

Bar Counsel Report

In Re: MITCHELL L. POSIN
Bar No.: 2840
Case No.: 88045
Filed: 10/09/2024

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,

Bar Counsel Report

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 6734 70 (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.

In Re: JASON L. LOPEZ
Bar No.: 7796
Case No.: SBN22-00507
Filed: 08/14/2024

REPRIMAND

To Jason L. Lopez:

A Southern Nevada Disciplinary Board Formal Hearing Panel convened on July 18, 2024, to consider your conditional admission that you violated Rule of Professional Conduct ("RPC") 8.4(b) (Misconduct) as alleged in the State Bar's complaint filed February

23, 2024. The panel also received documentary evidence regarding your conduct. The Panel concluded unanimously that you violated RPC 8.4(b) as a criminal act that reflected adversely on your fitness as a lawyer. The Panel concluded that you should receive a Reprimand for your conduct in driving under the influence of alcohol on a public highway. This letter constitutes delivery of the Panel's reprimand.

On September 7, 2022, you filed a petition for reinstatement to practice law with the State Bar of Nevada ("State Bar"). Your reply to the State Bar's investigative inquiry disclosed for the first time that you were arrested for Driving Under the Influence ("DUI") on February 28, 2021. A subsequent investigation into your reinstatement petition revealed the following:

On August 26, 2021, a criminal complaint was filed in Las Vegas Township Justice Court ("LVJC"), charging you with Driving Under the Influence, a misdemeanor violation of NRS 484C.110, 484C.400 and 484C.105. On December 13, 2021, you pled nolo contendere to the DUI charge above. On March 14, 2022, the LVJC entered final judgment and determined that you completed the sentence requirements.

The reinstatement investigation also revealed that you were also arrested on suspicion of DUI on October 23, 2006, in Clark County. LVJC records revealed that you were charged with DUI, a misdemeanor violation of NRS 484.379. LVJC records revealed you pled nolo contendere to this earlier DUI charge on May 9, 2007, with adjudication being stayed pending your compliance with sentencing conditions. On November 5, 2007, LVJC amended your DUI charge to a misdemeanor charge of Reckless Driving and closed the case.

Supreme Court Rule ("SCR") 111(2) (Duty to inform bar counsel) states: "Upon being convicted of a crime by a court of competent jurisdiction, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, an attorney subject to these rules shall inform bar counsel within 30 days." Further, SCR 111(1) ("Conviction" defined) states: "... a conviction shall include a plea of guilty or nolo contendere ..., regardless of whether a sentence is suspended or deferred or whether a final judgment of conviction has been entered, and regardless of any pending appeals."

Here, you did not timely inform Bar Counsel of your 2021 alcohol-related traffic conviction by January 12, 2022, as required by SCR 111(1) & SCR 111(2). Further, you did not timely inform bar counsel of your 2007 alcohol-related traffic conviction at all, much less by June 9, 2007.

The State Bar of Nevada filed a mandatory petition with the Nevada Supreme Court informing them of your alcohol-related traffic convictions, as required under SCR 111(4), along with a Screening Panel's recommendation for discipline consideration. The Nevada Supreme Court issued an order referring the matter back to the Southern

CONTINUED ON PAGE 40

Bar Counsel Report

Nevada Disciplinary Board for discipline consideration. Accordingly, the State Bar filed a complaint alleging rule violations of RPC 8.4(b) (Misconduct) and RPC 8.4(d) (Misconduct).

RPC 8.4(b) (Misconduct) states in relevant part: “It is professional misconduct for a lawyer to: (b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;”

Here, you committed a criminal act, namely DUI, a violation of Nevada Revised Statutes (“NRS”) 484C.110 and 484C.400 and NRS 484C.105. The Panel found that this criminal act reflected adversely on your fitness as a lawyer.

Based upon your duty breached to the public, your mental state of negligence that resulted in actual or potential injury to the legal system or profession, the baseline sanction is a Reprimand. “Reprimand is generally appropriate when a lawyer negligently 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.” Section 7.3 (Violation of Duties Owed as Professional). ABA Standards for Imposing Lawyer Sanctions §5.12 (2nd Ed. 2019).

The panel weighed aggravating and mitigating circumstances individualized to your matter. The aggravating factors included prior disciplinary offenses, and substantial experience in the practice of law of 17 years. The mitigating factors included personal or emotional problems and a cooperative attitude toward the proceedings. A qualitative weighing of those four factors did not warrant an upward or downward deviation from the reprimand baseline sanction.

Please allow this Reprimand to serve as a thoughtful reminder of your professional ethical obligations. We wish you well and trust that no similar problems will arise in the future.

In Re: FRANKLIN (formerly “KYLE”) STUCKI
Bar No.: 12646
Case No.: OBC23-00981
Filed: 08/30/2024

REPRIMAND

You represented a client in a third-party liability lawsuit filed in Douglas County, Nevada, on a contingency fee basis. In July 2019, you filed a premises liability Complaint on the Client’s behalf, naming the property owners of the building where the Client worked as Defendants. The parties engaged in written discovery and conducted multiple depositions oriented towards the issue of liability for the Client’s injuries.

