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State Bar Court of California

Hearing Department
Los Angeles

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Jean Cha Deputy Trial Counsel 1149 S. Hill St Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 228137</p>	<p>Case Number (s) 08-J-14788</p>	<p>(for Court's use)</p> <p>FILED SEP 01 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Mitchell L. Posin 601 S. 10th St Las Vegas, NV 89101 (702) 382-2222</p> <p>Bar # 115151</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Mitchell Lee Posin</p> <p>Bar # 115151</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 3, 1984.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 77 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: Two Billing Cycles Following the Effective Date of the Supreme Court Order.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Due to Respondent's misconduct, several clients were deprived of their portion of funds or were forced to deal with lienholders and in some cases their credit was negatively effected. Ultimately, all clients were made whole.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. Respondent has no prior discipline in over 19 years of practice before the misconduct began. (Std. 1.2(e)(i); Shapiro v. State Bar (1990) 51 Cal.3d 251, 259.)
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. Even in Respondent's financial hardship, which was created by the intervening unforeseen acts of his father unilaterally withdrawing almost \$200,000.00 out of the law firm's CTA, Respondent was able to make restitution in five client matters by the date of the order and all client matters by the end of 2009.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. Due to Respondent's father's unilaterally withdrawing \$191,500.00 from the law firm's trust account, Respondent made an effort to restore and pay restitution to those clients he was able to determine were owed funds, after an accounting, from his own personal funds. This caused substantial financial hardship on Respondent.

overwhelmed and distraught when he learned that his own father, inappropriately withdrew \$191,500.00 from the Posin & Posin attorney-client trust account and converted it to his own use on July 25, 2005. From early 2003 through 2006, Respondent and his father's relationship deteriorated into an . The conflict ended in Respondent's father's demise and death in March 2007. Respondent was unable to recover any funds from his father. Respondent absorbed the full force and horrific impact this had on his personal life. The deterioration of this father-son relationship and the disturbance it caused in Respondent's personal and professional life directly impaired Respondent's ability to competently adhere to the Rules of Professional Conduct and adversely impacted Respondent's judgment and ability to adequately confront client grievances and respond to State Bar requests for responses to specific allegations.

- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. Respondent has presented six character letters from individuals consisting of a judge, two lawyers and persons in the community attesting to his honesty and integrity. (Std. 1.2(e)(vi).)
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

In 2005, after years of relying on his father's maintenance of the client trust account, Respondent self reported his client trust accounting problems to the State Bar of Nevada and accepted his share of responsibility. Although Respondent was unable to recover a penny from his father, Respondent made restitution in all client matters that were effected by his father's actions. In July 2007, Respondent voluntarily ceased practice in California and Nevada for approximately 6 months. Since, the events leading to Respondent's discipline in Nevada, Respondent has implemented new client trust accounting maintenance methods and has retained the regular assistance of a certified public accountant.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of Two Years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**

Respondent must be placed on probation for a period of Two Years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of One Year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

Attachment language begins here (if any):

**ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: MITCHELL LEE POSIN, 115151

CASE NUMBER: 08-J-14788

Respondent Mitchell L. Posin, admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

FACTS

1. The parties agree that the attached Exhibit "A" is a true and correct certified copy of the July 2, 2008 State Bar of Nevada's Order of Suspension in Respondent's Nevada discipline matter, order no. 51207.

2. The parties agree that the attached Exhibit "B" is a true and correct copy of the February 11, 2008 State Bar of Nevada Disciplinary Board Findings of Fact, Conclusions of Law, and Recommendation in Respondent's discipline matter as well as the June 25, 2007 Stipulation of Facts.

3. The parties stipulate that the acts or omission warranting the agreed disposition is set for and adopted as if set forth in full herein in Exhibit B.

CONCLUSIONS OF LAW

4. By not appearing at hearings in July 2002, on August 19, 2002, June 6, 2003, July 14, 2003, July 30, 2003, and October 6, 2003, on behalf of Raines in the Rolle matter, failing to file an opposition to a May 13, 2003 motion for summary judgment, a June 11, 2004 motion for attorney's fees and costs, Respondent intentionally, recklessly, or repeatedly failed to perform legal services competently in wilful violation of Rules of Professional Conduct, rule 3-110(A).

5. By not advising Raines of updates and hearings in the Rolle matter, Respondent failed to communicate and respond to the client's reasonable status inquiries in wilful violation of Business and Professions Code section 6068(m).

6. By allowing Raines's case to be closed December 15, 2003, Respondent effectively withdrew from employment by abandoning the client matter and failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

7. By not responding to the State Bar investigation letters in the Rolle matter sent on August 12, 2005, September 1, 2005, October 17, 2005, December 2, 2005, and December 20, 2005, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

8. By not promptly paying outstanding medical liens in the Toffel matter and withholding client funds after October 2003, Respondent failed to promptly disburse, as requested by his client, client funds in Respondent's possession in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

9. By not responding to the State Bar investigation letters in the Toffel matter sent on December 7, 2005, December 20, 2005, January 19, 2006, March 2, 2006, April 21, 2006, and May 12, 2006, Respondent failed to adequately respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

10. By not responding to the State Bar investigation letters in the Cipriano matter sent on January 4, 2006, February 6, 2006, April 21, 2006, and May 12, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

11. By failing to appear in the Delgado matter at an October 19, 2005 hearing and failed to adequately supervise staff Respondent intentionally, recklessly, or repeatedly failed to

perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

12. By not responding to the State Bar investigation letters in the Delgado matter sent on November 30, 2005, December 20, 2005, January 19, 2006, February 6, 2006, March 2, 2006, and May 12, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

13. By failing to promptly disburse client settlement funds to lien holders in June 2005 in the Delgado matter, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4).

14. By not responding to the State Bar investigation letters in the Posin matter sent on December 19, 2005, January 19, 2006, and February 6, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

15. By not responding to the State Bar investigation letters in the Gladfelter matter sent on February 23, 2006, March 9, 2006, April 21, 2006, and May 12, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

16. By failing to perform legal services with competence necessary to seal criminal records in 2005 in the Barton matter, Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A).

17. By failing to render an appropriate accounting of funds maintained for the benefit of a client in the Davis matter, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

18. By failing to communicate and respond promptly to reasonable status inquiries of a client in 2006 in the Davis matter, Respondent wilfully violated Business and Professions Code section 6068(m).

19. By not responding to the State Bar investigation letters in the Davis matter sent on June 1, 2006, June 21, 2006, July 10, 2006, August 3, 2006, August 25, 2006, September 15, 2006, and October 3, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

20. By failing to obtain client approval to accept an arbitration award, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A)

21. By failing to communicate a non-binding arbitration award to his client in the Mouawad matter, failing to communicate or respond promptly to reasonable status inquiries from June 2006 to September 2006, Respondent wilfully violated Business and Professions Code section 6068(m).

22. By not responding to the State Bar investigation letters in the Mouawad matter sent on September 18, 2006, October 9, 2006, November 6, 2006, and November 21, 2006, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

23. By failing to promptly disburse settlement funds to lien holders in 2 client matters, Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A).

24. By failing to promptly disburse client funds being held in trust in between July 2004 December 2005 in 3 separate client matters, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4).

25. By not responding to the State Bar investigation letters in the State Bar of Nevada matter sent on November 19, 2007, February 9, 2007, and March 28, 2007, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

26. By failing to perform services for almost one year and failing to obtain a settlement check related to a June 2006 settlement in the Vidaure matter, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4).

27. By failing to respond to Vidaure's numerous messages requesting a status update, Respondent wilfully violated Business and Professions Code, section 6068(m).

28. By not responding to the State Bar investigation letters in the Vidaure matter sent on November 2, 2006, January 26, 2007, and March 28, 2007, Respondent failed to respond to the State Bar's requests for responses to an investigation within a reasonable amount of time in wilful violation of Business and Professions Code section 6068(i).

29. By failing to ensure that all medical liens were paid in June 2005 in the Foca matter, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in wilful violation of Rules of Professional Conduct, Rule 3-110(A).

30. By failing to disburse settlement funds promptly to a client and by not paying medical providers until May 2007 in the Foca matter, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4).

31. By failing to accurately communicate the status of settlement funds to the client in 2005 in the Foca matter, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Rules of Professional Conduct section 6068(m).

32. By failing to use reasonable diligence to accomplish the purpose for which he was employed, by causing delay and failing to timely cooperate in communicating and accepting a

plea agreement in the Allison matter for his out-of-state client, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

33. By misrepresenting the facts and circumstances to the State Bar investigator on March 5, 2007 surrounding his delay in performing legal services, by claiming Respondent never received a plea agreement from the prosecutor in the Allison matter, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

AUTHORITIES.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

Standard 2.2(b) of the Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provides that a violation of rule 4-100 shall result in at least a three-month suspension, irrespective of mitigation circumstances.

Standard 2.3 provides for actual suspension or disbarment depending on the facts and circumstances involving an act of moral turpitude.

Standard 2.4(a) provides for disbarment where a pattern of wilfully failing to perform services exists.

Standard 2.6 provides for suspension or disbarment depending on the gravity of the offense or harm for a violation of Business and Professions Code §§6068(m) and 6068(i) with due regard to the purposes of imposing discipline set forth in Standard 1.3.

