

# Bar Counsel Report

**In Re: SHAWN CHRISTOPHER**  
**Bar No.: 6252**  
**Case No.: 82110**  
**Filed: 02/19/2021**

## ORDER OF DISBARMENT

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Shawn Christopher be suspended from the practice of law in Nevada for five years and one day based on violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.16 (declining or terminating representation), RPC 8.1 (disciplinary matters), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).*

The State Bar has the burden of showing by clear and convincing evidence that Christopher committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Christopher failed to answer the complaint and a default was entered.<sup>1</sup> SCR 105(2). The record therefore establishes that Christopher violated the above-referenced rules by (1) failing to take action in a client's case after receiving a \$10,000 retainer, (2) failing to keep the client informed and to respond to requests for information, (3) improperly withdrawing representation without reasonable notice and without returning the client's file and unearned retainer, (4) converting nearly \$100,000 of capital from a real estate transaction in which he partnered with a former client for personal use, and (5) failing to respond to the State Bar's inquiries.

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).

Christopher violated duties owed to his clients (diligence, communication), the profession (failure to respond to lawful requests for information by a disciplinary authority), and the public (misconduct). The record supports the panel's finding that Christopher's mental state was knowing as to his violations of RPCs 1.3, 1.4, and 8.1, and intentional as to his violation of RPC 8.4(d). His misconduct harmed his client and business partner by causing them financial loss and damaged the reputation of the legal profession.

The baseline sanction for Christopher's misconduct, before considering aggravating and mitigating circumstances, is disbarment. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 5.11 (Am. Bar Ass'n 2017) (providing that disbarment is appropriate when "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.") The panel found and the record supports four aggravating circumstances (prior disciplinary offenses, dishonest or selfish motive, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders, and substantial experience in the practice of law) and one mitigating circumstance (personal or emotional problems).

Considering all the factors, including the balance of aggravating and mitigating circumstances and the scope of Christopher's misconduct, we disagree with the recommended downward deviation from the baseline sanction of disbarment. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney); see *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001) ("Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment.") Christopher's misconduct, which was driven by a dishonest and selfish motive and included his misappropriation of significant funds from a client and from a business partner and his intentional failure to respond to the State Bar's inquiries or participate in the disciplinary proceedings, seriously and adversely reflects on his fitness to practice law. Such misconduct fits squarely within the parameters of Standard 5.11, warranting disbarment.

Accordingly, we hereby disbar attorney Shawn Christopher from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1).<sup>2</sup> Further, Christopher 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: STEVEN J. SZOSTEK**  
**Bar No.: 3904**  
**Case No.: 82237**  
**Filed: 02/12/2021**

### **ORDER APPROVING 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, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Steven J. Szostek. Under the agreement, Szostek admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), and RPC 5.4 (professional independence of lawyer). He agreed to a one-year suspension stayed for two years, to run concurrent with his stayed suspension and probation imposed in In re Discipline of Szostek, Docket No. 79960 (Order Approving Conditional Guilty Plea Agreement, April 23, 2020).*

Szostek has admitted to the facts and violations as part of his guilty plea agreement. The record therefore establishes that he violated RPC 1.3 (diligence) by taking more than three years to finalize trust documents and RPC 1.4 (communication) by failing to respond to the client's requests for updates regarding the trust documents. Additionally, he violated RPC 5.4 (professional independence of lawyer) by sharing legal fees related to the trust with a nonlawyer.

The issue for this court is whether the agreed-upon discipline sufficiently protects 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).