On August 24, 2022, Defendants filed a Motion for Summary Judgment asking the Court to dismiss the case for lack of evidence. A third-party Plaintiff (the Client’s

workers’ comp carrier) opposed the Motion for Summary Judgment, although the third-party Plaintiff did not file the Opposition with the Court. You filed an Opposition to the Motion for Summary Judgment on the Client’s behalf on September 28, 2022.

On May 30, 2023, the Court held an evidentiary hearing on Defendant’s motion. You and the Client appeared at the hearing and you argued against summary adjudication.

On July 24, 2023, the Court granted Defendant’s motion and summarily adjudicated all the Client’s claims. A Notice of Entry of the Court’s order was filed on or about July 25, 2023. You were aware of the Court’s order no later than August 1, 2023.

In mid-August 2023, you discussed the potential appellate arguments with other counsel but did not notify the Client of the Court’s order. The deadline to file a notice of appeal of the Court’s decision was on or about August 23, 2023. You did not file anything contesting the Court’s order and did not file a notice of appeal.

The Client attempted to contact you in August and September 2023 but received no response to her efforts to communicate. You also failed to proactively inform the Client of the summary adjudication and appeal deadline during this time period.

In mid-August through mid-September 2023, you and your spouse were separated and discussing divorce.

On October 3, 2023, after the deadline to file a notice of appeal had passed, you emailed the Client notifying her of the Court’s order summarily adjudicating her claims. You told the Client that there were no grounds to win on appeal but did not provide the Client with the appellate deadline.

Violations of the Rules of Professional Conduct

Pursuant to RPC 1.3 (Diligence) you had a “duty to act with reasonable diligence and promptness in representing a client.” You violated this duty when you failed to promptly notify the Client of the order granting summary judgment and her options for appealing the decision.

You also had a duty, pursuant to RPC 1.4 (Communication) to “[p]romptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by these Rules; [] [r]easonably consult with the client about the means by which the client’s objectives are to be accomplished; [] [k]eep the client reasonably informed about the status of the matter; [and] [p]romptly comply with reasonable requests for information.” You violated RPC 1.4 when you failed to (i) inform the Client of the order granting summary judgment and her options in response thereto and (ii) respond to the Client’s reasonable requests for information in August and September 2023.

Your misconduct was “negligent” because your personal circumstances interfered with your ability to properly manage the Client’s matter. Although no lawyer can guarantee success of a claim, it is the lawyer’s duty to

Bar Counsel Report

allow the Client's claim to be substantially considered. Thus, the Client was injured by your misconduct because she lost the opportunity to appeal the summary adjudication.

Application of ABA Standards for Imposing Lawyer Sanctions

ABA Standard 4.43 states "reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client." Your negligent violation of your duties to your client, which caused her injury, warrants application of this standard and imposition of a reprimand. There are no aggravating or mitigating factors that justify deviation from the sanction called for by Standard 4.43.

REPRIMAND

In light of the foregoing, you violated Rule of Professional Conduct ("RPC") 1.3 (Diligence) and RPC 1.4 (Communication) and are hereby REPRIMANDED. You are required to pay SCR 120 costs of \$1,500 plus the hard costs of the disciplinary proceeding no later than 30 days after the issuance of the Order in this matter.

Case No.: SBN24-00347
Filed: September 5, 2024

ADMONITION

To [Attorney]:

A Northern Nevada Disciplinary Board Screening Panel convened on August 15, 2024, to consider the above-referenced grievance against you. The Panel concluded that you violated the Nevada Rules of Professional Conduct ("NRPC") and admonished you for your handling of your client's adoption matter. This letter constitutes delivery of the Panel's admonition.

You were assisting a person, through the Division of Child and Family Services, with the adoption of a foster care child. The adoption was finalized in December 2022. You also agreed to assist your client in filing the adoption decree with Vital Statistics so that an amended birth certificate could be issued.

Your client provided you with the necessary report for submission to Vital Statistics. However, you misplaced the paperwork. You did not timely contact the client to obtain a new copy of the necessary paperwork and, admittedly, just hoped that the original paperwork would be found. You also admit that you failed to adequately communicate with your client regarding the status of the Vital Statistics process and the misplaced documents. You were aware that your

client was frustrated and angry with the delay, but you did not correct the issue and get the request for amended birth certificate filed.

After an extended period of time, you attempted to inform your client that the paperwork was misplaced and request a new copy from her. Although she did not respond to your request, fortunately you found the misplaced documentation and did, eventually, submit it to Vital Statistics. The client has now received the amended birth certificate, albeit with a substantial, unnecessary delay.

NRPC 1.3 (Diligence) states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Here, there was an unreasonable delay in getting an amended birth certificate issued.

NRPC 1.4(a)(4) (Communication) states: "(a) A lawyer shall: ... (4) Promptly comply with reasonable requests for information; ..." Here, you did not respond to numerous inquiries from the client seeking a case status nor did you promptly inform her that you misplaced the necessary documents. Your admitted failure to communicate caused your client frustration and anxiety because she did not have the amended birth certificate for her child.