The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and afforded great weight (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92), they are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

In review of the nature and extent of the facts and circumstances surrounding the misconduct and balancing the compelling mitigation with aggravation, one year actual suspension is adequate to

satisfy the purposes of attorney discipline. (Std. 1.6(b); *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 29, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 29, 2010, the estimated prosecution costs in this matter are approximately \$1,636.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs that will be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings. It is also noted that if Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision(c), the remaining balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 286). The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent will receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

In the Matter of
Mitchell L. Posin

Case number(s):
08-J-14788

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
MITCHELL POSIN.

No. 51207

FILED

JUL 02 2008

TRACIE A. 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.¹ The panel set conditions that he should meet during this four-month period. After four

¹We 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.² Finally, the panel recommended that Posin be required to pay the costs of the proceedings.³

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

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

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

³The 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.

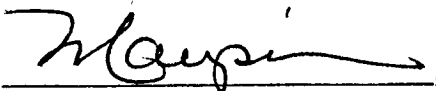
⁴In re Discipline of Schaefer, 117 Nev. 496, 25 P.3d 191, as modified by 31 P.3d 365 (2001).

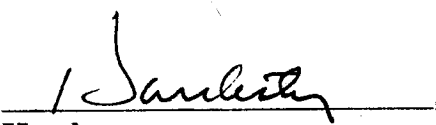
⁵In re Stuhff, 108 Nev. 629, 634-35, 837 P.2d 853, 856 (1992).

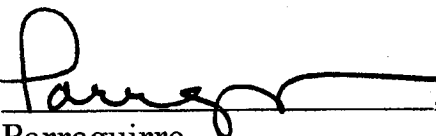
⁶Id. at 635, 837 P.2d at 856 (quoting Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

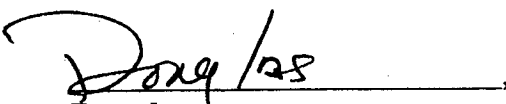
year, with credit for the time Posin "voluntarily" ceased practicing law. As the suspension is more than six months, Posin must petition for reinstatement under SCR 116. We note that the remedial measures recommended by the panel, working with a mentor, taking six CLE units, and obtaining malpractice 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.

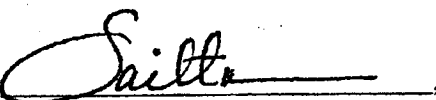
It is so ORDERED.


Maupin J.


Hardesty J.

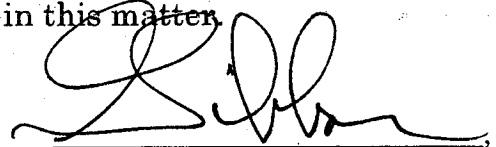

Parraguirre J.


Douglas J.

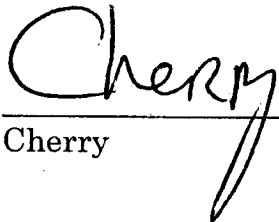

Saitta J.

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

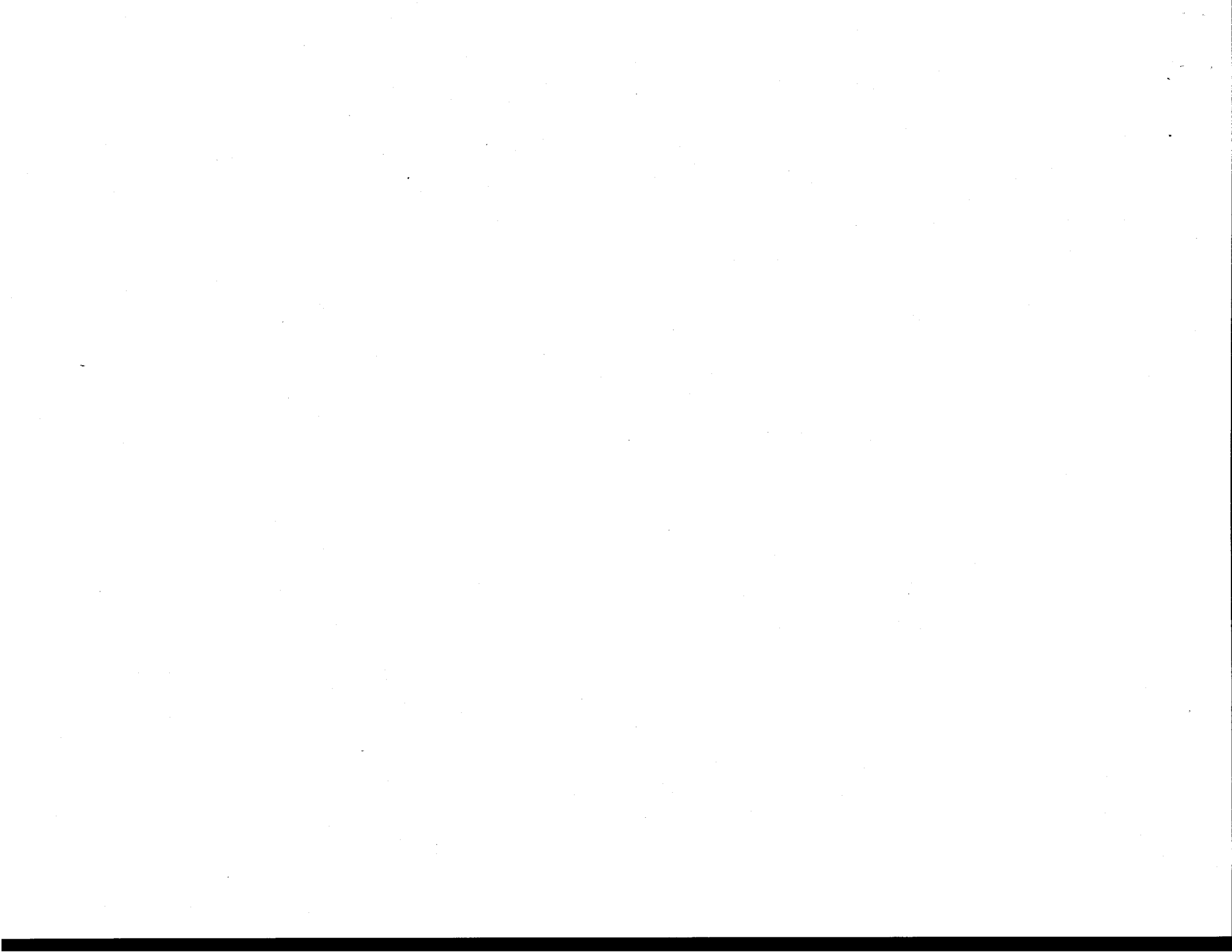
While I concur with the majority's decision to approve the disciplinary panel's recommended findings of professional conduct rule violations and the decision to impose costs upon Posin, I dissent from the decision to impose a longer suspension than that recommended by the disciplinary panel. The time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


_____, C.J.
Gibbons

I concur:


_____, J.
Cherry

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



1 Case Nos. 05-123-0653, 05-205-0653, 06-001-0653, 06-014-0653, 06-015-0653,
2 06-022-0653, 06-029-0653, 06-094-0653, 06-138-0653, 06-160-0653,
3 06-120-0653, 06-156-0653, 07-015-0653, 07-018-0653

FILED

FEB 11 2008

Sara Allen
STATE BAR OF NEVADA

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

4 STATE BAR OF NEVADA,)
5)
6 Complainant,)
7)
8 vs.)
9)
10 MITCHELL POSIN, ESQ.,)
11)
12 Respondent.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION

11 This matter initially came before a designated Formal Hearing Panel of the Southern
12 Nevada Disciplinary Board ("Panel") at 9:00 a.m. on June 25, 2007, regarding MITCHELL
13 POSIN, ESQ. ("Respondent"). The Panel consisted of Chair Nicholas Santoro, Esq., Thomas
14 Ryan, Esq., Larry Lamoreux, Esq., Bruce Leslie, Esq. and Erin Beesley, Laymember. Deputy
15 Bar Counsel David A. Clark represented the State Bar of Nevada ("State Bar"). Respondent
16 was present and was represented by Frank Cremen, Esq.

17 Prior to the hearing, the *Las Vegas Review Journal* submitted a media request. The
18 Panel granted the request and a journalist was present during the hearing. A photographer
19 was allowed access for a portion of the hearing to secure any necessary photographs.

20 The State Bar submitted a Formal Hearing packet of pleadings and notices. This
21 included a Stipulation of Facts filed June 25, 2007. Also submitted by the State Bar into
22 evidence as Exhibit 1 was a series of emails between Shamoil Shipchandler, Assistant U.S.
23 Attorney in Texas and Dawn Reid, paralegal/investigator for the State Bar; and an affidavit of
24 Tara Duenas, Custodian of Records, regarding Respondent's license and discipline history as
25 Exhibit 2. The foregoing exhibits were admitted without objection.

174

1 Respondent submitted a letter from Minerva Mouawad as Exhibit A and a two (2) page
2 accounting entitled "Funds Reimbursed to Cover Theft from Trust" as Exhibit B. These
3 exhibits were admitted without objection.

4 Respondent provided testimony on his behalf and was cross-examined by the State
5 Bar and questioned by members of the Panel. Respondent also provided Judge Sally
6 Loehrer, Michael Brooks, Esq. Mace Yampolsky, Esq. Natalie Riggs, Brett Whipple, Esq., and
7 Natalie Cowan to testify on his behalf.

