


IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 88045

FILED

OCT 09 2021

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

ORDER OF DISBARMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Mitchell L. Posin be suspended from the practice of law in Nevada for five years and one day, to run consecutive to the 18-month suspension imposed in *In re Discipline of Posin*, No. 82339, 2021 WL 673470 (Nev. Feb. 19, 2021) (Order Approving Conditional Guilty Plea Agreement), based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 8.4 (misconduct).

The State Bar has the burden of demonstrating by clear and convincing evidence that Posin committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Posin and the State Bar submitted a stipulation of facts that demonstrate Posin violated the above listed rules in his representation of two clients.

First, in a civil matter, Posin failed to file a stipulation and dismissal as directed by the court, after the parties had indicated that the matter had settled. Posin was sanctioned as a result. The case was then closed even though no settlement agreement was signed, and Posin spent the next year attempting to get a settlement agreement signed before finally moving to reopen the case. After the case was reopened, Posin did no further work on the matter, despite the client's continued communication with Posin's office for the next year and a half.

Second, in a criminal matter, Posin was retained to represent a client facing 22 charges, including multiple felony charges. Posin sought multiple continuances and asserted he was unprepared due to issues with his investigator. On the first day of trial, Posin sought another continuance, and his client personally expressed concern with Posin's ability to represent the client as Posin had not communicated with the client. The district court once again granted the continuance and gave Posin nine more months to prepare for trial. At the status checks that followed, Posin represented he would be ready for the rescheduled trial date. Then, days before trial, Posin's client filed a motion to substitute counsel asserting that Posin was not prepared for trial as he had not been in contact with the client or the investigator. In response, Posin represented to the court that he was prepared to proceed to trial, so the district court denied the motion. Then, on the first day of the rescheduled trial, Posin admitted that he was unprepared and had not conducted sufficient discovery. The defense investigator told the district court that Posin had no knowledge of the case, had not reviewed the case file, and had failed to subpoena evidence. The investigator further represented that Posin was unable to provide the client with a defense in the matter at that time. Because of the prejudice to the State from the numerous earlier continuances, the matter continued to trial with Posin representing the client. The client was convicted and sentenced to 115 years to life. This court overturned that conviction and referred Posin to the State Bar. *Brass v. State*, 138 Nev. 180, 507 P.3d 208 (2022).

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).

Posin knowingly violated duties owed to his clients (competence and diligence) and the profession (misconduct). His clients were injured or potentially injured because their cases were not timely resolved and Posin’s criminal client did not have adequate representation at trial. The baseline sanction for the misconduct, before consideration of aggravating and mitigating circumstances, is suspension. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42(a) (Am. Bar Ass’n 2023) (providing that suspension is appropriate when “a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client”). The panel found, and the record supports, three aggravating circumstances (substantial experience in the practice of law, prior discipline, and a pattern of misconduct) and two mitigating circumstances (full and free disclosure to the disciplinary authority and cooperative attitude toward the proceedings and remorse).

Considering all the factors, we disagree with the panel that a five-year-and-one-day suspension is sufficient. The aggravating circumstances warrant a more severe discipline. Posin has been disciplined on multiple occasions over the last fifteen years for violations similar to those at issue here. In 2008, Posin was suspended for one year for 51 RPC violations, including violations of RPC 1.1 (competence) and RPC 1.3 (diligence). *In re Discipline of Posin*, Docket No. 51207 (Nev. July 2, 2008) (Order of Suspension).

In 2016, Posin was suspended for two years, with 18 months of that suspension stayed, for violations of RPC 1.1 (competence), RPC 1.2

(scope of representation), RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 1.15 (safekeeping property). *In re Discipline of Posin*, No. 69417, 2016 WL 1213354 (Nev. March 25, 2016) (Order Approving Conditional Guilty Plea Agreement). That case involved, among other misconduct, circumstances where Posin misinformed a client about a postconviction filing, failed to file the correct documents in a criminal appeal, and failed to prepare a motion in an emergency child visitation matter. *Id.*

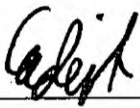
In 2021, we once again suspended Posin, this time for 18 months, for violating RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 8.4(d) (misconduct). *In re Discipline of Posin*, No. 82339, 2021 WL 673470 (Nev. Feb. 19, 2021) (Order Approving Conditional Guilty Plea Agreement). That case again involved Posin's failure to competently and diligently represent his clients. *Id.* Posin failed to inform a client of the outcome of a small claims appellate matter, leading to that matter's dismissal; failed to respond to discovery or a dispositive motion in a quiet title action, leading to the dispositive motion being granted in favor of the opposing party; and failed to conduct discovery, appear at trial, or quash a bench warrant in a misdemeanor criminal matter. *Id.*

Despite the multiple disciplinary actions against Posin, he continues to fail to competently and diligently represent his clients, resulting in harm to his clients. His continued pattern of misconduct places the public, the courts, and the legal profession at risk. *See In re Discipline of Arabia*, 137 Nev. 568, 571, 495 P.3d 1103, 1109 (2021) (stating that the purpose of attorney discipline is to protect the public, the courts and the legal profession, not to punish the attorney). Thus, we conclude disbarment is necessary. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 8.1(b) (Am.

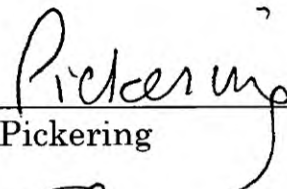
Bar Ass'n 2023) (providing that disbarment is appropriate when a lawyer "has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession").

Accordingly, we hereby disbar attorney Mitchell L. Posin from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Posin shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days from the date of this order.


It is so ORDERED.

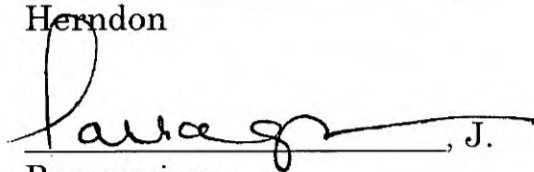

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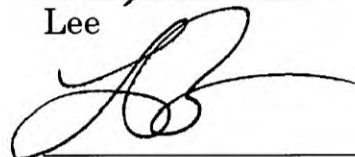

_____, J.
Stiglich


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Pickering


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Herndon


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Lee


_____, J.
Parraguirre


_____, J.
Bell

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