You admit that you knew of your obligations of diligence and communication and failed to comply with them. Your client incurred potential injury and actual injury resulting from your misconduct during the representation.

The baseline sanction for your conduct here is practice suspension. ABA Standards for Imposing Lawyer Sanctions (2nd Ed. 2019), Section 4-4 (Lack of Diligence), Standard 4.42 states: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect [and] causes injury or potential injury to a client."

A downward deviation from the suspension baseline is warranted. You have no discipline history in 17 years of practice, accepted responsibility for the misconduct and fully cooperated in the disciplinary process, expressed remorse for the injury caused, lacked any selfish or dishonest motive, and you reported experiencing medical issues and extraordinary familial obligations during the representation. These mitigating factors are significant and warrant deviation down to the issuance of an admonition.

Based on the foregoing, you are hereby ADMONISHED for violations of NRPC 1.3 (Diligence) and NRPC 1.4 (Communication). Please promptly conclude this matter by remitting the cost of \$750 within 30 days of the issuance of this sanction. SCR 120(3).

Please allow this Admonition to serve as a thoughtful reminder of your professional ethical obligations. We wish you well in your practice and trust that no similar problems will arise in the future.

TIP

FROM THE BAR COUNSEL

“If It Sounds Too Good to Be True ...”

“We are living in the golden age of scams,” TIME magazine recently suggested. “U.S. consumers lost a record \$10 billion to fraud in 2023 ... a 14% increase over 2022.” As the magazine continued, “[t]hat tally is almost certainly an undercount. More than three-quarters of victims ... don’t report to authorities that they’ve been defrauded.”

Interest on Lawyer Trust Account (IOLTA) scams are no exception.

Pursuant to Rule 78 of the Nevada Supreme Court Rules (SCRs), all financial institutions that provide client trust accounts must report to the Office of Bar Counsel whenever an overdraft occurs. SCR 78(2). Therefore, while IOLTA scams are rarely reported to the Office of Bar Counsel, if a scam was successful and it resulted in an overdraft to a client trust account, the Office of Bar Counsel must open an investigation. If a scam was successful but there was no overdraft, the Office of Bar Counsel may never know if the attorney did not self-report.

No one is immune from scams, not even attorneys.

Imagine a client approaches you to collect a large settlement. After suffering a loss, he provides a fully executed settlement agreement with a local company. A quick search reveals this is a registered limited liability company in Nevada. The client indicates that while the company initially agreed to pay the settlement, it has now failed to issue the funds. The client therefore approaches you to understand his rights and options.

The client knows the lingo, knows what questions to ask, and appears just as sophisticated as your average client, if not more; so, upon conclusion of the consultation, you enthusiastically execute a retainer. Your retainer may even contemplate a reduced fee since the client comes to you with an existing settlement and filing a complaint may be unnecessary. The client simply asks you to wait two weeks before contacting the company if they do not respond to his most recent demand.

This should be easy money, but you know what they say, right? “If it sounds too good to be true”

Shortly thereafter, you receive a check in the mail from the company with an apology to your client. Perhaps the client brings you the check, asks you to deposit it, and now brings you liens or other debts to be satisfied. Perhaps he

brought you those claims earlier, but you had not yet sent verification letters. Like the settlement agreement, these claims are convincing, and the settlement easily covers the claims. Perhaps the client simply approaches you with an additional matter.

Either way, the company has issued the settlement check from a well-known international bank, so you immediately deposit the check at your own local bank. However, while the funds are immediately available for use, this transaction is still pending. A final detail may even elude your office: This check is issued from a foreign branch of that bank, meaning the check could take six weeks to clear. Your client trust account may be flush with cash from other matters, so you are not aware the deposit of this foreign check remains pending for some time unless you strictly keep and update your ledgers for each client matter.

Pursuant to RPC 1.15(d), you have a duty to promptly distribute client funds not in dispute. The client therefore asks for a partial distribution while you handle any remaining claims or that new matter. Perhaps there are no claims, so the client asks for a full disbursement. Perhaps the client becomes aggressive and demands the distribution or else report you to the Office of Bar Counsel. The client may even appear very patient or use guilt to force a distribution before you realize the fraudulent check has not cleared.

Red flags such as a foreign check; a check directly from a named “defendant,” not an attorney or with certified funds; or a client demanding a wire transfer, which cannot be reversed, could all be a sign of an IOLTA scam. As RPC 1.3, RPC 1.4(a), and RPC 1.15(d) begin to compete with each other (ex. “reasonable diligence and promptness” versus “promptly comply” versus “promptly deliver”), document everything. Ask your bank how long funds may take to verify. Save that correspondence or share it with the client. Maintain separate ledgers for all client matters to ensure you do not inadvertently use one client’s property to pay the fraudster.

These are simple suggestions to ensure “pending” does not become an overdraft as we navigate together “the golden age of scams.”

Need help with IOLTA accounting? Download “Trust Accounting in Nevada” from the state bar’s website. This free resource provides valuable assistance regarding establishing and reconciling an IOLTA. It also discusses responsible practices involving deposits and withdrawals, including the “timing” of deposits as discussed here. <https://nvbar.org/news-and-publications/resources-2/books-manuals-and-references/>