

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
JAMES G. WOLFF, BAR NO. 6537.

No. 59565

FILED

NOV 28 2012

TRACIE K. KIRKMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER IMPOSING RECIPROCAL DISCIPLINE
AND DISBARRING ATTORNEY

This is a petition under SCR 114 to reciprocally discipline attorney James G. Wolff, based on discipline imposed upon him in North Dakota.¹ Wolff was ultimately disbarred in North Dakota and the issue before this court is whether he should be disbarred in Nevada. Wolff did not file a response to the petition.

Wolff's North Dakota misconduct arose from three disciplinary matters, which consisted of nine counts of professional misconduct, involved six different clients, and entailed other matters.² On September

¹Wolff has been suspended from the practice of law in Nevada for nonpayment of bar dues since June 29, 2010.

²On June 24, 2009, Wolff was placed on interim suspension under North Dakota Rules for Lawyer Discipline 4.1 (criminal conduct) and 3.4(B) (threat of public harm); and North Dakota Rule of Professional Conduct 1.2(d) (counseling a client to engage, or assist a client, in conduct that a lawyer knows is criminal) because he had been charged with criminal conspiracy-unlawful possession of a controlled substance (cocaine). As discussed below, Wolff entered a guilty plea to attempted possession of controlled substance (cocaine), a class A misdemeanor in
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20, 2010, the North Dakota Supreme Court accepted the Findings of Fact, Conclusions of Law, and Recommendations from a Hearing Panel of the Disciplinary Board regarding the following three petitions filed against Wolff.

In the first matter, Wolff was charged with billing work to the files of four clients, who were represented by another attorney in his firm, for work that was not actually done or was of no value to the clients. When confronted, Wolff either refunded the money to the client or said he intended to credit the payment for the entries on a final bill. He was served with and admitted service of the petition for discipline in May 2008. The Hearing Panel thereafter concluded that Wolff charged and collected unreasonable fees, in violation of North Dakota Rule of Professional Conduct 1.5(a); failed to hold property of a client or third person in his possession separate from his own property, in violation of North Dakota Rule of Professional Conduct 1.15(a); and failed to deposit legal fees and expenses into the client trust account that were paid in advanced and to be withdrawn only as fees were earned and expenses incurred, in violation of North Dakota Rule of Professional Conduct 1.15(c).

... continued

January 2010. On June 7, 2010, Wolff's interim suspension was continued under North Dakota Rule of Lawyer Discipline 4.1(C) and (D) based on his conviction for issuing a bank check with insufficient funds, a class C felony. The initial interim suspension and the continuation of the interim suspension were imposed until final disposition of the disciplinary proceedings. It does not appear that Wolff notified bar counsel about these criminal matters, in violation of SCR 111(2).

In the second matter, Wolff was charged with entering into a fee agreement with a client, which provided, in part, that Wolff would receive one-third of any recovery as an attorney fee; and directed how a dispute between Wolff and his client would be resolved, and in such a case, who would be entitled to attorney fees and costs. Wolff allegedly did not discuss these provisions with his client. Thereafter, he entered into a settlement on behalf of his client where he deposited the settlement money into his trust account and informed the client that an accounting of the recovery left nothing for her after the deduction of the attorney fees and costs. Wolff allegedly never disclosed statements or a trust ledger to his client or to bar counsel upon request. Wolff was served the petition for discipline and admitted such service in August 2008. The Hearing Panel concluded that Wolff entered into an agreement prospectively limiting his liability for malpractice, in violation of North Dakota Rule of Professional Conduct 1.8(h); failed to maintain on a current basis sufficient records of compliance, in violation of North Dakota Rule of Professional Conduct 1.15(h); and knowingly made a false statement of material fact or failed to disclose a fact necessary to correct a misapprehension, in violation of North Dakota Rule of Professional Conduct 8.1.

With respect to the third matter, Wolff was charged with asking his client to obtain cocaine, paying for the illegal substance, and subsequently being charged with criminal conspiracy to unlawfully possess a controlled substance (cocaine), a class C felony.³ Wolff was

³The record reflects that on January 20, 2010, Wolff entered a guilty plea to attempted possession of controlled substance (cocaine), a class A misdemeanor.

served the petition for discipline and accepted such service in August 2009. The Hearing Panel found that Wolff counseled a client to engage in conduct that he knew was criminal, in violation of North Dakota Rule of Professional Conduct 1.2(d); misconduct, in violation of North Dakota Rule of Professional Conduct 8.4(b); and committed a criminal act that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of North Dakota Rules of Lawyer Discipline 1.2(A)(2) and (11).

