


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
MITCHELL L. POSIN, BAR NO. 2840.

No. 86864

FILED

SEP 08 2023

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

ORDER REJECTING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113(1), a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Mitchell L. Posin. Under this agreement, Posin admitted to violating RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 8.4(d) (misconduct). He agreed to a five-year-and-one-day suspension, to run concurrent to his eighteen-month suspension in *In re Discipline of Posin*, No. 82339, 2021 WL 673470 (Nev. Feb. 19, 2021) (Order Approving Conditional Guilty Plea Agreement), and to the payment of costs.

As a condition of the plea agreement, Posin admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes that Posin violated the above-listed rules by failing to diligently prepare for his client's criminal trial despite numerous continuances. The day trial began, Posin informed the court that he would still not be able to provide the client adequate trial representation. Posin also failed to diligently handle another client's civil matter by not timely seeking to enforce a settlement agreement. The issue for this court is whether the agreed-upon discipline is sufficient to protect the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756

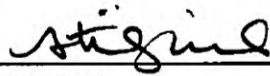
P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).


As a condition of the plea agreement, Posin admitted to knowingly engaging in conduct that violated duties owed to his clients, who were harmed by Posin being inadequately prepared for one client’s criminal trial and failing to address matters in a civil case resulting in a substantial delay. Those delays also caused injury to the profession and legal system. The baseline sanction before considering aggravating or mitigating factors is suspension. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass’n 2018) (providing that suspension is appropriate when “a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client”); *id.* Standard 7.2 (“Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.”). The record supports the panel’s finding of three aggravating factors (substantial experience in the practice of law, prior disciplinary offenses, and a pattern of misconduct) and two mitigating factors (full and free disclosure to the disciplinary authority and cooperative attitude toward the proceedings and remorse). Particularly relevant is that Posin’s discipline history involves violations of the same rules at issue here such that it does not appear he has made efforts to rectify the factors leading to his repeated misconduct. As Posin’s disciplinary

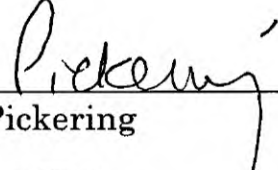
history suggests a pattern of serious misconduct, we find the agreed-upon discipline to be insufficient to protect the public, the courts, and the legal profession.


Accordingly, we reject the conditional guilty plea agreement and remand this matter to the Southern Nevada Disciplinary Board for further proceedings consistent with this order.

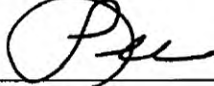
It is so ORDERED.

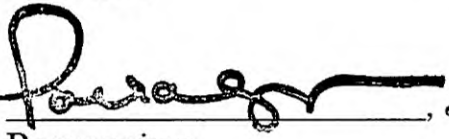

_____, C.J.
Stiglich



_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Chair, Southern Nevada Disciplinary Board
Law Offices of Mitchell Posin, Chtd.
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court