline history, which includes a public reprimand imposed earlier this year as reciprocal discipline for stipulated discipline imposed by California, and mitigating factors, including Seegmiller's prompt efforts to remedy his misconduct, we conclude that a public reprimand is the appropriate discipline.

Accordingly, we approve the panel's recommendation in its entirety, and we issue the attached public reprimand. Seegmiller shall also pay the costs of the disciplinary proceeding within thirty days of the date of this order.

It is so ORDERED.[4]

Becker, C.J.
Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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[4]This is our final disposition of this matter. Any new proceedings concerning Seegmiller shall be docketed under a new docket number.

cc: Howard Miller, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
William B. Terry, Chartered

1 Case No. 04-097-1821

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,	)
Complainant,	)
vs.	)
WILLIAM SEEGMILLER, ESQ.,	)
Respondent.	)

PUBLIC REPRIMAND

TO: WILLIAM SEEGMILLER, ESQ.
c/o William B. Terry
530 South Seventh Street
Las Vegas, NV 89101

On March 5, 2004, Heidi and John Rickard met at their home with Bruce Hamilton, a non-lawyer investigator. Mr. Hamilton met with the Rickards at the direction of one of your paralegals. The Rickards executed retainer agreements for your law firm to represent four (4) members of the Rickard family in personal injury claims arising from a motor vehicle accident. Therefore, an attorney-client relationship was established between your firm and the Rickards without any direct interaction between the clients and you or a Nevada-licensed attorney employed by Respondent.

On or about March 11, 2004, Leticia Ostler, a paralegal in your firm, sent the Rickards an introductory letter, informing them she was their case manager and that the firm of West Seegmiller now represented them. In her letter to the Rickards, Oslter cautioned that,

> Please keep in mind that gaps in your treatment of seven days or longer will weaken your case. You must keep your appointments regularly. If you have not treated with a provider longer than a week, you should call us immediately. The insurance carrier looks for a gap in treatment and will value the case much less if one occurs.

In addition, Ostler signed and sent other correspondence including, but not limited to, letters of representation to third parties and letters terminating West Seegmiller's

EXHIBIT 1

representation of the Rickards. During the 31 days that your firm represented them, the Rickards never communicated with a Nevada-licensed attorney but rather only with non-lawyer assistants.

The foregoing conduct by your non-lawyer assistants was performed in accordance with your office policies and practices. As such, your policies have institutionalized the unauthorized practice of law. There are critical stages during the course of representing a client that call for the exercise of independent professional judgment on the part of the lawyer.

The first such instance is the decision on whether or not to represent a client, at all. As the Supreme Court noted in the unreported case of *In re Laub* (No. 36322, January 9, 2002),

> [T]he decision of whether to represent a particular client calls for an exercise of professional judgment, and that the attorney-client relationship must be formed with the attorney, not a nonlawyer assistant. In addition, a nonlawyer assistant may not be delegated the task of advising a client or potential client about his or her legal rights and remedies.

Here, the attorney-client relationship was established through Mr. Hamilton, rather than by yourself or another lawyer with your firm. In addition, Ms. Ostler advised the clients in her introductory letter about the legal ramifications involved with missing medical appointments. She also corresponded with third parties, presenting representation letters, demands for arbitration, and letters that terminated your firm's representation. Such conduct, when engaged in by a nonlawyer, constitutes the unauthorized practice of law.

Based upon the foregoing, you violated Supreme Court Rule 154 (Communication), SCR 187 (Responsibilities regarding nonlawyer assistants) and SCR 189 (Unauthorized practice of law) and are hereby PUBLICLY REPRIMANDED. You are also directed to amend your business practices in conformity with the standards set forth herein.