

bar counsel report

SUPREME COURT OF NEVADA

In re: Jeanne Winkler
Bar No.: 7215
Docket No.: 56194
Filed: November 16, 2011

ORDER OF DISBARMENT

Respondent disbarred after demonstrating a pattern of misconduct, committing multiple offenses, submitting false evidence and misappropriating approximately \$233,000 from her trust account. Respondent also ordered to pay disciplinary costs, including staff salaries.

This is an automatic review of a decision of a hearing panel of the Southern Nevada Disciplinary Board recommending that attorney Jeanne Winkler be disbarred from the practice of law in Nevada. We conclude that disbarment is warranted.

FACTS AND PROCEDURAL HISTORY

This matter stemmed from financial difficulties Winkler experienced, resulting in her misappropriating approximately \$233,000 from her client trust account and borrowing \$115,000 from a client. Winkler's troubles began when an employee of her husband's business, Direct Electric, embezzled approximately \$350,000. Keeping Direct Electric afloat caused a financial strain on Winkler's law office. Eventually, both businesses began to crumble. In December 2006, Winkler was presented with an investment opportunity by a family court judicial officer. Although Winkler initially invested her own money in the endeavor, she eventually withdrew money from her client trust account to fund the investment. Ultimately, she invested \$500,000, of which \$233,000 was client trust fund money. The investment yielded nothing. Around this time, Winkler borrowed \$115,000 from her client, Debra Hood.

Winkler's misappropriation of her client trust fund account was discovered in January 2008 when two associates in Winkler's law firm were made aware of a letter from the state bar requesting that Winkler explain a bounced check draft on her client trust account and a response from Winkler stating that the overdraft was due to a bookkeeping error. Concerned about the overdraft on the account, the two associates reported the information to the state bar, which opened an investigation into the matter.

The Southern Nevada Disciplinary Board Chair filed a petition in this court on February 25, 2008, seeking to temporarily suspend Winkler from the practice of law, pending the resolution of formal disciplinary proceedings. On March 7, 2008, Winkler was suspended from the practice of law.¹ *In Re: Discipline of Jeanne Winkler*, Docket No. 51127 (Order of Temporary Suspension, March 7, 2008).

As a result of Winkler's activities, the State Bar of Nevada filed three complaints. The first complaint, filed on March 4, 2009, related to the misappropriation of funds in Winkler's trust account as to specific clients, her misrepresentations to the state bar and the Hood loan. A second complaint, filed on May 14, 2009, concerned allegations that Winkler engaged in the unauthorized practice of law by representing individuals at two Department of Motor Vehicle administrative hearings while suspended from the practice of law. And the third complaint, filed on September 4, 2009, related to (1) Winkler's misappropriation of client trust money in connection to her representation of Theresa Price, a young widow with three children, who sought Winkler's representation in a number of matters related to her husband's death; (2) Winkler's ghostwriting a pleading for a proper person litigant in a family law matter; and (3) her misappropriation of a portion of a client's retainer.

A disciplinary hearing on all three complaints was held on March 2, and 29, 2010. Several witnesses testified on the state bar's behalf, and Winkler presented several witnesses in mitigation.

After the hearing, the disciplinary panel concluded that the state bar had proved the allegations in the complaints by clear and convincing evidence and unanimously found that Winkler had committed a multitude of violations, specifically: one violation of RPC 1.1 (Competence); two violations of RPC 1.3 (Diligence); two violations of RPC 1.4 (Communication); one violation of RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules); 16 violations of RPC 1.15 (Safekeeping Property); three violations of RPC 1.16 (Declining or Terminating Representation); three violations of RPC 3.3 (Candor Towards the Tribunal); three violations of RPC 3.4 (Fairness to Opposing Party and Counsel); two violations of RPC 4.1 (Truthfulness in Statements to Others); two violations of RPC 5.5 (Unauthorized Practice of Law); one violation of RPC 8.1 (Bar Admission and Disciplinary Matters); and 18 violations of RPC 8.4 (Misconduct). The panel also found the following aggravators, pursuant to SCR 102.5(1): a dishonest and selfish motive, a pattern of misconduct, multiple offenses, submission of false evidence, false statements or deceptive practices during the discipline process, vulnerability of the victim, and illegal conduct. In mitigation, the disciplinary panel found that Winkler had no prior disciplinary record and was cooperative with the state bar during its investigation. The panel specifically rejected the following mitigating circumstances proffered by Winkler: personal or emotional problems, character or reputation and remorse. See SCR 102.5(2). Based on its findings, the panel unanimously recommended that Winkler be disbarred from the practice of law and that she pay all costs of the disciplinary proceedings, including Bar Counsel and staff salaries, within six months of her receipt of the state bar's bill of costs in this matter.