Szostek admitted to negligently or knowingly violating duties owed to his client (diligence and communication) and to the profession (professional independence of lawyer). His client suffered potential injury because of the delay in receiving the trust for which she had paid. The baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2017) (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 record supports the panel's findings of two aggravating circumstances (prior discipline and substantial experience in the practice of law) and two mitigating circumstances (absence of dishonest or selfish motive and cooperative attitude toward proceedings). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, commencing from April 23, 2020, the date of Szostek's stayed suspension in Docket No. 79960, we hereby suspend Steven J. Szostek for one year, stayed for two years subject to the condition that Szostek not receive any new grievance that results in formal discipline. Szostek shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order, if he has not done so already. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

**In Re: MITCHELL L. POSIN**  
**Bar No.: 2840**  
**Case No.: 82339**  
**Filed: 02/19/2021**

### **ORDER APPROVING 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, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Mitchell L. Posin. Under the agreement, Posin admitted to violating RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 8.4(d) (misconduct) and agreed to an 18-month suspension.*

Posin has admitted to the facts and violations as part of his guilty plea agreement. The record thus establishes that he violated the above-listed rules by failing to file a notice of appearance or opening brief and failing to inform a client about the outcome of a small claims appellate matter, which was dismissed as a result of Posin's lack of diligence; failing to respond to requests for admissions and timely oppose a summary judgment motion on behalf of a plaintiff in a quiet title action, resulting in the motion being granted in favor of the defendant; and failing to conduct discovery and appear at trial in a misdemeanor criminal matter, resulting in a bench warrant for the client, and failing to move to quash the warrant.

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The issue for this court is whether the agreed-upon discipline sufficiently protects 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).

Posin admitted to knowingly violating duties owed to his client (competence, communication, and diligence) and to the profession (misconduct). His clients suffered actual injury because two had cases decided against them without an opportunity to be heard on the merits, and one had a bench warrant issued against him and had to retain new counsel to resolve the matter. The baseline sanction for such misconduct, before considering aggravating or mitigating circumstances, is suspension. Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass’n 2017) (providing suspension is appropriate when “a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.”) The record supports the panel’s findings of four aggravating circumstances (prior discipline for substantially similar conduct, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and two mitigating circumstances (absence of dishonest or selfish motive and cooperative attitude toward the proceeding). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, commencing from the date of this order, we hereby suspend attorney Mitchell Posin from the practice of law in Nevada for 18 months. Posin shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order, if he has not done so already. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

**In Re: SERGIO JOSE SIDERMAN**  
**California Bar No.: 190889**  
**Case No.: OBC20-0961**  
**Dated: 02/19/2021**

## LETTER OF REPRIMAND

To Sergio Jose Siderman:

On February 16, 2021, a Screening Panel of the Southern Nevada Disciplinary Board considered the

above-referenced grievance. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct (“RPC”) and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

After hearing an advertisement on a local Spanish radio station claiming your firm was “the best of the best.”<sup>3</sup> Grievant and his wife retained your firm on April 24, 2020, for \$1,000.00 for what he believed was representation in a removal appeal pending before the 9th Circuit Court of Appeals. Grievant stated that he never met with an attorney when he retained your firm, only a paralegal. Your employee then explained the process to Grievant, collected documentation, went over the retainer agreement, and took background notes regarding Grievant’s criminal convictions. Grievant and his wife understood that the initial retainer was only for the first step of reviewing Grievant’s file. They were under the impression that the document review would take approximately thirty (30) days and that your firm would contact them to discuss an additional retainer, if applicable.

Although Grievant did not provide his documents until June 5, 2020, the document review was not completed until August 31, 2020. Moreover, even though your document review revealed that Grievant was ineligible to receive any immigration relief, Grievant and his wife were not told that your firm would not take their case past the document review.

RPC 1.3 (Diligence) states that a lawyer “shall act with reasonable diligence and promptness in representing a client.” In this case, it took nearly three months to complete Grievant’s document review when he was told it would take approximately thirty (30) days. This type of ethical breach caused potential injury to Grievant. Under ABA Standard 4.43, 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.

RPC 1.4 (Communication) states, in pertinent part, that a lawyer shall “[k]eep the client reasonably informed about the status of a matter” and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” In this case, you and your staff failed to properly explain the services you would be providing to Grievant which left him and his wife confused as to the scope of your representation. This type of ethical breach caused potential injury to Grievant. Under ABA Standard 4.43, 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.

