

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
MITCHELL POSIN.

No. 51207

**FILED**

JUL 02 2008

THACILEY LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation for discipline, based on its finding that attorney Mitchell Posin violated several professional conduct rules. Having reviewed the record and transcript from the disciplinary hearing, we conclude that clear and convincing evidence supports the panel's findings of multiple rule violations. We do not approve, however, the hearing panel's recommended discipline.

The underlying disciplinary proceeding against Posin consolidated 13 grievances filed with the State Bar against Posin. Before the hearing, 1 grievance was dismissed and the remaining 12 grievances proceeded. After the initial disciplinary hearing, the panel entered an interim order under which Posin "voluntarily ceased practice," except for one criminal case, for approximately four months.<sup>1</sup> The panel set conditions that he should meet during this four-month period. After four

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<sup>1</sup>We note that the panel's authority to direct an interim "voluntary" cessation of practice is unclear, as nothing in the rules governing attorney discipline provides for such an order.

months, the panel reconvened and determined that although Posin had met most of the conditions, including not practicing law during the required time period, he had failed to meet all the requirements. The panel then entered a second interim order, continuing the "voluntary" cessation of practice for another month and a half and requiring that all conditions be complied with in full.

The panel met again after the month and a half and concluded that Posin had met all the requirements imposed by the interim orders. The panel found 51 different rule violations and recommended that Posin receive a five-and-one-half-month suspension, with credit for the time he "voluntarily" ceased practice under the interim orders. Thus, no further suspension would be imposed and Posin need not petition for reinstatement. In addition to the suspension, the panel recommended a two-year probation, with the following conditions: Posin must take six continuing legal education (CLE) units regarding office management within a year, obtain malpractice insurance of \$1,000,000 and maintain it for two years, and work with a mentor for two years. The mentor and Posin would submit quarterly reports to the State Bar. Additionally, the panel found that \$6000 owed to a client could not be delivered because the client's address was unknown. The panel instructed Posin's attorney to hold the check for a period of one year, with attempts to transmit the check to the client, and if those attempts were unsuccessful, then the

money could be considered abandoned.<sup>2</sup> Finally, the panel recommended that Posin be required to pay the costs of the proceedings.<sup>3</sup>

While a disciplinary panel's findings are persuasive, we review the record de novo to determine whether discipline is proper.<sup>4</sup> In disciplinary matters, the findings of fact must be "supported by clear and convincing evidence."<sup>5</sup> Clear and convincing evidence requires "evidence of tangible facts from which a legitimate inference . . . may be drawn."<sup>6</sup>

We conclude that the 51 professional conduct rule violations found by the disciplinary panel should be approved. The findings were supported by clear and convincing evidence and Posin did not challenge these findings in this court.

We do not, however, approve the disciplinary panel's recommended discipline. Based on the seriousness and the number of violations, we conclude that a more lengthy suspension is proper. Accordingly, we hereby suspend Posin's license to practice law for one

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<sup>2</sup>In the event that the client does not claim the funds, Posin shall comply with the Uniform Unclaimed Property Act, NRS Chapter 120A.

<sup>3</sup>The State Bar requested that Posin be required to pay the State Bar's paralegal salary for time spent on this matter because the paralegal had to perform a great deal of work to go through Posin's records and accounts, due to Posin's failures. The panel's recommendation did not specify whether this cost is included or not.

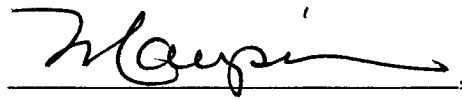
<sup>4</sup>In re Discipline of Schaefer, 117 Nev. 496, 25 P.3d 191, as modified by 31 P.3d 365 (2001).


<sup>5</sup>In re Stuhff, 108 Nev. 629, 634-35, 837 P.2d 853, 856 (1992).

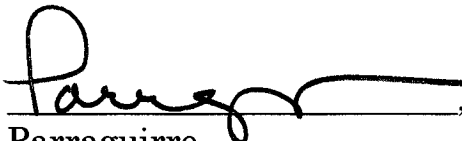
<sup>6</sup>Id. at 635, 837 P.2d at 856 (quoting Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

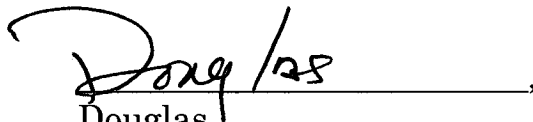
year, with credit for the time Posin "voluntarily" ceased practicing law. As the suspension is more than six months, Posin must petition for reinstatement under SCR 116. We note that the remedial measures recommended by the panel, working with a mentor, taking six CLE units, and obtaining malpractice insurance, appear to be appropriate conditions for Posin's eventual reinstatement, but we emphasize that the reinstatement panel remains free to recommend conditions for reinstatement based on the evidence presented to it. Finally, we order Posin to pay the costs of the disciplinary proceedings, including the proportional amount of paralegal salary incurred in this case, as has been determined and submitted to the disciplinary panel by the State Bar.

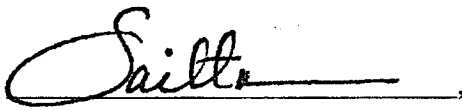
It is so ORDERED.

 J.  
Maupin

 J.  
Hardesty

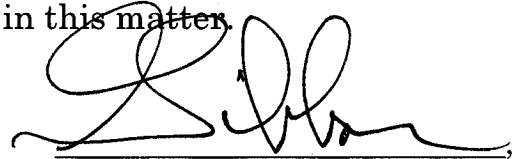
 J.  
Parraguirre

 J.  
Douglas

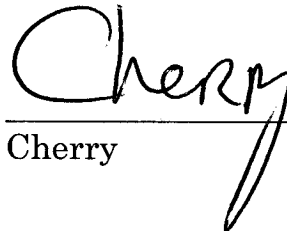
 J.  
Saitta

GIBBONS, C.J., with whom CHERRY, J., agrees, concurring in part and dissenting in part:

While I concur with the majority's decision to approve the disciplinary panel's recommended findings of professional conduct rule violations and the decision to impose costs upon Posin, I dissent from the decision to impose a longer suspension than that recommended by the disciplinary panel. The time served under the "voluntary" cessation of practice was a sufficient suspension in this matter.

  
Gibbons, C.J.

I concur:

  
Cherry, J.

cc: Jeffrey D. Albregts, Chair, Southern Nevada Disciplinary Board  
Rob W. Bare, Bar Counsel  
Kimberly K. Farmer, Executive Director  
Cremen Law Offices  
Perry Thompson, Admissions Office, U.S. Supreme Court