DISCUSSION

A disciplinary panel's decision recommending disbarment is subject to automatic review by this court. SCR 105(3)(b). "[A]lthough persuasive, the panel's findings and recommendations are not binding on this court." *Matter of Discipline of Droz*, 123 Nev. 163, 168, 160 P.3d881, 844 (2007) (alteration omitted) (quoting *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992)). "This court must review the record de novo and exercise its independent judgment to determine whether and what type of discipline is warranted." *Id.* at 168, 160 P.3d at 884-85 (quoting *Stuhff*, 108 Nev. at 633, 837 P.2d at 855). The panel's findings of misconduct must be supported by clear and convincing evidence. *In re Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

In her response to the complaint, Winkler admitted nearly all of the alleged violations of the Rules of Professional Conduct or the factual underpinnings establishing violations in the complaints. The evidence introduced at the disciplinary hearing further supported the allegations. Having reviewed the record, we conclude that clear and convincing evidence supports the panel's findings with two exceptions. In particular, we conclude that the following allegations were not supported by clear and convincing evidence: (1) count 3 of the March 4, 2009, complaint alleging that Winkler committed a violation of RPC 3.3 (Candor Toward the Tribunal), when she misappropriated proceeds from the sale of marital property from a client and the client's husband in a divorce action; and (2) count 2 of the September 4, 2009, complaint alleging that Winkler committed a violation of RPC 3.4 (Fairness to Opposing Party and Counsel), when she drafted a court pleading for a proper person litigant in a child custody matter.

Although we conclude that the above-noted allegations were not sufficiently proved, the remaining allegations are more than sufficient to support disbarment. Accordingly, the panel's recommendation of

disbarment is approved, and Winkler is disbarred from the practice of law in this state. Winkler shall pay all costs of the disciplinary proceedings, including Bar Counsel and staff salaries, within six months of her receipt of the state bar's bill of costs in the matter, as recommended by the panel. The parties shall comply with SCR 115's notice requirements and the state bar shall comply with SCR 121.1.

It is so ORDERED.

In re: James P. Sitter
Bar No.: 2481
Docket No.: 55329
Filed: November 16, 2011

ORDER OF SUSPENSION

Four-year Suspension ordered after Respondent engaged in multiple offenses, co-mingled personal funds in his trust account, and misappropriated trust account funds for his own use. Conditions were also placed should Respondent petition for reinstatement. Respondent to pay costs of the disciplinary proceedings.

This is an automatic review, pursuant to SCR 105(3)(b), of the Southern Nevada Disciplinary Board hearing panel's findings that attorney James P. Sitter violated three rules of professional conduct and its recommendation that he be suspended from the practice of law for two years, effective from the time period since his temporary suspension pursuant to SCR 102(40)(a), which occurred on March 27, 2009,² with reinstatement subject to certain conditions.³ Having reviewed the evidence submitted, the transcript from the disciplinary hearing and both Sitter's and the state bar's briefs, we approve the panel's findings and recommendation to the extent that Sitter shall be suspended from the practice of law with reinstatement subject to conditions; however, we reject the recommendation that the suspension be for two years from the date of this court's order of temporary suspension, and instead direct that the suspension be for four years from the date of this court's temporary suspension.

The facts of this case are undisputed. Sitter co-mingled personal funds in his trust account from the time period of January 1, 2008, to February 28, 2009. In so doing, Sitter, on six to seven occasions, invaded his trust account, removing monies that should have been paid to the client directly, or to individuals that had liens for services provided to Sitter's clients, even though Sitter had not earned the monies. Several of these transgressions were discovered after the state bar received a letter from Bank of America on October 21, 2008, advising that Sitter's trust account was overdrawn. After the state bar sent a letter requesting that Sitter explain the overdraft and provide copies of his bank records, Sitter complied, and the state bar discovered multiple instances of misconduct.

In addition, on February 11, 2009, the state bar received a letter from Sitter's client, Barbara Young, who had retained Sitter to represent her in two separate personal injury matters, complaining about Sitter. Sitter admitted to Young that he had misappropriated her settlement funds, which were deposited into his trust account on January 14, 2008, and that he had spent all of the funds from one of the two personal injury cases he was handling for Young. In fact, on March 31, 2008, the balance in Sitter's trust account was \$197.02 – even though none of the withdrawals that occurred between January 14, 2008 and March 31, 2008, were related to Young's personal injury matter. Notably, Sitter did not send Young her portion of her settlement proceeds until December 12, 2008. During this time period, Sitter neglected to communicate properly with Young regarding her settlement.