8 After deliberating and reviewing all pleadings, exhibits, and testimony that had been
9 received into evidence, the Panel continued the hearing for five (5) months. An Interim Order
10 was entered on July 12, 2007. See **Exhibit 1** attached to these Findings.

11 Pursuant to the terms of the Interim Order, during the time the hearing was continued,
12 Respondent was to cease practicing law for a period of four (4) months, starting August 1,
13 2007. This voluntary cessation of the practice of law was tantamount to a suspension for
14 purposes of Supreme Court Rule (SCR) 118. Respondent was also subject to the notice
15 requirements under the new SCR 115 (Notice of change of licensure status). The exception
16 to the cessation of the practice of law was that Respondent would be allowed to continue
17 representation in the case of *USA v. Chao Fan Xu, et al.*, case no. 2:02-CR-0674-PMP (LRL),
18 currently pending in the United States District Court in Nevada.

19 Various other conditions were also placed upon Respondent that were to be completed
20 within thirty (30) days, including but not limited to paying restitution, providing an accounting
21 of the Archie Davis Revocable Living Trust, and obtaining an adequate bookkeeping system
22 that was satisfactory to the State Bar.

23 The Panel reconvened on November 15, 2007. The Panel consisted of Chair,
24 Nicholas Santoro, Esq., Thomas Ryan, Esq., Larry Lamoreux, Esq., Gary Branton, Esq.¹

25 _____
¹ Gary Branton, Esq. was an *ad hoc* replacement for Bruce Leslie, Esq.

1 and Erin Beesley, Laymember. Deputy Bar Counsel David A. Clark represented the State
2 Bar. Respondent was present and was represented by Frank Cremen, Esq.

3 Nevada attorney Richard Myers and Texas attorney Michael Hindman appeared
4 before the Panel and requested restitution for their clients, Bruce and Debra Raines,
5 grievants in Case No. 05-123-0653.

6 The State Bar submitted into evidence as Exhibit 3 a Notice of Motion and Motion for
7 Summary Judgment filed in *Raines, et al. v. Posin & Posin, et al.* Eighth Judicial District Court
8 Case No. A 516488; a spreadsheet prepared by the State Bar regarding the Restitution
9 Payments as of 11/14/2007 as Exhibit 4; spreadsheet entitled Archie Davis Revocable Living
10 Trust Accounting as Exhibit 5; letters between the State Bar and Cremen Bates Numbered
11 0001-00021 as Exhibit 6; and a fax from Mr. Cremen to the State Bar dated November 14,
12 2007 as Exhibit 7. The foregoing exhibits were admitted without objection.

13 Respondent did not submit any additional exhibits.

14 After deliberating and reviewing all pleadings, exhibits, and testimony that were
15 received into evidence, the Panel found that Respondent failed to comply with the conditions
16 set forth in the Interim Order filed on July 12, 2007. The Panel continued the hearing until
17 mid-January 2008. A Second Interim Order was entered on December 18, 2007. See
18 **Exhibit 2** attached to these Findings.

19 Additional conditions were placed upon Respondent in the Second Interim Order.
20 Specifically, the voluntary cessation of the practice of law was to remain in effect and
21 Respondent was to prove by clear and convincing evidence that all conditions of the Interim
22 Order had been met when the panel reconvened. Final discipline and costs were to be
23 determined at the time of the Formal Hearing.

24 The Panel also ordered that it was not inclined to award restitution to the Raines at that
25 time but reserved the right to revisit it when the Panel reconvened.

170

1 The final hearing took place on January 10, 2008. The Panel consisted of Chair,
2 Nicholas Santoro, Esq., Jacob Hafter, Esq.², Larry Lamoreux, Esq., Gary Branton, Esq. and
3 Erin Beesley, Laymember. Deputy Bar Counsel David A. Clark represented the State Bar.
4 Respondent was present and was represented by Frank Cremen, Esq.

5 The State Bar submitted into evidence as Exhibit 8 a letter from Mr. Cremen to the
6 State Bar dated December 21, 2007; and a letter from Richard Myers, Esq. dated January 9,
7 2008 as Exhibit 9. The foregoing exhibits were admitted without objection.

8 Respondent did not submit any additional exhibits.

9 Based upon the pleadings filed, the documents admitted into evidence and the legal
10 arguments presented, the Panel submits the following Findings of Fact, Conclusions of Law,
11 and Recommendation.

12 FINDINGS OF FACT.

13 1. Respondent is an attorney licensed to practice law in the State of Nevada and
14 was admitted to the State Bar of Nevada on or about December 1986. During the time at
15 issue in these proceedings, Respondent's principal office for the practice of law was located in
16 Clark County, Nevada.

17 2. The Panel incorporates and hereby adopts the facts which were detailed in the
18 Stipulation of Facts, attached hereto as **Exhibit 3**, dated June 25, 2007.

19 3. In consideration of the Stipulation of Facts, the parties agree to dismiss the
20 Complaint filed November 28, 2006 (Case No. 06-094-0653 / Mansour Yazdabadi).

21 CONCLUSIONS OF LAW.

22 Based upon the foregoing Findings of Fact, the Panel hereby issues the following
23 Conclusions of Law:

24 _____
25 ² Jacob Hafter, Esq. was an *ad hoc* replacement for Thomas Ryan, Esq.

177

1 1. The Southern Nevada Disciplinary Board has jurisdiction over Respondent and
2 the subject matter of these proceedings pursuant to Supreme Court Rule 99.

3 2. Respondent has substantially complied with the conditions set forth in the
4 Interim Orders, including the voluntary cessation of the practice of law for a period of 5
5 months, 10 days, from August 1, 2007, through January 10, 2008, the date of the final hearing
6 in this matter.

7 3. As to Count 1 of the Complaint filed July 25, 2006 (Case No. 05-123-
8 0653/Larry Rolle, Esq.), the Panel finds by clear and convincing evidence that Respondent
9 violated SCR 153 (Diligence), SCR 154 (Communication), SCR 155 (Fees), SCR 166
10 (Declining or terminating representation), SCR 171 (Expediting litigation), and SCR 200 (now
11 RPC 8.1) (Bar association and disciplinary matters, failure to respond to disciplinary
12 authority).

13 4. As to Count 2 of the Complaint filed July 25, 2006 (Case No. 05-205-
14 0653/Cheryl and Michael Toffel), the Panel finds by clear and convincing evidence that
15 Respondent violated SCR 151 (Competence), SCR 153 (Diligence), SCR 154
16 (Communication), SCR 165 (Safekeeping property), SCR 187 (Responsibilities regarding
17 nonlawyer assistants) and SCR 200 (now RPC 8.1) (Bar association and disciplinary matters,
18 failure to respond to disciplinary authority).

19 5. As to Count 3 of the Complaint filed July 25, 2006 (Case No. 06-001-
20 0653/Karla Cipriano), the Panel finds by clear and convincing evidence that Respondent
21 violated SCR 200 (now RPC 8.1) (Bar association and disciplinary matters, failure to respond
22 to disciplinary authority).

23 6. As to Count 4 of the Complaint filed July 25, 2006 (Case No. 06-014-0653 /
24 Jorge Delgado), the Panel finds by clear and convincing evidence that Respondent violated
25 SCR 154 (Communication), SCR 165 (Safekeeping property), SCR 187 (Responsibilities

1 regarding nonlawyer assistants) and SCR 200 (now RPC 8.1) (Bar association and
2 disciplinary matters, failure to respond to disciplinary authority).

3 7. As to Count 5 of the Complaint filed July 25, 2006 (Case No. 06-015-0653 /
4 Murray Posin, Esq.), the Panel finds by clear and convincing evidence that Respondent
5 violated SCR 165 (Safekeeping property), and SCR 200 (RPC 8.1) (Bar association and
6 disciplinary matters, failure to respond to disciplinary authority).

7 8. As to Count 6 of the Complaint filed July 25, 2006 (Case No. 06-022-0653 /
8 Jackie Gladfelter), the Panel finds by clear and convincing evidence that Respondent violated
9 SCR 200 (now RPC 8.1) (Bar association and disciplinary matters, failure to respond to
10 disciplinary authority).

11 9. As to Count 7 of the Complaint filed July 25, 2006 (Case No. 06-029-0653 /
12 Linda and Anrique Barton), the Panel finds by clear and convincing evidence that Respondent
13 violated SCR 153 (Diligence), SCR 154 (Communication), SCR 165 (Safekeeping property),
14 SCR 187 (Responsibilities regarding nonlawyer assistants) and SCR 200 (now RPC 8.1) (Bar
15 association and disciplinary matters, failure to respond to disciplinary authority).

16 10. As to Count 1 of the Complaint filed February 15, 2007 (Case No. 03-138-0653
17 / Archie Davis) the Panel finds by clear and convincing evidence that Respondent violated
18 SCR 151 / RPC 1.1 (Competence), SCR 154 / RPC 1.4 (Communication), SCR 165 / RPC
19 1.15 (Safekeeping property) and SCR 200(2) / RPC 8.1 (Bar admission and disciplinary
20 matters).

21 11. As to Count 2 of the Complaint filed February 15, 2007 (Case No. 06-166-0653 /
22 Minerva Mouawad), the Panel finds by clear and convincing evidence that Respondent
23 violated SCR 151 / RPC 1.1 (Competence), SCR 153 / RPC 1.3 (Diligence), SCR 154 / RPC
24 1.4 (Communication), SCR 171 / RPC 3.2 (Expediting litigation) and SCR 200(2) / RPC 8.1
25 (Bar Admission and Disciplinary Matters).

