

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
JAMES P. SITTER, ESQ., BAR NO.
2481.

No. 55239

FILED

NOV 16 2011

TRACEE K. ANDERMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney James P. Sitter violated three rules of professional conduct and its recommendation that he be suspended from the practice of law for two years, effective from the time period since his temporary suspension pursuant to SCR 102(4)(a), which occurred on March 27, 2009¹, with reinstatement subject to certain conditions.² Having reviewed the evidence submitted, the transcript from the disciplinary hearing, and both Sitter's and the State Bar's briefs, we approve the panel's findings and recommendation to the extent that Sitter shall be suspended from the practice of law with reinstatement subject to conditions; however, we reject the recommendation that the suspension be for two years from the date of this court's order of temporary suspension, and instead direct that

¹In re: Discipline of James P. Sitter, Esq., Docket No. 53447 (Order of Temporary Suspension, March 27, 2009). We acknowledge that Sitter joined the petition for temporary suspension.

²One panel member recommended disbarment.

the suspension be for four years from the date of this court's temporary suspension.

The facts of this case are undisputed. Sitter co-mingled personal funds in his trust account from the time period of January 1, 2008 to February 28, 2009. In so doing, Sitter, on six to seven occasions, invaded his trust account, removing monies that should have been paid to the client directly, or to individuals that had liens for services provided to Sitter's clients, even though Sitter had not earned the monies.

Several of these transgressions were discovered after the State Bar received a letter from Bank of America on October 21, 2008, advising that Sitter's trust account was overdrawn. After the State Bar sent a letter requesting Sitter to explain the overdraft and provide copies of his bank records, Sitter complied, and the State Bar discovered multiple instances of misconduct.

In addition, on February 11, 2009, the State Bar received a letter from Sitter's client, Barbara Young, who had retained Sitter to represent her in two separate personal injury matters, complaining about Sitter. Sitter admitted to Young that he misappropriated her settlement funds, which were deposited into his trust account on January 14, 2008, and that he had spent all of the funds from one of the two personal injury cases he was handling for Young. In fact, on March 31, 2008, the balance in Sitter's trust account was \$197.02—even though none of the withdrawals that occurred between January 14, 2008, and March 31, 2008, were related to Young's personal injury matter. Notably, Sitter did not send Young her portion of her settlement proceeds until December 12, 2008. During this time period, Sitter neglected to communicate properly with Young regarding her settlement.

The State Bar filed a complaint, and Sitter admitted virtually all of the allegations set forth in the complaint. In his answer, Sitter also explained that during the period in which this misconduct occurred he had significant health issues, and that his general business account had been closed by Bank of America, which resulted in his improper commingling of funds in his trust account.

At the panel's hearing on the matter, Sitter again admitted the facts presented by the State Bar and accepted responsibility for his actions.³ The panel concluded that there were several mitigating factors in this case, including that Sitter accepted responsibility for his actions, assisted the State Bar in indentifying other acts of ethical violations on his part, and had resolved all of the ethical violations and paid all third-party lienholders. The panel determined that the State Bar had demonstrated, by clear and convincing evidence, that Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct). SCR 105(2)(e).

After the hearing, four of the panel members recommended suspension subject to the following conditions: that Sitter must maintain his CLE requirements for the period of two years, or until he is reinstated to practice law and provide proof of attendance to the State Bar; that he additionally take at least one course on the subject of trust account management; that he take and pass the Multi-State Professional Responsibility Exam; and that he include in his petition for reinstatement

³Sitter denied that during the State Bar's investigation he told the State Bar that, "I know that the trust account is for client funds and not for personal funds, but old habits die hard."

an agreement that he will never handle client or third-party property or funds as long as he practices law. One panel member recommended disbarment.

On review, Sitter maintains that he should not be suspended for a period of two years because: (1) he committed his transgressions during a period when he was under extreme stress and undergoing numerous surgeries related to joint degeneration in his back, left hip, and right knee—and there are several mitigating factors; and (2) the panel's recommendation for a two-year suspension may have been unduly influenced by the panel member who argued for Sitter's disbarment.

While the findings and recommendations of a disciplinary board hearing panel are persuasive, our automatic review of a panel decision recommending a suspension is conducted de novo, requiring the exercise of independent judgment by this court. SCR 105(3)(b); In re Stuhff, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We conclude that clear and convincing evidence supports the panel's findings, and that Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property), and RPC 8.4 (misconduct). SCR 105(2)(e).