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) states, in pertinent part, that a lawyer

“having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” In this case, you failed to make reasonable efforts to ensure that your nonlawyer assistants are in compliance with the RPCs. This type of ethical breach caused potential injury to the public and/or legal system. Under ABA Standard 7.3, 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.

Rule 5.5 (Unauthorized Practice of Law) states that unless an exception applies, a lawyer shall not “practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction,” or “assist another person in the unauthorized practice of law.” In this case, you admitted that your paralegal met with potential clients to conduct the initial client interview and complete the retainer. Further, Grievant’s decision to retain your firm was made without him ever meeting with an attorney. This type of ethical breach caused potential injury to the public and/or legal system. Under ABA Standard 7.3, 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.

Rule 7.2A (Advertising Filing Requirements) states, in pertinent part, that a “lawyer or law firm shall file with the state bar ... a copy or recording of all advertisements disseminated in exchange for something of value ... within 15 days of first dissemination.” In this case, you failed to file your advertisements on the local Spanish radio station within 15 days of first dissemination. This type of ethical breach caused potential injury to the public and/or legal system. Under ABA Standard 7.3, 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.

Accordingly, you are hereby **REPRIMANDED** for violating RPC 1.3 (Diligence), 1.4 (Communication), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 5.5 (Unauthorized Practice of Law), and 7.2A (Advertising Filing Requirements). In addition, pursuant to Supreme Court Rule 120(3), you are required to remit to the State Bar of Nevada the amount of \$1,500 within thirty (30) days of this Letter.

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#### ENDNOTES:

1. Copies of the complaint and the notice of intent to take a default were served on Christopher via mail at his SCR 79 and home addresses and via email at his SCR 79 email address. Personal service was also attempted on Christopher three times at his home address, at which a process server witnessed someone looking out of the window but refusing to answer the door, and once at his real estate office, where an employee confirmed that Christopher worked but was rarely in the office.
2. Although the hearing panel also recommended that we order Christopher to reimburse his business partner and pay restitution to his client, as we have noted previously, SCR 102 does not provide for restitution in conjunction with disbarment and restitution cannot be said to further the purpose of attorney discipline when an attorney has been permanently disbarred, so we cannot order restitution in this matter.
3. Theresa Freeman, who processes the advertisement filings for the State Bar, stated that she had no record of any filings for advertisements from your firm.

# TIP

## FROM THE BAR COUNSEL

### Avoid the Temptation: Don't Let Your Cases Drag On

**COVID-19 has inevitably changed our lives in more ways than we can count. Wearing masks has become second nature, weddings have been cancelled, travel plans have most likely been rescheduled, and some of our favorite restaurants closed or adopted restrictions. None of us expected the pandemic to last this long.**

For lawyers, many aspects of our jobs have changed as well. It has been more than a year since many lawyers started working from home. Slowly but surely, we have become accustomed to the new normal. Zoom and BlueJeans hearings are no longer foreign concepts. Electronic correspondence has become the preferred method of communication. And our cases seem to be dragging along much slower than they normally do.

Rule of Professional Conduct 3.2 (Expediting Litigation) states, in pertinent part, that a lawyer “shall make reasonable efforts to expedite litigation consistent with the interest of

the client.” However, our duty to expedite litigation “does not preclude a lawyer from granting a reasonable request from opposing counsel for an accommodation, such as an extension of time, or from disagreeing with a client’s wishes on administrative and tactical matters, such as scheduling depositions, the number of depositions taken, and the frequency and use of written discovery requests.”

Dragging cases bring the legal profession disrepute. Lawyers often seek continuances for personal reasons. There is nothing wrong with that. However, don't let the exception swallow the rule. Using COVID-19 as an excuse to buy more time for a case can be tempting. One case turns to two, and the dominoes begin to fall. Routine or habitual litigation delays for a lawyer's personal convenience are generally unreasonable.

Despite the sluggish nature of the new normal, it is important to remember our duty to keep our cases moving forward to the best of our abilities.

# RESULTS MATTER

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