

People v. Chastain, No. GC98A53 (consolidated with No. GC98A59).

The Presiding Disciplinary Judge and Hearing Board imposed a two-year and three-month suspension in this reciprocal discipline action arising from two separate disciplinary actions in South Carolina against Randall Meads Chastain. In one action, Chastain received a two-year suspension for abandonment of clients and failing to return unearned retainers to clients. In a second action, Chastain received a ninety-day suspension for failure to file state income tax returns. Although the People requested a harsher sanction than that imposed by South Carolina, pursuant to C.R.C.P. 251.21(d)(4), the Presiding Disciplinary Judge and Hearing Board determined that the pleadings did not give Chastain fair notice of the charges upon which the People sought the enhanced sanction of disbarment.

SUPREME COURT, STATE OF COLORADO
CASE NO.: **GC98A53 (consolidated with GC98A59)**
ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE

OPINION AND ORDER IMPOSING SANCTIONS

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

RANDALL MEADS CHASTAIN,

Respondent.

Sanction Imposed: Two Year and Three Month Suspension

This matter was heard on April 29, 1999, and a subsequent post-trial hearing was held on June 24, 1999 before the Presiding Disciplinary Judge (“PDJ”) and two hearing board members, Boston H. Stanton, Jr., and John T. Baker, both members of the Bar. Debora D. Jones, Assistant Regulation Counsel, represented the People of the State of Colorado (the “People”). Randall Meads Chastain (“Chastain”) failed to appear.

I. CHARGES

This consolidated disciplinary matter is a reciprocal discipline action arising out of Chastain’s actions in the course of the practice of law in South Carolina. In one of the two South Carolina disciplinary matters, Chastain abandoned nine clients and failed to return funds to seven clients, which resulted in a two year suspension (Colorado

disciplinary case no. GC98A53). In a separate South Carolina disciplinary matter, Chastain failed to file South Carolina state income tax returns, resulting in a suspension of ninety days (Colorado disciplinary case no. GC98A59).

The People alleged that Chastain's conduct arising out of the South Carolina misconduct establishes grounds for discipline pursuant to C.R.C.P. 241.6 and C.R.C.P. 241.17, and violates The Colorado Rules of Professional Conduct ("Colo. RPC") 8.4(a) and Colo. RPC 8.4(b). The People further allege that the conduct giving rise to the South Carolina sanction requires a sanction of disbarment under Colorado law.

The People's Exhibit 1 was admitted into evidence. Exhibit 1 consisted of court certified copies of *In the Matter of Randall M. Chastain*, 450 S.E.2d 578 (S.C. 1994) and *In the Matter of Randall M. Chastain*, 488 S.E.2d 878 (S.C. 1997). The PDJ and Hearing Board made the following findings of fact, which were established by clear and convincing evidence:

II. FINDINGS OF FACT

Randall Meads Chastain has taken and subscribed the oath of admission, was admitted to the bar of this court on December 1, 1970 and is registered upon the official records of the Supreme Court, attorney registration number 06058. He is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).

Chastain filed answers to the complaints in GC98A53 and GC98A59 on or about July 10, 1998, but did not file an answer to the Amended Complaint in GC98A53 filed by the People on February 11, 1999, nor did he respond to the People's discovery requests.

By Order dated January 8, 1999, the PDJ ordered Chastain to set a Status Conference by telephone. Chastain failed to comply with the PDJ's order, which was sent to Chastain's two last known addresses by certified mail. By Order dated January 25, 1999 the PDJ ordered Chastain to attend a Status Conference by telephone on February 9, 1999. Chastain did not comply with the PDJ's Order, and did not attend the conference. At the February 9, 1999 conference, the matter was set for trial April 29, 1999 and notice of the trial was sent to Chastain. The PDJ held a pre-trial conference on April 14, 1999, and Chastain failed to appear, despite efforts to contact Chastain by telephone. By Order dated April 15, 1999, the PDJ ordered Chastain to respond to the People's Interrogatories and Request for Production of Documents tendered on March 1, 1999, and ordered an expedited briefing schedule on other pending matters. The PDJ stated in the March 1, 1999 Order that Chastain's failure to respond to the People's discovery requests would result in the imposition of sanctions pursuant to C.R.C.P. 37(c), including striking Chastain's two answers in the consolidated action, and entering default judgment against him. Chastain failed to comply with the March 1, 1999 Order.

At the scheduled trial on April 29, 1999, Chastain failed to appear. Accordingly, the answers filed by Chastain were stricken. The allegations of fact contained in the complaints were therefore deemed admitted. *In the Matter of Michael F. Scott*, 979 P.2d

572 (Colo. 1999); *People v. Pierson*, 917 P.2d 275, 275 (Colo. 1996); C.R.C.P. 251.15(b).

