

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF JEANNE
WINKLER, ESQ., BAR NO. 7215.

No. 56194

FILED

NOV 16 2011

TRACEY L. LINDSEY
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF DISBARMENT

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.

Effective Date: November 16, 2011
Bar No. 7215

11-35293

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 Winkler to explain a bounced check drafted 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 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

¹Winkler was admitted to practice in Nevada in October 1999.

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); sixteen violations of RPC 1.15 (Safekeeping Property); three violations of RPC 1.16 (Declining or Terminating Representation); three violations of RPC 3.3 (Candor Toward the Tribunal); three violations of 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 eighteen 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 she proffered: 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 the matter.

DISCUSSION


A disciplinary panel's decision recommending disbarment is subject to automatic review by this court. SCR 105(3)(b). "[Al]though persuasive, the panel's findings and recommendations are not binding on this court." Matter of Discipline of Droz, 123 Nev. 163, 168, 160 P.3d 881, 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).

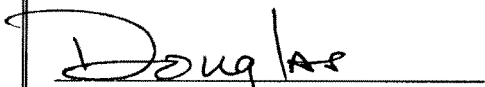
In her response to the complaint, Winkler admitted nearly all of the alleged violations of the Rules of Professional Conduct or the factual underpinnings establishing violations in the complaints. And the evidence introduced at the disciplinary hearing further supported the allegations. Having reviewed 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.

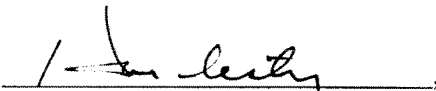

Saitta, C.J.


Douglas, J.

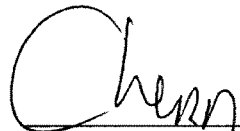
Douglas


Gibbons, J.


Gibbons


Hardesty, J.

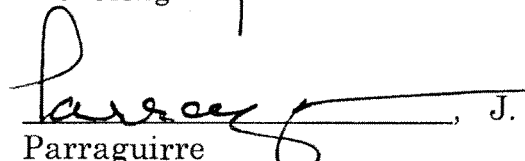
Hardesty


Cherry, J.

Cherry


Pickering, J.

Pickering


Parraguirre, J.

Parraguirre

cc: Jeffrey R. Albrechts, Chair, Southern Nevada Disciplinary Board
David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director
Michael J. Warhola, LLC
Perry Thompson, Admissions Office, U.S. Supreme Court