179

1 12. As to Count 1 of the Complaint filed May 25, 2007 (Case No. 06-120-0653 /
2 State Bar of Nevada), the Panel finds by clear and convincing evidence that Respondent
3 violated SCR 153 / RPC 1.3 (Diligence), SCR 154 / RPC 1.4 (Communication), SCR 165 /
4 RPC 1.15 (Safekeeping property), and RPC 8.1 (Bar Admission and Disciplinary Matters).

5 13. As to Count 2 of the Complaint filed May 25, 2007 (Case No. 06-156-0653 /
6 Sharon Vidaure), the Panel finds by clear and convincing evidence that Respondent violated
7 RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping property), and RPC
8 8.1 (Bar Admission and Disciplinary Matters).

9 14. As to Count 3 of the Complaint filed May 25, 2007 (Case No. 07-015-0653 /
10 Jason Foca), the Panel finds by clear and convincing evidence that Respondent violated SCR
11 153 / RPC 1.3 (Diligence), SCR 154 / RPC 1.4 (Communication), SCR 165 / RPC 1.15
12 (Safekeeping property), and RPC 8.1 (Bar Admission and Disciplinary Matters).

13 15. As to Count 4 of the Complaint filed May 25, 2007 (Case No. 07-018-0653 /
14 Monica Allison), the Panel finds by clear and convincing evidence that Respondent violated
15 RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.2
16 (Expediting litigation), RPC 8.1(a) (Bar admission and Disciplinary Matters: Knowingly make
17 a false statement of material fact) and 8.4 (Misconduct).

18 16. The State Bar Complaint filed November 28, 2006 (Case No. 06-094-0653
19 /Mansour Yazdabadi) is hereby dismissed.

20 **RECOMMENDATION.**

21 Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel, by
22 unanimous vote, concludes and respectfully recommends to the Supreme Court of the State
23 of Nevada the following:
24
25

180

1 1. That an order be entered suspending Respondent from the practice of law for
2 five (5) months and ten (10) days, with credit applied for the period of time equivalent to his
3 voluntary cessation to practice law: to wit, August 1, 2007, through January 10, 2008.

4 2. As conditions for the resumption of the practice of law, Respondent shall:

5 a. Take six (6) units of continuing legal education (CLE) credits in the area
6 of office management through a CLE provider that is approved by the
7 State Bar within one (1) year, and;

8 b. Immediately obtain and maintain legal malpractice insurance in the
9 minimum amount of \$1,000,000 (one million) for a period of two (2) years.

10 3. Respondent shall obtain a mentor that is approved by the State Bar and work
11 with the mentor for a period of two (2) years. Respondent and the mentor shall sign a
12 contract and submit quarterly reports to the State Bar.

13 4. That Respondent's attorney, Frank Cremen, shall hold for safekeeping in his
14 trust account the \$6,000 owed to Christine Carasco for the time period of one (1) year.
15 Respondent shall make reasonable efforts to contact Ms. Carasco and get the money to her.
16 If Ms. Carasco does not come forward after one (1) year, the funds can be considered
17 abandoned.

18 5. That pursuant to SCR 120, Respondent be ordered to pay all costs of these

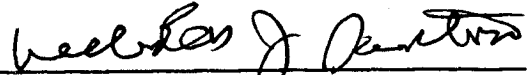
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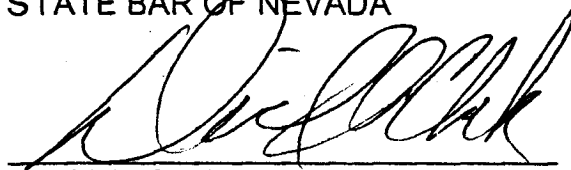
1 proceedings within ninety (90) days of his receipt of the State Bar's Bill of Costs in this matter.

2
3 DATED this 11 day of February 2008.

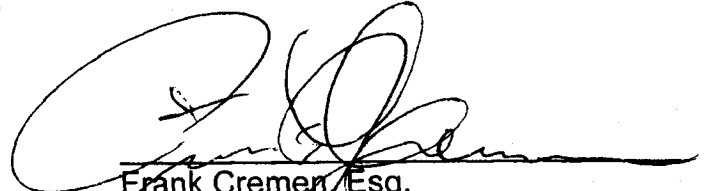
4 
5 NICHOLAS SANTORO, ESQ., Chair
6 Southern Nevada Disciplinary Panel

7 APPROVED AS TO FORM AND CONTENT:

8 STATE BAR OF NEVADA

9 

10 David A. Clark, Deputy Bar Counsel
11 600 E. Charleston Blvd.
12 Las Vegas, NV 89104
Attorney for the State Bar of Nevada

13 

14 Frank Cremer, Esq.
15 715 S. Fourth Street
16 Las Vegas, NV 89101
17 Attorney for Respondent

18
19
20
21
22
23
24
25 (182)

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the attached **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** was placed in a sealed envelope and deposited in the U.S. mail in Las Vegas, Nevada, postage fully prepaid thereon for first class regular and certified mail, addressed to Mitchell Posin, Esq., c/o Frank Cremen Esq., 715 South Fourth Street, Las Vegas, Nevada 89101.

DATED this 11th day of February, 2008.

Tara Duenas

Tara Duenas, an Employee of the State Bar of Nevada

U.S. Postal Service
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Per (Enc) _____
 To Mitchell Posin, Esq.
 c/o Frank Cremen, Esq.
 715 South Fourth Street
 Las Vegas, NV 89101
 City Findings

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mitchell Posin, Esq.
c/o Frank Cremen, Esq.
715 South Fourth Street
Las Vegas, NV 89101

2. Article Number
(Transfer from service label)

7007 0710 0004 4046 6536

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature
R Casey Agent Addressee

B. Received by (Printed Name) *R CASEY* **C. Date of Delivery** *2/12/08*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below.

RECEIVED BY
FEB 13 2008

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

STATE BAR OF NEVADA

Domestic Return Receipt

102595-02-M-1540

1820

EXHIBIT
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184

Case Nos. 05-123-0653, 05-205-0653, 06-001-0653, 06-014-0653, 06-015-0653,
06-022-0653, 06-029-0653, 06-094-0653, 06-138-0653, 06-160-0653,
06-120-0653, 06-156-0653, 07-015-0653, 07-018-0653

FILED

JUL 12 2007

STATE BAR OF NEVADA

Janie Davis
STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
 Complainant,)
)
 vs.)
)
 MITCHELL POSIN, ESQ.,)
)
 Respondent.)

INTERIM ORDER

This matter came before a designated Screening Panel of the Southern Nevada Disciplinary Board ("Panel") on June 25, 2007, at 9:00 a.m. for a Formal Hearing regarding MITCHELL POSIN, ESQ., ("Respondent"). The Panel consisted of Chair, Nicholas Santoro, Esq., Thomas Ryan, Esq., Larry Lamoreux, Esq., Bruce Leslie, Esq. and Erin Beesley, Laymember. Deputy Bar Counsel David A. Clark represented the State Bar of Nevada ("State Bar"). Respondent was present and was represented by Frank Cremen, Esq.

After deliberating and reviewing all pleadings, exhibits, and testimony that has been received into evidence, this Panel HEREBY ORDERS:

1. This matter is continued for five (5) months for final disposition.
2. During that time, Respondent shall cease practicing law for a period of four (4) months, starting August 1, 2007. This voluntary cessation of the practice of law is tantamount to a suspension for purposes of Supreme Court Rule (SCR) 118. Respondent is also subject to the notice requirements under the

Cessation of the practice of law effective August 1, 2007
Bar Number: 2840

DC

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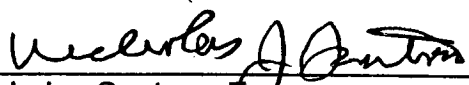
1 new SCR 115 (Notice of change of licensure status). A copy of this rule is
2 attached hereto as Exhibit A.

- 3 3. The one possible exception to cessation of the practice of law for the four (4)
4 month time period is the matter of *USA v. Chao Fan Xu, et al.*, case no. 2:02-
5 CR-0674-PMP(LRL), currently pending in the United States District Court in
6 Nevada. Within fifteen (15) days of the Formal Hearing, Respondent shall
7 file with this Panel a written showing of prejudice that would inure to
8 Respondent's client given the impending trial date. The Panel's decision will
9 carve out the *Xu* case from the cessation of the practice for four (4) months if
10 Respondent makes the requisite showing of prejudice.
- 11 4. This Interim Order will be published in *Nevada Lawyer* magazine.
- 12 5. Respondent shall pay restitution within five (5) to ten (10) calendar days from
13 the date of the Formal Hearing to those parties identified by the Respondent
14 during the Formal Hearing. Restitution shall be made through the trust
15 account of Respondent's counsel.
- 16 6. Within thirty (30) days of June 25, 2007, Respondent shall:
- 17 a. Release the \$500 court bond to Minerva Mouawad.
 - 18 b. Distribute all funds to the lienholders and the clients as to Nina Fair,
19 Shane Delance, and Sharon Vidaure.
 - 20 c. Obtain a blocked account order from the judge in the *Fair* matter.
 - 21 d. Rectify the overpayment in the James Hamly matter.
 - 22 e. Provide a full accounting to the State Bar concerning The Archie
23 Davis Revocable Living Trust. If the State Bar determines that there
24 is a violation, that violation will be a separate matter and not covered
25 under the imposition of discipline in this Order. This panel will retain

jurisdiction over the *Davis* matter for additional adjudication of any violations that may be uncovered as a result of this accounting.

