

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
DAVID K. WINTER, ESQ., BAR NO.
4529.

No. 58433

FILED

FEB 24 2012

TRACEY W. LINDSEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF DISBARMENT

This is an automatic review, pursuant to SCR 105(3)(b), of a Northern Nevada Disciplinary Board hearing panel's findings that attorney David K. Winter violated four rules of professional conduct and its recommendation that Winter be disbarred from the practice of law in Nevada. Having reviewed the record, we approve the panel's findings and recommendation.¹

FACTS AND PROCEDURAL HISTORY

Winter's misconduct stems from his actions while representing Daniel L. Stango in federal district court litigation. On August 17, 2006, the United States District Court for the District of Nevada entered an order of contempt against Winter. The contempt arose from Winter's failure to comply with the district court's judgment and turnover order. The contempt order directed the clerk of the court to forward the order to the State Bar of Nevada for the commencement of disciplinary proceedings. The order demonstrated that Winter devised and implemented a scheme to transfer Stango's assets to another individual in order to conceal the assets. Winter did this with the intent to mislead the receiver of the judgment against Stango. Winter also did not notify the

¹Neither Winter nor the State Bar submitted a brief challenging the panel's findings and recommendation or otherwise informed this court of any intent to contest the panel's findings and recommendation. Thus, this matter was submitted for decision on the record without briefing or oral argument. See SCR 105(3)(b).

12-05944

court of these transfers. Although Stango transferred the assets to another individual, Stango continued to make all payments for the mortgage, taxes, and insurance on the assets, with the mortgage and insurance remaining in Stango's name. Further, Stango continued to receive income from two of the assets. Winter concealed and misrepresented these transfers to the court and the receiver.

Winter created a new corporation in order to disguise Stango's ownership in a corporation bearing the same name. Winter also became the North American manager and began drawing a salary from this new corporation. Winter had authority to handle the finances and investments of the new corporation. Payments to the new corporation were sent to Winter. The new corporation collected over \$214,000 after the entry of judgment. The original and new corporations had the same name, used the same assets, had the same person running the operation and were the same business. The new corporation was an alter ego of the original corporation and both were subject to the judgment and turnover order. Thus, Winter should have turned this money over to the receiver. Winter also used over \$150,000 belonging to the new corporation for personal uses.

The State Bar filed a complaint alleging several violations of the Nevada Rules of Professional Conduct (RPC).² The hearing panel found one violation of RPC 3.3 (candor toward the tribunal), two violations of RPC 3.4 (fairness to opposing party and counsel), one violation of RPC

²Because the conduct that was the subject of the panel's review occurred in 2006, the panel determined that Winter's actions violated the former Supreme Court Rules that governed attorney conduct. The current RPC became effective on May 1, 2006. Because the substance of the provisions did not significantly change when they were recodified in the current RPC, we refer to the RPC designations of the violations.

4.1 (truthfulness in statements to others), and two violations of RPC 8.4 (misconduct). The panel also found the following aggravating factors, pursuant to SCR 102.5(1): (1) Winter's prior disciplinary action in 2002 for a conflict of interest and prohibited transactions with a client involving Winter's pecuniary interest; (2) Winter's misconduct involved dishonesty and fraud on the federal district court and opposing party; (3) Winter actively involved himself as both a lawyer and employee participant in the fraudulent and deceptive business scheme of his clients, and monetarily gained from the misconduct; (4) Winter's misconduct and multiple offenses, as well as the similarities between the conduct with a client for pecuniary gain and the circumstances of prior discipline; and (5) Winter did not appreciate the wrongfulness of his conduct. The panel found that four mitigating circumstances required discussion, pursuant to SCR 102.5(2): (1) the existence of personal problems in Winter's life, (2) Winter's efforts to rectify the consequences of his misconduct, (3) Winter's cooperation in the disciplinary proceedings, and (4) Winter's inexperience in the practice of law. The panel found that the mitigating factors did not "outweigh the profoundly aggravating circumstances." Based on its findings, the panel recommended that Winter be disbarred from the practice of law in Nevada.

DISCUSSION

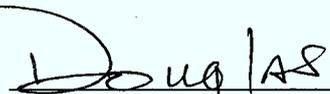
A disciplinary panel's decision recommending disbarment is subject to automatic review by this court. SCR 105(3)(b). Although "persuasive, the panel's findings and recommendations are not binding on this court." Matter of Discipline of Droz, 123 Nev. 163, 168, 160 P.3d 881, 884 (2007) (alteration omitted) (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 In re Stuhff, 108 Nev. at 633, 837 P.2d at 855). Clear and convincing evidence must support the panel’s findings. In re Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

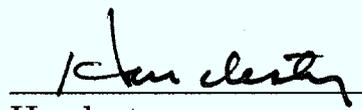
Having reviewed the record, we conclude that clear and convincing evidence supports the panel’s findings and that the recommended discipline is appropriately tailored to the circumstances. Accordingly, we disbar Winter from the practice of law in this state. Such disbarment is irrevocable. See SCR 102(1). The parties shall comply with the applicable provisions of SCR 115 and 121(1).

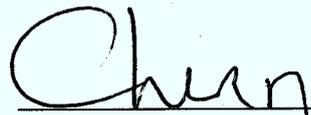
It is so ORDERED.³


_____, C.J.
Saitta

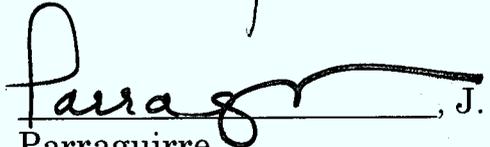

_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Cherry


_____, J.
Pickering


_____, J.
Parraguirre

³This is our final disposition of this matter. Any new proceedings concerning Winter shall be docketed under a new docket number.

cc: Thomas Susich, Chair, Northern Nevada Disciplinary Board
David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director
David K. Winter
Perry Thompson, Admissions Office, U.S. Supreme Court