In *Chastain*, 450 S.E.2d at 580 (“the abandonment case”), in which the parties submitted a conditional admission of misconduct, the Supreme Court of South Carolina found that Chastain had failed to act with reasonable diligence and promptness in representing clients, failed to adequately communicate with clients, and failed to cooperate with the Board of Commissioners on Grievances and Discipline. The conditional admission submitted to the Supreme Court of South Carolina also established that Chastain had taken \$30,790 from his clients, failed to perform the requested legal services, and failed to refund the fees requested. Chastain abandoned and caused serious harm to nine clients. Chastain was suspended from the practice of law in South Carolina for two years, and ordered to pay \$30,790 restitution to his clients. Chastain admitted that his conduct violated South Carolina Rules of Professional Conduct (“SCACR”) 1.3, SCACR 1.4, SCACR 407 and SCACR 8.1. The People alleged that the disciplinary ruling in this abandonment case established grounds for discipline in Colorado as provided in C.R.C.P. 241.6 and C.R.C.P. 241.17 and violated Colo. RPC 8.4(a)(violating a rule of professional conduct).

In *Chastain*, 488 S.E.2d at 878 (“the tax return case”) in which the parties submitted a conditional admission of misconduct, the Supreme Court of South Carolina suspended Chastain from the practice of law for ninety days as a result of Chastain’s conditional admission admitting to having engaged in misconduct by failing to make and file South Carolina Income Tax returns for the tax years 1989, 1990, and 1993 in violation of S.C. Code Ann. §12-54-10(b)(6)(c)(Supp. 1996). The failure to file a tax return is a serious crime under South Carolina law as that term is defined in paragraph 2(P) of the Rule on Disciplinary Procedure, former SCACR Rule 413. By his conduct, Chastain violated SCACR Rule 8.4 and SCACR Rule 407, by committing a criminal act that reflects adversely upon his honesty, trustworthiness and fitness as a lawyer, and has violated paragraph 5(E) of the South Carolina Rule on Disciplinary Procedure, former SCACR Rule 413, by engaging in conduct tending to bring the courts or legal profession into disrepute. The People alleged that the disciplinary ruling in this tax return case established grounds for discipline in Colorado as provided in C.R.C.P. 241.6 and C.R.C.P. 241.17 and violated Colo. RPC 8.4(a)(violating a rule of professional conduct) and Colo. RPC 8.4(b)(a lawyer shall not commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects).

III. CONCLUSIONS OF LAW

The People established by clear and convincing evidence that Chastain failed to communicate with clients in nine separate matters and failed to return unearned retainers in seven separate matters in South Carolina. C.R.C.P. 241.17(a) provides: “Except as otherwise provided by these Rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these Rules, conclusively establish such misconduct.” *People v. Calder*, 897 P.2d 831, 832 (Colo. 1995).

C.R.C.P. 241.17(d) provides in relevant part that:

[T]he hearing panel shall refer the matter to the Supreme Court with the recommendation that the same discipline be imposed by the Supreme Court as was imposed by the foreign jurisdiction, unless it is determined by the hearing panel that: (4) The misconduct proved warrants that a substantially different form of discipline be imposed by the Supreme Court.

The People alleged that Chastain's conduct in South Carolina which resulted in a two year suspension in the abandonment case and a three month suspension in the tax return case under the South Carolina attorney regulation framework warrants disbarment under Colorado law.

By Order dated June 2, 1999, the PDJ ordered additional oral argument on an issue not adequately addressed at trial: whether in this reciprocal discipline action, in which the People requested a greater sanction than the sanctions imposed in the foreign jurisdiction, respondent had received adequate notice of the charges against him in Colorado. Chastain failed to appear at the June 24, 1999 post trial hearing. The PDJ and Hearing Board heard argument from the People on the notice issue.

The Complaint in GC98A59 (the tax return case) provides at ¶ 6:

The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 241.6 and 241.17, and violates Colo. RPC 8.4(a)(a lawyer shall not violate the rules of professional conduct); and Colo. RPC 8.4(b)(a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

Both the Complaint and the Amended Complaint in GC98A53 (the abandonment case) provide at ¶ 8: "The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 241.6, C.R.C.P. 241.17; and violates Colo. RPC 8.4(a)(a lawyer shall not violate the rules of professional conduct)."

Respondent received the sanctions of a suspension of two years in the abandonment case and three months in the tax return case under South Carolina law. The People sought a greater sanction in Colorado in both GC98A59 (the tax return case) and GC98A53 (the abandonment case), stating that under The Colorado Rules of Professional Conduct and prior case law, the misconduct giving rise to the suspension in South Carolina warrants disbarment under Colorado law. The People acknowledged, however, that their request for disbarment arises from the South Carolina abandonment case and not the tax return case. A review of the Colorado Complaint and the Amended Complaint against Chastain arising from the South Carolina abandonment case reveals the People did not plead the specific rule or rules under Colorado law which they assert prohibit the conduct for which they now seek disbarment.

C.R.C.P. 241.17(d) provides, in part:

Commencement of Proceedings Upon Notice of Discipline Imposed. Upon receiving notice that an attorney subject to these Rules has been publicly disciplined in another jurisdiction, the Disciplinary Counsel shall obtain the disciplinary order and prepare and file a complaint against the attorney as provided in C.R.C.P. 241.12. If the Disciplinary Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the complaint.