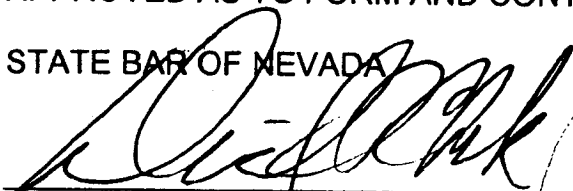
7. Respondent shall be responsible for all costs of the proceeding.
8. Respondent shall get an adequate bookkeeping system in place that is satisfactory to the State Bar. When this Panel reconvenes in five (5) months, the State Bar must approve of the bookkeeping system and will continue to maintain jurisdiction for six (6) months after that to review Respondent's bookkeeping system to avoid future problems.
9. At the end of five (5) months, if Respondent failed to comply with the conditions set forth in this order, or if Respondent practiced law directly or indirectly through someone else, or if other matters of a disciplinary nature have arisen with respect to Respondent's practice of law, this panel has retained jurisdiction to suspend Respondent for a period of time, which could be six (6) months plus one (1) day or up to one (1) year.
10. If at the end of five (5) months, it Respondent has met the conditions, this Panel will recommend that Respondent be suspended for four (4) months with credit for time served, and pay the costs of these proceedings.

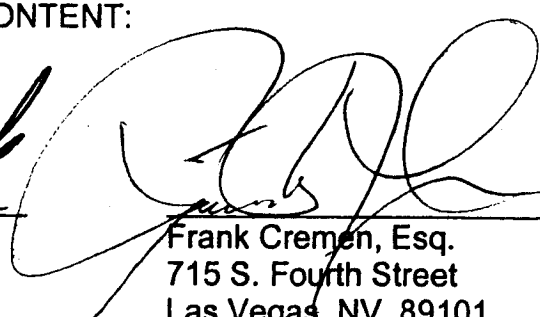
DATED this 11 day of July 2007.


Nicholas Santoro, Esq.
Formal Hearing Panel Chair
Southern Nevada Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

STATE BAR OF NEVADA


David A. Clark, Deputy Bar Counsel
600 E. Charleston Blvd.
Las Vegas, NV 89104
Attorney for the State Bar of Nevada


Frank Cremen, Esq.
715 S. Fourth Street
Las Vegas, NV 89101
Attorney for Respondent

Rule 115. Notice of change in license status; winding down of practice.

1. Who must comply. An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under Rule 98 or Rule 212, transfer to disability inactive status, or resignation with discipline pending must comply with this rule. An attorney who resigns without discipline pending under Rule 98(5)(a) and who has any Nevada clients must also comply with this rule solely with respect to the attorney's Nevada clients. If an attorney who resigns under Rule 98(5)(a) has no Nevada clients, then the attorney shall file the affidavit described in Rule 115(4).

2. Duty to notify clients not involved in legal proceedings. An attorney who is required to comply with this rule shall immediately notify, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The attorney shall further advise the clients to seek other legal advice of their own choice, and shall inform them of any relevant limitation period and deadlines.

3. Duty to notify clients and forums involved in proceedings. An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under Rule 98 or Rule 212, transfer to disability inactive status, or resignation, shall immediately notify, by registered or certified mail, return receipt requested, (1) each of the attorney's clients who is involved in pending litigation, administrative proceedings, arbitration, mediation or other



similar proceedings,(2) the attorney(s) for each adverse party in such matters, and (3) the court, agency, arbitrator, mediator or other presider over such proceeding of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The notice to the client shall state the desirability of prompt substitution of another attorney of the client's own choice and shall list any upcoming appearances and deadlines. The notice given to the attorney for an adverse party shall provide the last known address of the client.

In the event the client does not obtain substitute counsel within 30 days of the attorney's notice to the client, it shall be the responsibility of the attorney to move in the court, agency or other forum in which the proceeding is pending for leave to withdraw, if leave is required.

4. Duty to inform Supreme Court of compliance with order. Within 10 days after the entry of the disbarment, suspension, transfer to disability inactive status, or resignation order, the attorney shall file an affidavit of compliance with the supreme court, bar counsel, and, if the suspension was under Rule 212, with the board of continuing legal education. The affidavit must show:

(a) That the attorney has fully complied with the provisions of the order and with these rules;

(b) All other state, federal, and administrative jurisdictions to which the attorney is admitted or specially admitted to practice;

(c) That the attorney has served a copy of his or her affidavit on bar counsel;

189

(d) The address and telephone number of the attorney and that of a contact person, if any, designated for client files; and

(e) The status of any client or third-party funds being held.

5. Maintenance of records. An attorney required to comply with this rule shall maintain records of his or her proof of compliance with these rules and with the disbarment, suspension, transfer to disability inactive status, or resignation order for the purposes of subsequent proceedings. Proof of such compliance shall be a condition precedent to reinstatement or readmission.

6. Failure to comply. If an attorney subject to this rule fails to comply with any provision of this rule or the court's order of disbarment, suspension, transfer to disability inactive status, or resignation, the court may enter an order to accomplish the purpose of this rule.

7. Effective date. Orders imposing suspension or disbarment or approving resignation shall be effective immediately. After entry of the order, the attorney shall not accept any new retainer or act as attorney for another in any new case or legal matter of any nature. However, for 15 days from the entry date of the order, the attorney may wind up and complete, on behalf of any client, all matters pending on the entry date.

191

EXHIBIT
2

1 Case Nos. 05-123-0653, 05-205-0653, 06-001-0653, 06-014-0653, 06-015-0653
2 06-022-0653, 06-029-0653, 06-094-0653, 06-138-0653, 06-166-0653
3 06-120-0653, 06-156-0653, 07-015-0653, 07-018-0653

DEC 13 2007

John Deery
STATE BAR OF NEVADA

4 STATE BAR OF NEVADA
5 SOUTHERN NEVADA DISCIPLINARY BOARD

6 STATE BAR OF NEVADA,)
7 Complainant,)
8 vs.)
9 MITCHELL POSIN, ESQ.,)
10 Respondent.)

SECOND INTERIM ORDER

11 This matter came before a designated Formal Hearing Panel of the Southern
12 Nevada Disciplinary Board ("Panel") on November 15, 2007, at 9:00 a.m. for a Formal
13 Hearing regarding MITCHELL POSIN, ESQ. ("Respondent"). The Panel consisted of
14 Chair, Nicholas Santoro, Esq., Thomas Ryan, Esq., Larry Lamoreux, Esq., Gary Branton,
15 Esq.¹ and Erin Beesley, Laymember. Deputy Bar Counsel David A. Clark represented the
16 State Bar of Nevada ("State Bar"). Respondent was present and was represented by
17 Frank Cremen, Esq.

18 Nevada attorney Richard Myers and Texas attorney Michael Hindman appeared
19 before the Panel and requested restitution for their clients, Bruce and Debra Raines, who
20 are grievants in Case No. 05-123-0653.

21 After deliberating and reviewing all pleadings, exhibits, and testimony that has been
22 received into evidence, this Panel finds that Respondent has failed to comply with the
23

24
25 ¹ Gary Branton, Esq. was an *ad hoc* replacement for Bruce Leslie, Esq.

PAZ

1 conditions set forth in the Panel's Interim Order filed on July 12, 2007 ("Interim Order"),
2 after fair opportunity to do so.

3 Specifically, Respondent failed to comply with paragraphs 5, 6(c) and 6(e) of the
4 Interim Order. Respondent failed to pay restitution within five (5) to ten (10) calendar days
5 from the date of the Formal Hearing as ordered in paragraph 5 and failed to provide a "full
6 accounting" on the Archie Davis matter as ordered in paragraph 6(e).

7 Based on the Panel's unanimous conclusion that Respondent failed to meet all of
8 the conditions in the Interim Order, this Panel ORDERS THAT:

- 9 1. This matter is continued until mid-January 2008.
- 10 2. The voluntary cessation of the practice of law as ordered in the Interim Order
11 is continued until the date of the Formal Hearing in January 2008.
- 12 3. The only exception to cessation of the practice of law is the matter of *USA v.*
13 *Chao Fan Xu, et al.*, case no. 2:02-CR-0674-PMP(LRL), currently pending in
14 the United States District Court in Nevada.
- 15 4. Respondent shall prove by clear and convincing evidence that all conditions
16 in the Interim Order have been complied with in each and every respect.
- 17 5. Final discipline will be reserved until the Panel reconvenes in January 2008.
18 The Panel also reserves the right to issue any other discipline at that time if it
19 is deemed appropriate.
- 20 6. The Panel reserves the right to award costs to the State Bar, including
21 paralegal salary.

