

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF WILLIAM L.
WOLFBRANDT, ESQ.

No. 43893

FILED

MAR 25 2005

JANET E. BLONK
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney William L. Wolfbrandt be suspended from the practice of law for thirty days.

Wolfbrandt was charged in two separate complaints with violations of SCR 153 (diligence), SCR 173(3) (knowingly disobeying an obligation under the rules of a tribunal), SCR 200(2) (failure to respond to lawful demand for information), and SCR 203(4) (conduct prejudicial to the administration of justice). At the formal hearing on both complaints, the panel concluded that clear and convincing evidence showed that Wolfbrandt failed to perform the duties required of him under this court's fast track program¹ in two criminal appeals, that he failed to respond to orders of this court, and that he failed to timely pay sanctions imposed by this court.

In one complaint, Wolfbrandt was the trial counsel for a criminal client who filed a proper person notice of appeal, but Wolfbrandt claimed that he did not know that a final written judgment had been entered, thus triggering his fast track duties. Wolfbrandt admittedly

¹See NRAP 3C.

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failed to open correspondence from this court informing him of his fast track duties in that appeal. In both complaints, Wolfbrandt admitted that he had no good reason for failing to promptly respond to the bar's requests for information.

After the hearing, the panel issued its findings and decision, in which it found that Wolfbrandt had violated SCR 153, 173(3), 200(2),² but that the bar did not meet its burden of proving that he had violated SCR 203(4). The panel recommended the following discipline:

1. Wolfbrandt shall be suspended from the practice of law for thirty days.
2. Wolfbrandt shall avail himself of the law office management resources of another attorney for a period of one year, unless and until he is employed in a government forum or as an associate at a private firm.
3. Wolfbrandt shall enter into a mentorship agreement for one year, focusing on law office administration, development of a practice outside of appeals, development of procedures for handling matters on appeal (including fast track statements and substitution of counsel after filing those statements), and electronic calendaring systems. The mentorship shall commence during the period of suspension. The mentor, who may be the attorney referenced in paragraph two, shall be selected with bar

²The panel also concluded that Wolfbrandt had violated SCR 203(3) (misconduct involving dishonesty, fraud, deceit or misrepresentation), but this violation was not charged in either complaint. See In re Discipline of Schaefer, 117 Nev. 496, 516-18, 25 P.3d 191, 204-05 (2001) (concluding that attorney being disciplined must be given notice of violations).

counsel's approval. Wolfbrandt shall provide quarterly reports to bar counsel during the mentorship.

4. Wolfbrandt shall pay the actual costs of the disciplinary proceedings within sixty days of the issuance of this court's order.

We agree with the panel that clear and convincing evidence of professional misconduct supports the imposition of discipline, and we conclude that the panel's recommended discipline is appropriate. We further conclude that additional conditions should be imposed upon Wolfbrandt to assure his future adherence to the rules of this court, particularly with respect to expedited criminal appeals under the fast track program.³

Trial counsel's initial participation is an essential element of the fast track program's shorter briefing procedure and has successfully helped to expedite the criminal appeals process. Despite Wolfbrandt's stated desire to not practice before this court, NRAP 3C requires trial counsel in most criminal appeals to follow the fast track procedures.⁴ Even when trial counsel will not be representing the appellant in a criminal appeal, NRCP 3C(b)(1) does not permit trial counsel to withdraw

³See In re Kenick, 100 Nev. 273, 680 P.2d 972 (1984) (pointing out that this court is not bound by a panel's findings and recommendations, and must exercise independent judgment when determining what type of discipline to impose).

⁴See NRAP 3C(b)(1). Unless otherwise ordered by this court, exceptions from the fast track program are provided only for appeals involving a category A felony in which a sentence of death or life imprisonment without the possibility of parole is actually imposed, or when the defendant was not represented by counsel at trial. See NRAP 3C(a)(1) and (2).

until after he has filed the rough draft transcript request and the fast track statement. Once the necessary fast track documents are filed, only this court, and not the district court, has the authority to consider a motion by trial counsel to withdraw from representation during the appeal.⁵

Forms for the fast track documents are provided in the NRAP appendix. Additionally, educational resources to learn about the fast track program are available at the Supreme Court Law Library and through the Nevada State Bar.

Consequently, during the period of his mentorship, Wolfbrandt is directed to study the fast track materials contained in the Nevada Appellate Practice Manual and the “Practice Before the Nevada Supreme Court” continuing legal education audiotope program produced in 2002. Before his mentorship expires, Wolfbrandt must provide to this court a sworn affidavit that he has studied and understands those materials.⁶ We caution Wolfbrandt that his continued failure to adhere to the rules of this court may result in further disciplinary action, which may severely curtail or prevent his future representation of criminal defendants in the trial courts if he is unable to meet the fast track appellate requirements.⁷

⁵NRAP 3C(b)(1).


⁶We direct the court clerk to keep this docket open until Wolfbrandt has provided the affidavit required by this order. Any new proceedings concerning Wolfbrandt, however, shall be docketed under a different docket number.


⁷See Middleton v. Warden, 120 Nev. ___, 98 P.3d 694 (Adv. Op. 74, October 14, 2004) (prohibiting an attorney from practicing before this court in any future cases without this court’s express prior authorization).

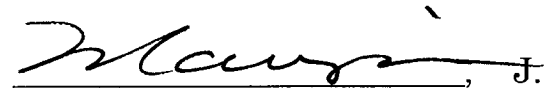
Finally, in addition to Wolfbrandt's required quarterly reports, the mentor shall also provide bar counsel with quarterly reports of Wolfbrandt's progress during the mentorship.


Accordingly, we approve the panel's recommended discipline and impose the additional conditions stated above.⁸


It is so ORDERED.

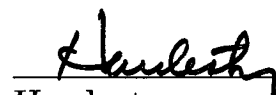

_____, C.J.
Becker

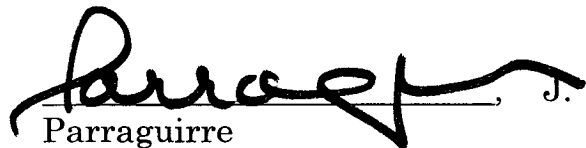

_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

⁸Wolfbrandt and the state bar shall comply with SCR 115.

cc: Howard Miller, Chair, Southern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Perry Thompson, Admission Office,
Supreme Court of the United States
William L. Wolfbrandt, Jr.