

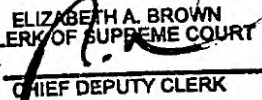
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
ANDREW WASIELEWSKI, BAR NO.  
6161.

No. 86528

FILED

OCT 19 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CHIEF DEPUTY CLERK

*ORDER OF SUSPENSION*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Andrew Wasielewski be suspended from the practice of law in Nevada for five years and one day. The recommended discipline is based on Wasielewski's violations of RPC 1.1 (competence), RPC 1.15 (safekeeping property), RPC 4.1 (truthfulness in statements to others), and RPC 8.4(b) and (c) (misconduct) after pleading no contest to and being convicted of reduced misdemeanor offenses for theft and disorderly conduct based on misappropriating client money.<sup>1</sup>

As an initial matter, Wasielewski contends that utilizing his no contest convictions to impose discipline violates his due process rights and does not satisfy the clear and convincing standard to prove he committed the ethical violations. *See In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (explaining that the State Bar has the burden of showing clear and convincing evidence that an attorney committed the violations charged). We disagree.

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.

“A certified copy of proof of a conviction is conclusive evidence of the commission of the crime stated in it in any disciplinary proceeding instituted against an attorney based on the conviction.” SCR 111(5). In general, there is no distinction between convictions entered upon a plea of guilty, plea of no contest, or plea of not guilty for purposes of determining certain criminal penalties. *See Jones v. State*, 105 Nev. 124, 128, 771 P.2d 154, 156 (1989). And SCR 111 makes no distinctions, treating all as convictions. *See* SCR 111(1). In the SCR 111 attorney discipline context, we have an obligation to look beyond the label given to an attorney’s conviction “to the true nature of the facts, in order to determine whether the underlying circumstances of the conviction warrant discipline.” *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 211, 756 P.2d 464, 526 (1988).

Here, the record reflects Wasielewski received fair notice of the charges against him, an opportunity to defend himself, and the chance to challenge the use of his no-contest plea. SCR 111(5) is consistent with due process as it reflects the principle of finality and respects the outcome of criminal court proceedings. In the disciplinary proceedings, the panel considered a certified copy of proof of Wasielewski’s misdemeanor convictions and evidence that the convictions resulted from Wasielewski charging \$56,850 on a client’s credit card over eight months despite providing no legal services to the client and being removed as counsel by the court, and Wasielewski transferring approximately \$17,050 from another client’s trust account to his bank account. *See* SCR 105(3)(b) (explaining that this court applies a deferential standard of review to a hearing panel’s findings of fact). The panel also heard testimony from

Wasielewski that he transferred disputed attorney fees to his general account, notwithstanding his client's objections. Such evidence amounts to conclusive proof to support that the underlying circumstances of the convictions warrant discipline for violating RPC 1.1 (competence), RPC 1.15 (safekeeping property), RPC 4.1 (truthfulness in statements to others), and RPC 8.4(b) and (c) (misconduct).

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

The record supports that Wasielewski intentionally violated duties owed to his clients (competence, safekeeping property, and truthfulness in statements to others) and the profession (misconduct). His clients were injured as Wasielewski misappropriated approximately \$75,000 of his clients' money. The baseline sanction for Wasielewski's conduct, before consideration of aggravating and mitigating circumstances, is disbarment. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass'n 2017) (recommending disbarment "when a lawyer knowingly converts client property and causes injury or potential injury to a client").

The hearing panel found, and the record supports the following aggravating circumstances under SCR 102.5(1): (1) prior discipline, (2)

pattern of misconduct, (3) multiple offenses, (4) refusal to acknowledge the wrongful nature of the conduct, (5) the vulnerability of the victim, and (6) substantial experience in the practice of law. The panel also found, and the record supports the following three mitigating circumstances under SCR 102.5(2): (1) timely good faith effort to make restitution, (2) full and free disclosure, and (3) imposition of other penalties and sanctions. Specifically, Wasielewski paid restitution in the amount of \$20,000 for the first offense and \$17,050 for the second offense, reported his convictions to the State Bar, and received criminal sanctions for his misconduct. The record further demonstrates Wasielewski may have been owed some of the funds taken as attorney fees as evidenced by the testimony of one of the client's granddaughters.

Considering all these factors, we agree with the panel that a downward deviation from the baseline sanction of disbarment is warranted. We further agree that a suspension of five years and one day is sufficient to serve the purpose of attorney discipline. *See Claiborne*, 104 Nev. at 213, 756 P.2d at 527-28 (noting purpose of attorney discipline is to protect public, the courts, and the legal profession).

Accordingly, we hereby suspend attorney Andrew Wasielewski from the practice of law in Nevada for five years and one day commencing from the date of Wasielewski's temporary suspension, October 22, 2022.<sup>2</sup> *See In re Discipline of Wasielewski*, Docket Nos. 85435 and 85436, 2022 WL

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<sup>2</sup>To the extent Wasielewski's additional arguments are not addressed herein, we conclude they do not warrant a different outcome.

16595919 (Nev. Oct. 31, 2022). Wasielewski shall also pay the costs of the disciplinary proceedings, including fees in the amount of \$2,500, see SCR 120(1), as invoiced by the State Bar within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

Stiglich, C.J.  
Stiglich

Cadish, J.  
Cadish

Pickering, J.  
Pickering

Herndon, J.  
Herndon

Lee, J.  
Lee

Parraguirre, J.  
Parraguirre

Bell, J.  
Bell

cc: Chair, Southern Nevada Disciplinary Board  
Andrew Wasielewski  
Bar Counsel, State Bar of Nevada  
Executive Director, State Bar of Nevada  
Admissions Office, U.S. Supreme Court