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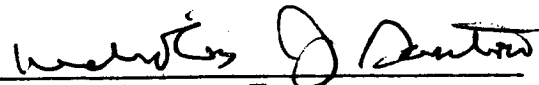
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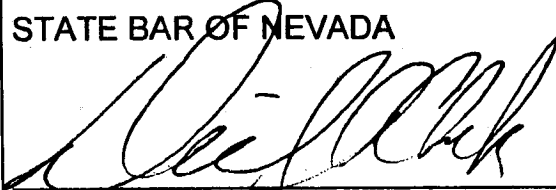
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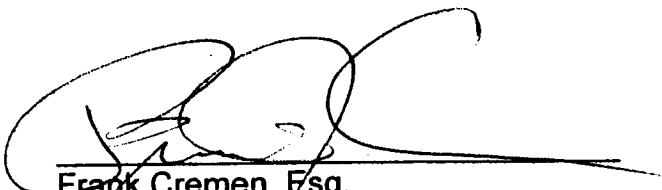
7. The Panel is not inclined to order restitution to the Raines at this time but reserves the right to impose additional restitution when the Panel reconvenes.

DATED this 13 day of ~~November~~ ^{Dec} 2007.


Nicholas Santoro, Esq.
Formal Hearing Panel Chair
Southern Nevada Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

STATE BAR OF NEVADA

David A. Clark, Deputy Bar Counsel
600 E. Charleston Blvd.
Las Vegas, NV 89104
Attorney for the State Bar of Nevada


Frank Cremen, Esq.
715 S. Fourth Street
Las Vegas, NV 89101
Attorney for Respondent

194

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Second Interim Order** was placed in a sealed envelope and sent by U.S. regular mail and certified mail in Las Vegas, Nevada, postage fully prepaid thereon for first class regular mail and certified mail addressed to Mitchell Posin, Esq., c/o Frank Cremen, Esq., 715 South Fourth Street, Las Vegas, NV 89101:

DATED this 18th day of December, 2007.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Tara Duenas
Tara Duenas, an Employee
of the State Bar of Nevada

Postage	\$	12-18-07 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery (Endorsement)	Mitchell Posin, Esq. c/o Frank Cremen, Esq. 715 South Fourth Street Las Vegas, NV 89101	
Total Postage		
Sent To		
Street, Apt. No. or PO Box No.		
City, State, ZIP+4		

2nd interim order

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mitchell Posin, Esq.
c/o Frank Cremen, Esq.
715 South Fourth Street
Las Vegas, NV 89101

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
R. Casey Addressee

B. Received by (Printed Name) *R. CASEY* C. Date of Delivery *12/19/07*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

RECEIVED BY

3. Service Type
 Certified Mail Registered Mail
 Registered Mail Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7007 0710 0004 4046 5898

Domestic Return Receipt

2nd interim order

12586-02-M-1540

195

EXHIBIT
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(96)

1 Case Nos. 05-123-0653, 05-205-0653, 06-001-0653, 06-014-0653, 06-015-0653,
2 06-022-0653, 06-029-0653, 06-094-0653, 06-138-0653, 06-166-0653,
3 06-120-0653, 06-156-0653, 07-015-0653, 07-018-0653

JUN 25 2007

Sara Posin

STATE BAR OF NEVADA STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

5 STATE BAR OF NEVADA,)
6 Complainant,)
7 vs.)
8 MITCHELL POSIN, ESQ.,)
9 Respondent.)

STIPULATION OF FACTS

10 IT IS HEREBY STIPULATED by and between Mitchell Posin, Esq. ("Respondent")
11 and the State Bar of Nevada ("State Bar"), by and through their respective counsel, that for
12 the purposes of these disciplinary proceedings, the following facts are true, undisputed, and
13 require no further offer of proof:

- 14 1. Respondent and his father, Murray Posin, were partners of Posin & Posin.
- 15 2. On July 25, 2005, Murray withdrew \$191,500 from the Posin & Posin
- 16 attorney-client trust account and converted it to his own use. Mitchell immediately
- 17 consulted counsel regarding his responsibilities, and on advice of counsel, advised the
- 18 State Bar of the conversion of trust funds.
- 19 3. On August 10, 2005, Respondent opened another trust account, in which
- 20 Murray was not a signor.
- 21 4. On August 16, 2005, \$10,000 was transferred to the new trust account. On
- 22 September 6, 2005, the remaining \$7,487.70 was transferred over to the new trust account.
- 23 This left a \$0.00 balance in the initial trust account.
- 24 5. On February 7, 2006, Murray's wife, Sara Posin, and the State Bar jointly
- 25 petitioned the Supreme Court for an order transferring Murray to disability inactive status.

197

1 6. On March 10, 2006, the Order transferring Murray to disability inactive status
2 was entered.

3 7. Murray Posin died on March 8, 2007.

4 **Case No. 05-123-0653 (Larry Rolle, Esq.)**

5 8. Texas attorney Larry Rolle represented Bruce and Debra Raines in a
6 personal injury claim. When it was clear that a lawsuit needed to be filed, Rolle contacted
7 Murray Posin of the law firm of Posin & Posin, which agreed to represent the Raines, with
8 Rolle assisting with communication, discovery, preparing documents and gathering medical
9 records/billing.

10 9. The initial complaint was filed on July 9, 1999, in the Eighth Judicial District
11 Court. Respondent was the attorney who signed the majority of the pleadings and
12 attended the hearings in this matter. Murray also signed many pleadings and was listed as
13 co-counsel in the case.

14 10. In January 2000, Rolle received notice of the Raines' depositions which were
15 scheduled in Las Vegas. One of Rolle's partners attended the depositions on March 21,
16 2000.

17 11. On March 6, 2003, Rolle received a notice of the trial setting. The trial was
18 scheduled for January 13, 2004.

19 12. Rolle became concerned that Respondent was not in contact with him or his
20 clients for trial preparation. On January 24, 2004, Rolle discovered through the Eighth
21 Judicial District Court website, that in July 2002, no one appeared at the Show Cause
22 hearing on behalf of the Raines. As a result, bench warrants were issued and a judgment
23 was entered against them in the amount of \$12,369. This information was not given to
24 Rolle or the Raines.

25 13. The following represents Respondent's actions in this matter:

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- 1 a. On July 18, 2002, Defendant Frontier Trucking filed a Motion for
2 Dismissal. No opposition was filed by the Plaintiffs. Respondent did
3 not attend the hearing on August 19, 2002. The motion was granted.
- 4 b. On October 24, 2002, Defendant Raymond Bagley filed a Motion to
5 Dismiss. An opposition was filed by Respondent. There was a
6 hearing before the Discovery Commissioner on November 19, 2002.
7 Respondent appeared at the hearing and stated that he could blame
8 it on his staff for not setting the conference but he knows the
9 responsibility falls on him. The Commissioner noted that the case
10 had been around for three (3) years and no case conference report
11 was filed. Respondent argued that the case went to the Supreme
12 Court. The Discovery Commissioner awarded \$1000 in attorney's
13 fees and ordered the Case Conference Report to be filed within thirty
14 days.
- 15 c. Defendant Bagley filed a Motion for Summary Judgment on May 13,
16 2003. No opposition was filed by Respondent. The hearing was on
17 June 6, 2003. Respondent did not appear at this hearing. The Court
18 granted the Motion for Summary Judgment.
- 19 d. On June 11, 2003, Defendant Bagley filed a Motion for Attorney's
20 Fees and Costs. This motion was also unopposed by Respondent.
21 The hearing was on July 14, 2003. Respondent did not attend this
22 hearing either. Fees in the amount of \$11,148.00 and costs in the
23 amount of \$1,221.06 were awarded to the defendant.
- 24 e. A Notice of Examination of Judgment Debtor Bruce Raines was filed
25 on July 30, 2003, which neither Bruce Raines nor Respondent

199

1 attended. Bruce Raines did not attend because Respondent failed to
2 notify him of the hearing date.

3 f. On October 6, 2003, there was a hearing to show cause why bench
4 warrants should not be issued. Counsel for Bagley stated that he
5 had not heard from Respondent even after the receipt of copy of the
6 Order to Show Cause was signed by Respondent's office. Judge
7 Denton ordered that the bench warrants be issued.

8 g. The case was closed on December 15, 2003. The Court noted that
9 although an effort was made to obtain the bench warrant, it was not
10 reduced to an Order. No bench warrant was issued.

11 14. Rolle submitted a grievance to the State Bar on August 8, 2005 alleging
12 misconduct on behalf of Respondent. Rolle also asked for assistance in getting the Raines'
13 file returned to him.

14 15. On August 12, 2005, the State Bar sent a letter to Respondent asking him to
15 respond to Rolle's grievance. The response was due on August 26, 2005. After not
16 receiving a response, a certified letter was sent on September 1, 2005, informing him that if
17 he did not respond by September 15, 2005, he could be charged with an additional
18 violation of SCR 200(2) (Bar association and disciplinary matters).

19 16. On September 18, 2005, Respondent requested an extension until
20 September 23, 2005, which was granted.

21 17. When Respondent responded on September 23, 2005, he claimed the firm
22 "extensively litigated this matter" and "the end result was not favorable."

23 18. Respondent admitted that there was an "insufficient effort" to notify the
24 Raines of the outcome of the last hearing. Respondent claimed that efforts have since
25 been made to correct this.

1 19. On October 17, 2005, the State Bar investigator sent letters to Rolle and
2 Respondent asking for additional documents to assist in the investigation of the grievance.

3 20. Rolle responded on October 25, 2005 and provided copies of his retainer
4 agreement with the Raines. The Raines did not receive a retainer agreement from Posin &
5 Posin. The Raines were aware that their case was being handled by Posin & Posin but
6 they had never been contacted by the firm. The Raines never received a copy of their file,
7 despite numerous requests, until January 25, 2007.