The state bar filed a complaint and Sitter admitted to virtually all of the allegations set forth in the complaint. In his answer, Sitter also

explained that during the period in which this misconduct occurred he had significant health issues and that his general business account had been closed by Bank of America, which resulted in his improper commingling of the funds in his trust account.

At the panel's hearing on the matter, Sitter again admitted the facts presented by the state bar and accepted responsibility for his actions.⁴ The panel concluded that there were several mitigating factors in this case, including that Sitter accepted responsibility for his actions, assisted the state bar in identifying other acts of ethical violations on his part and had resolved all of the ethical violations, and paid all third-party lienholders. The panel determined that the state bar had demonstrated, by clear and convincing evidence, that Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct). SCR 105(2)(e).

After the hearing, four of the panel members recommended suspension subject to the following conditions: that Sitter must maintain his CLE requirements for the period of two years, or until he is reinstated to practice law, and provide proof of attendance to the state bar; that he additionally take at least one course on the subject of trust account management; that he take and pass the Multistate Professional Responsibility Exam; and that he include in his petition for reinstatement an agreement that he will never handle client or third-party property or funds as long as he practices law. One panel member recommended disbarment.

On review, Sitter maintains that he should not be suspended for a period of two years because: (1) he committed his transgressions during a period when he was under extreme stress and undergoing numerous surgeries related to joint degeneration in his back, left hip and right knee – and because there are several mitigating factors; and (2) the panel's recommendation for a two-year suspension may have been unduly influenced by the panel member who argued for Sitter's disbarment.

While the findings and recommendations of a disciplinary board hearing panel are persuasive, our automatic review of a panel decision recommending a suspension is conducted de novo, requiring the exercise of independent judgment by this court. SCR 105(3)(b); *In re Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We conclude that clear and convincing evidence supports the panel's findings and that Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct). SCR 105(2)(e).

We reject Sitter's contentions on review.⁵ In fact, we conclude that the panel's recommended discipline is appropriately tailored to the circumstances, with the exception that we conclude Sitter's suspension from the practice of law for these violations should be for four years from the date of his temporary suspension instead of two. In this, we are convinced that the egregiousness of Sitter's current misconduct in misappropriating trust account funds, *State ex rel. Oklahoma Bar Ass'n v. Mayes*, 66 P.3d 398, 405 (Okla. 2003), coupled with his prior instances of discipline, warrant harsher discipline than that recommended by the panel.

As the state bar points out, in this case there were other aggravating factors that make the panel's recommended discipline appropriate, and even lenient, including: (1) a dishonest or selfish motive under SCR 102.5(1)(b), because Sitter admitted that he misappropriated client funds for his own use, avoided clients to disguise such misappropriation and lied to his co-counsel by maintaining the funds were in his trust account when they were not; (2) a pattern of misconduct under SCR 102.5(1)(c), because Sitter admitted he misappropriated funds from five different clients in this case alone; (3) commission of multiple offenses under SCR 102.5(1)(d), because Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct); and (4) under SCR 102.5(1)(i), Sitter is substantially experienced in the practice of law and has been in practice since 1978.

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Moreover, the record demonstrates that Sitter has been disciplined before. In August 2007, Sitter received a reprimand for violating RPC 1.15 (safekeeping property), after he mistakenly issued a trust account check instead of a personal check to repay a personal loan. In September 1997, Sitter received a private reprimand for violating former SCR 153 (diligence), former SCR 154 (communication), and former SCR 165 (safekeeping property) – the latter violation stemming from Sitter losing a client’s medical x-rays, and the former two violations stemming from Sitter’s lack of “expeditious evaluation” of his client’s claims. In February 1993, Sitter received a public reprimand, after a conditional guilty plea, for violating former SCR 165 (safekeeping property) after he commingled trust funds belonging to third parties with his operating account, which was then seized by the Internal Revenue Service – including those funds which should have been held in a trust account. *In re Discipline of James P. Sitter*, Docket No. 22571 (Order, February 4, 1993). In August 1984, Sitter received a private reprimand for his failure to properly communicate with his client.

Accordingly, we hereby suspend James P. Sitter from the practice of law for a period of four years from the date of his temporary suspension. Sitter must also comply with all of the conditions stated above, including maintaining his CLE requirements for the period of his suspension, or until he is reinstated to practice law, and provide proof of attendance to the state bar; in addition, Sitter must take at least one course on the subject of trust account management and provide proof of attendance to the state bar; he must take and pass the Multistate Professional Responsibility Exam, with the understanding that those results will not go stale from the date he passes the examination; and he must include in his petition for reinstatement an agreement that he will never handle client or third-party property or funds as long as he practices law. Additionally, Sitter shall pay all costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within six months of his receipt of the state bar’s bill of costs in this matter.