C.R.C.P. 241.12, the disciplinary rule which governed the content of all disciplinary complaints during the relevant time period, including reciprocal discipline, provides in part:

(a) Contents of Complaint . . . (2) . . . The complaint shall set forth clearly and with particularity the grounds for discipline with which the respondent is charged and the conduct of the respondent which gave rise to those charges.

C.R.C.P. 241.17 and C.R.C.P. 241.12 must be read together. The rules require that the charging document in both a non-reciprocal and a reciprocal discipline case set forth both a factual basis for the charges and the legal basis upon which the People seek discipline. See *In the Matter of Andrew L. Quiat*, No. 97SA121, No. 97SA461, 1999 WL 261545, at *11-12 (Colo. 1999)(*en banc*). Although C.R.C.P. 241.17 allows the imposition of the same discipline as imposed by a foreign jurisdiction based solely upon the allegation and proof of the imposition of such foreign discipline, a request for greater discipline under Colorado law requires compliance with the complaint content requirements of C.R.C.P. 241.12.

Procedural due process requires fair notice of the charge. *In the Matter of John Ruffalo, Jr.*, 390 U.S. 544, 550 (1968) *reh'g denied*, 391 U.S. 961 (1968). Fair notice of the charge envisions not only a recitation of the facts revealing the offensive conduct but also the identification of the legal prohibition which proclaims such conduct violative of the rules applicable to a lawyer's conduct. *Id.* at 551. Neither the Complaint nor the Amended Complaint in disciplinary action GC98A53 (the abandonment case) meet that test.

The Complaint and the Amended Complaint in disciplinary case no. GC98A53 rely upon C.R.C.P. 241.17 for imposition of the same discipline as imposed by South Carolina, but only refer to C.R.C.P. 241.6 generally and Colo. RPC 8.4(a) as the legal basis prohibiting Chastain's misconduct and justifying the imposition of a substantially different discipline. C.R.C.P. 241.6, however, embodies seven separate subsections, each focused upon different forms of misconduct. Reference to seven different types of prohibited misconduct does not provide fair notice to a respondent of the legal prohibition under Colorado law to prove the People's case for an enhanced discipline.

Nor does Colo. RPC 8.4(a) standing alone, or read together with C.R.C.P. 241.6 provide fair notice of the legal basis under Colorado law of the prohibited misconduct. Colo. RPC 8.4(a) provides that it is professional misconduct for a lawyer to “violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the act of another.”¹ There is no further identification of the specific Colorado rule or rules within the Complaint or Amended Complaint which the People charge prohibited Chastain’s conduct. Absent such a specification, a respondent would be required to search the rules of professional conduct, as adopted by Colorado, in an effort to determine which rule or rules the People contend he violated. Fair notice requires more. It is the obligation of the People to adequately inform the respondent of the legal prohibition they intend to prove justifies disciplinary action. *See Quiat*, 1999 WL 261545, at *11-12.

Although the People sufficiently pled a legal basis for the PDJ and Hearing Board to impose the same discipline as that imposed by the foreign jurisdiction, the Complaint and Amended Complaint do not give Chastain fair notice of the charges upon which the people seek an enhanced sanction in disciplinary case no. GC98A53.² *Ruffalo, supra*; *Committee on Professional Ethics and Conduct of the Iowa State Bar Association v. Wenger*, 454 N.W. 2d 367, 369 (Iowa 1990)(relying on *Ruffalo* and disregarding the findings of the commission that were based on an amendment to the complaint alleging additional charges at the close of the respondent’s testimony, and imposing sanctions only on the findings based on the complaint).

Under *Ruffalo, supra*, the Complaints and Amended Complaint do not provide respondent with adequate notice of the specific Colorado rule violations which warrant the greater sanction of disbarment. Accordingly, the PDJ and Hearing Board impose the same discipline as that imposed in the sister jurisdiction.

¹ There is no suggestion in the Complaint or Amended Complaint that Chastain either assisted or acted through another in violating some rule of professional conduct.

² Although the People argued that the foreign jurisdiction’s rules of professional conduct are virtually identical to Colorado’s rules and therefore those rules provide adequate notice, no proof of the similarity, either at the time of the alleged misconduct or at the present time, was offered into evidence. *See* C.R.C.P. 44(e); C.R.C.P. Lib. R. 264, §13-25-106(5), 5 C.R.S. (1998); *Cf. Chavez v. People of City of Lakewood*, 561 P.2d 1270 (Colo. 1977).

IV. ORDER

It is ORDERED as follows:

1. Randall Meads Chastain is suspended for a period of two years and three months from the practice of law effective thirty-one (31) days from the date of this Order.
2. Chastain shall pay the costs of these proceedings within sixty (60) days of the date of this Order. The People shall submit a Statement of Costs within ten (10) days of the date of this Order. Respondent shall have five (5) days thereafter to submit a response thereto.
3. As a condition of reinstatement, in addition to the requirements set forth in C.R.C.P. 251.29, Chastain shall be required to establish that he has paid the \$30,790 restitution ordered by the Supreme Court of South Carolina before reinstatement is granted.

cc:

Boston H. Stanton, Jr.

Via First Class Mail

John T. Baker

Via First Class Mail

Debora D. Jones

Via Hand Delivery

Randall Meads Chastain

Via First Class Mail