The North Dakota Supreme Court ordered Wolff suspended from the practice of law in North Dakota for one year for his misconduct in the first and second matters, discussed above, and disbarred him from the practice of law in North Dakota for his misconduct in the third matter.⁴ He was also ordered to pay costs and expenses of the disciplinary proceedings. Wolff failed to inform Nevada bar counsel of the discipline as required by SCR 114(1).

SCR 114(4) provides this court shall impose identical reciprocal discipline unless the attorney demonstrates, or this court finds, either: (1) there was a lack of due process in the other jurisdiction; (2) the decision of the other jurisdiction lacked fairness due to infirmity of evidence; (3) the misconduct deserves a punishment substantially different than that imposed by the other jurisdiction; or (4) the acts do not constitute misconduct in Nevada.

Disbarment is an extreme consequence this court does not consider lightly. Nothing in the record evidences a lack of due process or

⁴In North Dakota, a disbarred attorney can petition for reinstatement after five years from the effective date of the disbarment. In Nevada, disbarment is irrevocable. SCR 102(1).

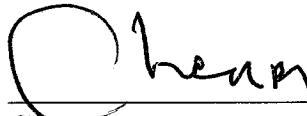
such an infirmity of proof that would establish unfairness such that reciprocal discipline should not be imposed. Indeed, the record establishes that Wolff was served notice of the three North Dakota disciplinary proceedings, affirmed service of the petitions for discipline, and filed responses. A one-year suspension is a reasonable response to Wolff's misconduct involving charging of unreasonable attorney fees, mishandling of client property, limiting prospective malpractice liability, making false statements of material fact, and failing to maintain current records. With respect to his criminal misconduct, disbarment is a reasonable response, particularly given that the nature of the criminal misconduct reflects adversely on his honesty, trustworthiness, and fitness as a lawyer and due to his prior disciplinary history. In addition, the established misconduct does not suggest that substantially different discipline is warranted in Nevada. Wolff's actions would constitute misconduct under Nevada's Rules of Professional Conduct.

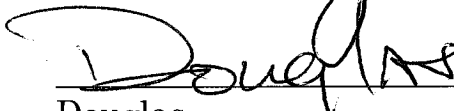
The equivalent Nevada rules which correspond to Wolff's misconduct are Nevada Rules of Professional Conduct 1.2(d) (scope of representation and allocation of authority between client and lawyer); 1.5(a) (fees); 1.8(h) (conflict of interest, prohibited transactions); 1.15(a) and (c) (safekeeping property); 8.1 (bar admission and disciplinary matters); 8.4(b) (misconduct); and SCR 101 (grounds for discipline). Aggravating circumstances include a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. Mitigating circumstances include an absence of prior discipline and possible personal or emotional problems. However, Wolff has failed to respond to the petition currently before the court, or to any other matter relating to his license to practice law in Nevada since his suspension in Nevada in 2009.


Consequently, Wolff has not demonstrated that substantially different discipline is warranted. Therefore, identical discipline is required under the rule.


Accordingly, we grant the petition for reciprocal discipline. Attorney James G. Wolff is hereby disbarred from the practice of law in this state. Wolff and the State Bar shall comply with SCR 115 and 121.1.

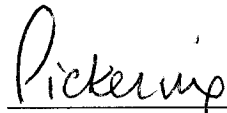
It is so ORDERED.

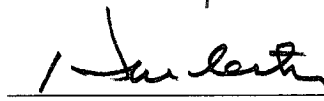

_____, C.J.
Cherry

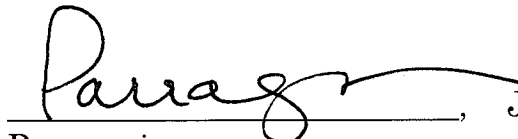

_____, J.
Douglas


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director, State Bar of Nevada
James G. Wolff
Perry Thompson, Admissions Office, United States Supreme Court