It is so ORDERED.

PICKERING, J., dissenting: I would order Mr. Sitter’s disbarment and therefore respectfully dissent to that extent.

In re: James M. Parsa
Bar No.: 7127
Docket No.: 57051
Filed: November 16, 2011

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Temporary Suspension warranted following a 2001 conviction in California of two misdemeanor counts of unlawful sexual intercourse and failure to report to the State Bar of Nevada his resignation from California State Bar with disciplinary charges pending.

This is a petition by bar counsel pursuant to SCR 111 and SCR 114 concerning attorney James M. Parsa, based on his 2001 conviction in California of two misdemeanor counts of unlawful sexual intercourse and his failure to report to the Nevada bar his resignation from the California bar with disciplinary charges pending. The petition is supported by certified copies of documentation evidencing that on May 17, 2001, Parsa pleaded guilty in Orange County, California, Superior Court to two misdemeanor counts of unlawful sexual intercourse, for which he was sentenced to three years of informal probation. Parsa complied with the conditions of his probation and the case was closed on November 25, 2006.

The California bar placed Parsa on interim suspension effective October 16, 2009, pending the outcome of disciplinary proceedings as a result of his conviction. On October 21, 2009, Parsa filed his resignation with charges pending with the California bar. On

December 2, 2009, the State Bar of Nevada received a voluntary request to transfer to inactive membership, pursuant to SCR 98(6), from Parsa. Parsa did not inform the Nevada bar that he had resigned from the California bar with disciplinary charges pending as a result of a criminal conviction.

Pursuant to SCR 111(9), which applies when an attorney has been convicted of a crime which does not meet the definition of “serious crime” under SCR 111(6), we may refer a matter to the appropriate disciplinary board for action but may decline to refer a conviction for a “minor offense” to the board. Having considered the matters set forth in the petition, we conclude that Parsa’s conviction is not for minor offenses. Moreover, pursuant to SCR 114, Parsa had a duty to inform Nevada Bar Counsel of his resignation from the California bar with disciplinary charges pending. SCR 114(1); *Ching v. State Bar of Nevada*, 111 Nev. 779, 785, 895 P.2d 646, 649 (1995). We note that Parsa did not respond to the petition, though the rules permit him to do so. SCR 114(3).

We therefore elect to refer this matter for commencement of formal disciplinary proceedings before the Southern Nevada Disciplinary Board pursuant to SCR 105(2); we further elect to temporarily suspend Parsa pending the resolution of the formal disciplinary proceedings against him. SCR 111, 114.

In re: Robert Weatherford
Bar No.: 7949
Docket No.: 57926
Filed: November 17, 2011

ORDER OF TEMPORARY SUSPENSION

Temporary Suspension warranted following a conviction of serious crimes.

Bar Counsel for the State Bar of Nevada has petitioned this court to enter an order temporarily suspending attorney Robert Weatherford from the practice of law under SCR 111. The petition is supported by certified copies of documents evidencing judgments of conviction entered against Weatherford in October 2010. Weatherford originally pleaded guilty to driving a vehicle under the influence (DUI), a violation of NRS 484.379,⁶ in April 2008 and was accepted into the felony DUI court program. He was terminated from the program after pleading guilty to a second DUI charge in June 2009.⁷ In October 2010, Weatherford was adjudged guilty of both the 2008 and 2009 DUI charges.

Having reviewed the petition and the supporting documentation submitted by bar counsel, we conclude that the petition conclusively establishes Weatherford’s conviction of serious crimes warranting temporary suspension. See SCR 111(6). Accordingly, we temporarily suspend Weatherford from the practice of law and refer this matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined is the extent of discipline to be imposed. See SCR 111(8).

In re: Susana Ragos Chung
Bar No.: 8405
Docket No.: 59442
Filed: November 17, 2011

ORDER OF TEMPORARY SUSPENSION AND REFERRAL TO DISCIPLINARY BOARD

Temporary Suspension warranted following a conviction of two felonies in California.

Bar Counsel for the State Bar of Nevada has filed a petition pursuant to the reporting requirements of SCR 111. The petition is

supported by documentation indicating that on May 13, 2011, in Alameda County, California, Superior Court, attorney Susana Ragos Chung, Bar No. 8405, entered a plea of *nolo contendere* to two counts of false and fraudulent claims, felonies in violation of California Penal Code section 549. Chung was sentenced to five years of formal probation, subject to numerous conditions, including *inter alia*, placing herself on inactive status with the California Bar, payment of restitution totaling \$117,561.93, and payment of a fine in the amount of \$117,561.93. Chung did not inform Bar Counsel of her conviction. See SCR 111(2).