8 21. Respondent did not respond to the State Bar's request of October 17, 2005.
9 As such, a "no response letter" was sent to Respondent on December 2, 2005 via certified
10 mail, return receipt requested. After not receiving a response, the State Bar sent another
11 certified letter, return receipt requested to Respondent on December 20, 2005.

12 22. On January 17, 2006, the State Bar received a letter from Respondent. The
13 letter was dated September 18, 2005, but was in response to the State Bar's October 17,
14 2005 letter. Respondent stated that the partnership with his father began deteriorating in
15 the late 1990s with the deterioration of Murray's mental health and marriage to Sara Smith.
16 It was not until July 31, 2005, that the dissolving of the partnership became full circle.

17 23. Respondent stated that he did not see any reason for the lapses and offered
18 the "partial excuse" of the deteriorating law firm and Murray not communicating with him
19 about the lapses of time.

20 24. On January 25, 2007, Respondent produced the Raines' file to attorney
21 Richard Myers, who is representing them in a legal malpractice lawsuit against
22 Respondent.

23 25. Based upon the foregoing, the State Bar maintains that Respondent violated
24 SCR 153 (Diligence), SCR 154 (Communication), SCR 155 (Fees), SCR 166 (Declining or
25

1 terminating representation), SCR 171 (Expediting litigation), and SCR 200 (now RPC 8.1)
2 (Bar association and disciplinary matters, failure to respond to disciplinary authority).

3 **Case No. 05-205-0653 / Cheryl and Michael Toffel**

4 26. Respondent represented Cheryl and Michael Toffel in a personal injury
5 matter.

6 27. The Toffels reside in New York and received most of their medical treatment
7 there. The Toffels signed liens with their New York medical providers. There was also a
8 Medicare lien for Michael Toffel.

9 28. Respondent settled the Toffel's case with Geico Insurance for \$45,000 each
10 in the end of September 2003.

11 29. The settlement checks were negotiated and deposited into Respondent's trust
12 account on October 24, 2003. The check for Mr. Toffel was made payable to Mr. Toffel,
13 Respondent, and Daniel Wilen, M.D. None of the third parties endorsed the backs of the
14 checks, including Dr. Wilen. The only signature that appeared on the back of the settlement
15 check was Respondent's wife and bookkeeper, Anita Gramont.

16 30. The Toffels never signed settlement documents and the release was never
17 returned to Geico.

18 31. A check was written from Respondent's trust account on October 24, 2003,
19 for \$30,000. The check was made payable to Posin & Posin for attorney fees. The memo
20 section of the check states "Harvey M. Toffel, Cheryl Andreyckisk."

21 32. On January 5, 2004, another check was issued from the trust account made
22 payable to Healthcare Recoveries in the amount of \$7,196.47 for Cheryl Andreyckisk.

23 33. The Toffels finally succeeded in speaking with Respondent in June 2005.
24 Respondent informed Mr. Toffel that a partial payment would be mailed to him. The Toffels
25 did not receive the payment and, on September 29, 2005, sent a letter to Respondent.

1 34. On November 29, 2005, Mr. Toffel submitted a grievance to the State Bar,
2 which was forwarded to Respondent on December 7, 2005.

3 35. Respondent did not respond to the State Bar and on December 20, 2005,
4 another letter was sent to him. After no response, a certified letter was sent to Respondent
5 from the State Bar on January 19, 2006.

6 36. On February 23, 2006, Respondent hand-delivered to the State Bar a
7 response to the Toffels' grievance.

8 37. Respondent acknowledged that the Toffels had the right to expect their
9 money promptly. Respondent stated that the reason the Toffels did not receive their
10 money was because his office had not been able to obtain an exact lien total from the out-
11 of-state providers. Respondent stated that his office had written to the providers to get the
12 total liens but had not received a response. Specifically, Respondent attempted to obtain a
13 final Medicaid balance. To that end, he wrote to Medicaid asking for a final balance. To
14 date, all documents from Medicaid have stated that the balance reflected thereon was not
15 final.

16 38. On March 2, 2006, the State Bar requested that Respondent provide an
17 accounting of settlement proceeds, the copies of the letters to the lien holders, copies of
18 the releases and the status in getting a distribution to Toffels.

19 39. On March 8, 2006, Respondent provided the State Bar with what appeared to
20 be the original file concerning the liens. The file came from Professional Paralegals and
21 there was a cover letter from Ron Brown with an approximate total of the medical liens
22 owed by the Toffels, which did not take into account any reductions. However, Respondent
23 did not address the issue of whether or not he would send the Toffels a portion of their
24 settlement.

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203

1 40. On March 29, 2006, the Office of Bar Counsel was informed that Respondent
2 retained counsel for the disciplinary matters.

3 41. Another letter was sent in care of Respondent's counsel on April 21, 2006,
4 requesting a status of the payment to the Toffels and the accounting of the settlement.

5 42. On May 12, 2006, a final letter was sent to Respondent in care of his counsel
6 advising that the matter would be presented to a screening panel on May 31, 2006, without
7 the benefit of their response if one was not received by May 22, 2006.

8 43. This matter was presented to a screening panel without Respondent's
9 response.

10 44. On May 3, 2007, Respondent's counsel sent a cashier's check to Michael
11 Toffel in the amount of \$22,163.44 and to Cheryl Andreyisk in the amount of \$18,088.42.
12 In his cover letter, counsel indicated that there are still liens that will be paid. Since that
13 letter, all liens have been paid, including the balance to Medicaid.

14 45. Based upon the foregoing, the State Bar maintains that Respondent violated
15 SCR 151 (Competence), SCR 153 (Diligence), SCR 154 (Communication), SCR 165
16 (Safekeeping property), SCR 187 (Responsibilities regarding nonlawyer assistants) and
17 SCR 200 (now RPC 8.1) (Bar association and disciplinary matters, failure to respond to
18 disciplinary authority).

19 **Case No. 06-001-0653 / Karla Cipriano**

20 46. The grievant, Karla Cipriano, was assaulted outside of a Southwest Medical
21 Associates medical building on or about October 24, 2002, by a security guard. Cipriano
22 retained Respondent to represent her.

23 47. Respondent contracted with Ron Brown of Professional Paralegals to assist
24 him with Cipriano's case.

25

2004

1 48. Respondent filed a Complaint on October 21, 2004, in the Eighth Judicial
2 District Court against the security guard, the security company, and Southwest Medical
3 Associates. The various summonses were issued and served. However, only Southwest
4 Medical Associates answered the complaint.

5 49. In October 2005, Cipriano's case against Southwest Medical Associates
6 settled for \$2,500. Ron Brown called Cipriano to inform her that he had the settlement
7 documents that required her signature. Brown met Cipriano at the Teriyaki Bowl restaurant
8 to sign the release.

9 50. Two (2) weeks later, Cipriano met with Natalie in Respondent's office to pick
10 up her check and sign the distribution sheet. Cipriano refused to sign the distribution sheet.
11 Respondent was not available to discuss this and she left without her check.

12 51. Cipriano returned to Respondent's office a few days later to discuss
13 Respondent's fees. She ultimately accepted the settlement distribution proposal. In her
14 grievance to the State Bar, Cipriano stated that she felt Respondent abandoned her and
15 her case.

16 52. On January 4, 2006, a copy of the grievance was sent to Respondent for his
17 response. Respondent did not respond and a certified letter was sent on February 6,
18 2006.

19 53. On February 23, 2006, Respondent met with the State Bar investigator and
20 delivered a one (1) paragraph response to the State Bar that stated he believed Cipriano to
21 be mentally unstable and that her case was very weak. Respondent stated that he
22 obtained a settlement that she agreed to accept.

23 54. During the meeting with the investigator, Respondent was asked to explain
24 why the case against the assailant and the security company were not pursued and to
25

1 explain the connection, if any, between the assailant and Brown. He stated he was not
2 aware of any connections but would look into it and respond.

3 55. Brown wrote a letter on behalf of Respondent. He described what transpired
4 at the meeting between Brown and Cipriano at the Teriyaki Bowl. Brown also attached a
5 copy of a Motion for Summary Judgment that was filed by Southwest Medical because
6 Cipriano did not respond to Requests for Admissions and was not in compliance with other
7 discovery requests. In Respondent's opposition, he stated that he was having difficulty
8 obtaining medical records from Cipriano's treating psychologist, who is Murray Posin's wife.
9 Following the filing of the motion for summary judgment, the case settled and the matter
10 was taken off calendar.

11 56. On March 29, 2006, the Office of Bar Counsel was informed that Respondent
12 retained counsel for the disciplinary matters.

13 57. A letter was sent to Respondent's counsel on April 21, 2006, again requesting
14 that Respondent explain why the case against the assailant and the security company were
15 not pursued and the connection, if any, between the assailant and Brown.

16 58. On May 12, 2006, a final letter was sent to Respondent in care of his counsel
17 advising that the matter would be presented to a screening panel on May 31, 2006, without
18 the benefit of their response if one was not received by May 22, 2006.

19 59. To date, no response has been received.

20 60. Based upon the foregoing, the State Bar maintains that Respondent violated
21 SCR 200 (now RPC 8.1) (Bar association and disciplinary matters, failure to respond to
22 disciplinary authority).