We reject Sitter's contentions on review.⁴ In fact, we conclude that the panel's recommended discipline is appropriately tailored to the

⁴We conclude that Sitter's contention, that the panel member recommending disbarment unduly influenced the panel's decision by vigorously arguing that Sitter should be disbarred, is patently meritless. We note that Sitter failed to present any evidence that the panel member persuaded the other panel members to recommend a longer suspension. Moreover, we observe that Sitter fails to present any cogent argument or set forth any citation to relevant authority supporting his insinuation that

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circumstances, with the exception that we conclude Sitter's suspension from the practice of law for these violations should be for four years from the date of his temporary suspension instead of two. In this, we are convinced that the egregiousness of Sitter's current misconduct in misappropriating trust account funds, State ex rel. Oklahoma Bar Ass'n v. Mayes, 66 P.3d 398, 405 (Okla. 2003), coupled with his prior instances of discipline, warrant harsher discipline than that recommended by the panel.

As the State Bar points out, in this case there were other aggravating factors that make the panel's recommended discipline appropriate, even lenient, including: (1) a dishonest or selfish motive under SCR 102.5(1)(b) because Sitter admitted that he misappropriated client funds for his own use, avoided clients to disguise such misappropriation, and lied to his co-counsel by maintaining the funds were in his trust account when they were not; (2) a pattern of misconduct under SCR 102.5(1)(c) because Sitter admitted he misappropriated funds from five different clients in this case alone; (3) commission of multiple offenses under SCR 102.5(1)(d) because Sitter violated RPC 1.4 (communication), RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct); and (4) under SCR 102.5(1)(i), Sitter is substantially experienced in the practice of law and has been in practice since 1978.

Moreover, the record demonstrates that Sitter has been disciplined before. In August 2007, Sitter received a reprimand for

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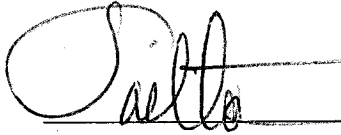
such an act would be improper. SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984).

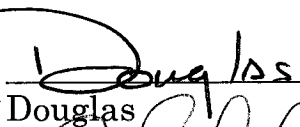
violating RPC 1.15 (safekeeping property), after he mistakenly issued a trust account check instead of a personal check to repay a personal loan. In September 1997, Sitter received a private reprimand for violating former SCR 153 (diligence), former SCR 154 (communication), and former SCR 165 (safekeeping property)—the latter violation stemming from Sitter losing a client's medical x-rays and the former two violations from Sitter's lack of "expeditious evaluation" of his client's claims. In February 1993, Sitter received a public reprimand, after a conditional guilty plea, for violating former SCR 165 (safekeeping property) after he commingled trust funds belonging to third parties with his operating account, which was then seized by the Internal Revenue Service—including those funds which should have been held in a trust account. In re Discipline of James P. Sitter, Docket No. 22571 (Order, February 4, 1993). In August 1984, Sitter received a private reprimand for his failure to properly communicate with his client.


Accordingly, we hereby suspend James P. Sitter from the practice of law for a period of four years from the date of his temporary suspension. Sitter must also comply with all of the conditions stated above, including maintaining his CLE requirements for the period of his suspension, or until he is reinstated to practice law, and provide proof of attendance to the State Bar; in addition, Sitter must take at least one course on the subject of trust account management and provide proof of attendance to the State Bar; he must take and pass the Multi-State Professional Responsibility Exam, with the understanding that those results will not go stale from the date he passes the examination; and he must include in his petition for reinstatement an agreement that he will never handle client or third-party property or funds as long as he practices

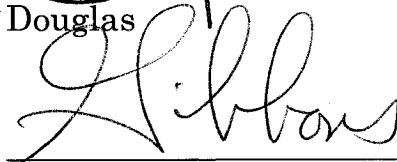
law. Additionally, Sitter shall pay all costs of the disciplinary proceedings, excluding bar counsel and staff salaries, within six months of his receipt of the state bar's bill of costs in this matter.


It is so ORDERED.

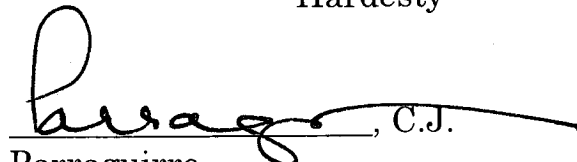

Saitta, C.J.


Douglas, J.


Cherry, J.

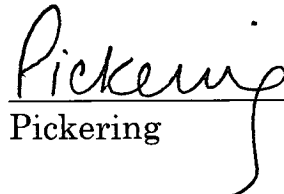

Gibbons, J.


Hardesty, J.


Parraguirre, C.J.

PICKERING, J., dissenting:

I would order Mr. Sitter's disbarment and therefore respectfully dissent to that extent.


Pickering, J.

cc: David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director, State Bar of Nevada
James P. Sitter
Perry Thompson, Admissions Office, United States Supreme Court