Pursuant to SCR 111, temporary suspension and referral to the appropriate disciplinary board are mandatory when an attorney has been convicted of a "serious" crime. See SCR 111(6)-(8). "Serious" crime includes a felony and "any crime less than a felony a necessary element of which is ... fraud." SCR 111(6). Here, Chung stands convicted of two counts of false and fraudulent claims, both felonies, which are "serious" crimes requiring that she be suspended and referred for discipline. SCR 111(7), (8). In addition, Chung's failure to inform Bar Counsel of her conviction as required by SCR 111(2) appears, in itself, to be an act of misconduct constituting grounds for discipline. See SCR 101 (acts or omissions of an attorney which violate rules of the supreme court are misconduct and constitute grounds for discipline). Moreover, even if Chung complies with the requirements of the plea agreement that would ultimately result in her convictions being reduced to misdemeanors (by paying full restitution and completing 12 months of probation), her crimes would nevertheless fit within SCR 111(6)'s definition of lesser crimes that qualify as "serious," because they involve fraud.

Accordingly, pursuant to SCR 111(8), we hereby refer this matter to the Southern Nevada Disciplinary Board for the institution of formal disciplinary proceedings, in which the sole issue to be determined shall be the extent of the discipline to be imposed upon attorney Susana Ragos Chung. Furthermore, pursuant to SCR 111(7), we hereby suspend attorney Chung from the practice of law in Nevada pending final disposition of the disciplinary proceedings ■

1. Winkler was admitted to practice in Nevada in October 1999.
2. *In re: Discipline of James P. Sitter, Esq.*, Docket No. 53447 (Order of Temporary Suspension, March 27, 2009). We acknowledge that Sitter joined the petition for temporary suspension.
3. One panel member recommended disbarment.
4. Sitter denied that during the state bar's investigation he told the state bar that, "I know that the trust account is for client funds and not for personal funds, but old habits die hard."
5. We conclude that Sitter's contention, that the panel member recommending disbarment unduly influenced the panel's decision by vigorously arguing that Sitter should be disbarred, is patently meritless. We note that Sitter failed to present any evidence that the panel member persuaded the other panel members to recommend a longer suspension. Moreover, we observe that Sitter fails to present any cogent argument or set forth any citation to relevant authority supporting his insinuation that such an act would be improper. *SITS v. Buckley*, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984).
6. NRS 484.379 was renumbered NRS 484C.110 in the 2009 revision. The substance of the statute is unchanged.
7. Weatherford also pleaded guilty to a third DUI charge in January 2011.

DISCIPLINE KEY

Resignation with charges pending: SCR 98(5)(b)
Types of possible discipline listed generally: SCR 102
Attorneys convicted of crimes: SCR 111
Conditional guilty plea agreements
(discipline by consent): SCR 113
Reciprocal discipline: SCR 114
Disbarred/Suspended attorneys: SCR 115
Reinstatement: SCR 116
Disability Inactive: SCR 117

Supreme Court Rules (SCRs):
www.leg.state.nv.us/CourtRules/SCR.html

DISBARMENT – License to practice revoked.

SUSPENSION – License suspended for a time certain, ineligible to practice. More than six months requires petition for reinstatement and court order.

DISABILITY INACTIVE – Ineligible to practice until further order of the court. In the interim, disciplinary proceedings held in abeyance.

INTERIM TEMPORARY SUSPENSION – Interim suspension based on showing of a substantial threat of serious harm to the public, in effect until further court order, usually after hearing.

RESIGNATION WITH CHARGES PENDING – Ineligible to practice. Requires Bar Counsel approval. Resignation is irrevocable, with readmission only possible upon application as a new admittee.

PUBLIC REPRIMAND – Misconduct found and public censure issued, including attorney's name and the underlying facts and charges. Published in *Nevada Lawyer* and made available to the press. Remains eligible to practice law.

LETTER OF REPRIMAND – Lowest level of discipline. Not published, but disclosed upon request under the new rules. May also include up to a \$1,000 fine and restitution. Remains eligible to practice.

ADMINISTRATIVE SUSPENSION – Attorneys may be administratively suspended for failure to pay bar fees (SCR 98(12)), and/or for failure to complete and report the required Continuing Legal Education hours (SCR 212). While these **are not disciplinary suspensions**, the attorney is **ineligible to practice law** until the deficiency is remedied and the procedures to transfer back to active status completed as set forth in the applicable rules.