23 **Case No. 06-014-0653 / Jorge Delgado**

24 61. In May 2005, Jorge Delgado retained Respondent to represent him in an
25 immigration matter.

206

1 62. Delgado alleged that on May 12, 2005, he made a payment in the amount of
2 \$900 (\$650 was paid with a check from his church and the remaining \$250 was in cash)
3 toward his retainer. This money was given to Respondent's paralegal, Rosa Lara. Lara
4 gave Delgado a receipt that was printed on Posin & Posin letterhead.

5 63. Delgado further alleged that he continued to make monthly payments to Lara.
6 He gave her \$125 on June 15, 2005, \$175 on July 5, 2005, \$125 on July 21, 2005, \$125 in
7 August 2005 and \$125 on September 14, 2005. Delgado paid a total of \$1,575, including
8 filing fees, toward his immigration case. Lara gave Delgado a receipt for each payment.

9 64. On October 18, 2005, Delgado had a hearing before an INS agent. Delgado
10 had not spoken with Respondent and was concerned, so he went to Respondent's office.
11 Delgado was informed by Respondent that Lara disappeared and no longer worked there.
12 Respondent stated that he did not have Delgado's file, which included his original
13 documents and passport, because Lara took it. Delgado asked Respondent if he would be
14 attending his hearing the following day and Respondent told him that he could not because
15 he would be in court.

16 65. Delgado attended the hearing on his own.

17 66. Delgado went to Respondent's office on November 15, 2005, to get his
18 documents from Respondent and a refund.

19 67. With the exception of the check from the church, Respondent told him that he
20 did not have proof that Delgado gave Lara the money and that the receipts Lara gave him
21 did not look like the receipts that their office normally used. Respondent asked Delgado to
22 go with him to the police to make a report that Lara embezzled money from him. Delgado
23 explained that he had a doctor's appointment but would return after his appointment.
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207

1 68. Delgado submitted a grievance to the State Bar, which was sent to
2 Respondent on November 30, 2005. Respondent did not respond and additional certified
3 letters were sent on December 20, 2005, January 19, 2006, and February 6, 2006.

4 69. On February 23, 2006, Respondent hand delivered his response to the State
5 Bar. Respondent informed the State Bar investigator that he did not attend the INS hearing
6 was because he thought it was an interview, not a hearing, and counsel was not required to
7 be present. Lara had not scheduled the hearing on his calendar and Respondent had other
8 court appearances scheduled for that day.

9 70. Respondent further stated that he continued to perform work on behalf of
10 Delgado following the INS interview. He alluded to a document that he filed for Delgado
11 requesting immigration relief because of spousal abuse. Respondent stated that the
12 document showed Delgado's tendency to blame others to an extent that was excessive.
13 Respondent stated that Delgado was blaming him for problems with his "unwinnable"
14 immigration case.

15 71. On March 2, 2006, the State Bar sent Respondent a letter requesting a status
16 of Delgado's refund and file and a copy of the document that he alluded to in his response
17 and the meeting with the investigator. Respondent did not respond to this request.

18 72. On March 29, 2006, the Office of Bar Counsel was informed that Respondent
19 retained counsel for the disciplinary matters.

20 73. On May 12, 2006, a final letter was sent to Respondent in care of his counsel
21 advising that the matter would be presented to a screening panel on May 31, 2006, without
22 the benefit of their response if one was not received by May 22, 2006.

23 74. This matter was presented to a screening panel without Respondent's
24 response.

25

2006

1 75. On July 3, 2007, Respondent's counsel sent a refund to Delgado in the form
2 of a cashier's check in the amount of \$1,575.00,

3 76. Based upon the foregoing, the State Bar maintains that Respondent violated
4 SCR 154 (Communication), SCR 165 (Safekeeping property), SCR 187 (Responsibilities
5 regarding nonlawyer assistants) and SCR 200 (now RPC 8.1) (Bar association and
6 disciplinary matters, failure to respond to disciplinary authority).

7 **Case No. 06-015-0653 / Murray Posin**

8 77. Murray Posin submitted a grievance to the State Bar on November 2, 2005,
9 alleging that Respondent was splitting fees with paralegal Ron Brown.

10 78. Attached to his grievance were copies of checks regarding the case of F.
11 Solorzano, wherein Professional Paralegals received \$3,425.00 and Respondent received
12 \$3,375.00 for a fee and \$1,538.79 for costs. The check for Professional Paralegals was
13 issued from Respondent's business account.

14 79. Also attached to the grievance were copies of checks regarding Rosa
15 Solorzana. Professional Paralegals received \$1,737.50 and Respondent received
16 \$1,697.50 for a fee and \$1,538.87 for costs. Again, the check for Professional Paralegals
17 was issued from Respondent's business account.

18 80. Copies of additional checks that were issued to Professional Paralegals were
19 also provided. These checks were for: Margaret Baker in the amount of \$450.00; Brenda
20 Garcia in the amount of \$700.00; and miscellaneous 1099/cost reimbursement in the
21 amount of \$1,303.00.

22 81. On December 19, 2005, the grievance was sent to Respondent for a
23 response. After not receiving a response, the State Bar sent certified letters on January 19,
24 2006 and February 6, 2006.

25

1 82. On February 23, 2006, Respondent hand delivered a response to the State
2 Bar investigator. Respondent stated that he contracted paralegal Ron Brown to assist him
3 with the personal injury cases. He claimed that Brown always invoiced him and was paid
4 based on the invoice. He contended that the fees were not split. The investigator
5 requested that Respondent provide copies of the invoices relating to the clients mentioned
6 in Murray's grievance, as well as other invoices covering the time span of the past six (6)
7 months.

8 83. The invoices concerning all the checks mentioned by Murray were provided to
9 the State Bar on March 8, 2006, by Ron Brown. Brown also provided a letter stating that
10 he is not fee-sharing with Respondent and is compensated at the hourly rate of \$85 plus
11 cost reimbursement.

12 84. The Bar has not received copies of invoices spanning the time frame of six (6)
13 months from Respondent that were requested during the February 23, 2006 meeting with
14 the investigator.

15 85. Based on the accounting provided by Respondent on April 16, 2007, the
16 amount of \$1,571.20 has not been distributed from Rosa Solorzano's settlement of June
17 2005. This amount represents money owed to lien holders. Respondent has now paid the
18 liens in full. Some of the checks have been returned as undeliverable.

19 86. Based on the accounting provided by Respondent on April 16, 2007, the
20 amount of \$10,961.21 has not been distributed from Florentina Solorzano's settlement of
21 June 2005. This amount represents money owed to lien holders and \$142.74, which is
22 owed to the client. Respondent has now paid the liens in full. Some of the checks have
23 been returned as undeliverable.

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210

1 87. Bas on the accounting provided by Respondent on April 16, 2007, the
2 amount of \$700 has not been distributed to Posin & Posin from Brenda Garcia's settlement
3 of June 2005.

4 88. Respondent provided an accounting on April 16, 2007, that indicated that
5 \$2,150.00 had not been distributed from Margaret Baker's settlement of April 2005. This
6 amount represented money owed to Margaret Baker (\$1,721.85) and to Posin & Posin for
7 fees and costs.

8 89. On May 31, 2007, Respondent provided a copy of a cancelled check dated
9 January 23, 2006, made payable to Margaret Baker in the amount of \$1,721.65. This
10 check was endorsed with a signature of "Margaret Baker."

11 90. Based upon the foregoing, the State Bar maintains that Respondent violated
12 SCR 165 (Safekeeping property), and SCR 200 (RPC 8.1) (Bar association and disciplinary
13 matters, failure to respond to disciplinary authority).

14 **Case No. 06-022-0653 / Jackie Gladfelter**

15 91. Jackie Gladfelter wrote a grievance on behalf of her brother, John Gladfelter,
16 who is handicapped. John retained Respondent on March 21, 2001, to seal his criminal
17 records. A sum of \$1,500 was paid to Respondent for this service on May 30, 2001.

18 92. Gladfelter's records were never sealed by Respondent and a refund was
19 requested.

20 93. The grievance was mailed to Respondent on February 23, 2006. Respondent
21 did not respond to the grievance and it was hand delivered to him again on March 9, 2006.

22 94. On March 29, 2006, the Office of Bar Counsel was informed that Respondent
23 retained counsel for the disciplinary matters.

24 95. A letter was sent to Respondent's attorney on April 21, 2006, asking
25 Respondent to respond to Gladfelter's allegations.

1 96. On May 12, 2006, a final letter was sent to Respondent in care of his attorney
2 advising that the matter would be presented to a screening panel on May 31, 2006, without
3 the benefit of their response if one was not received by May 22, 2006.

4 97. When this matter was presented to a screening panel, no response had been
5 received.

6 98. On May 3, 2007, Respondent's counsel sent a refund to Gladfelter in the form
7 of a cashier's check in the amount of \$1,500.

8 99. Based upon the foregoing, the State Bar maintains that Respondent violated
9 SCR 200 (now RPC 8.1) (Bar association and disciplinary matters, failure to respond to
10 disciplinary authority).

11 **Case No. 06-029-0653 / Linda and Anrique Barton**

12 100. Anrique Barton retained Respondent in early 2005 to seal his criminal records
13 in order for him to obtain a job. The Bartons reside in Washington.

14 101. Barton sent money orders to Respondent in care of Respondent's paralegal,
15 Rosa Lara, for a retainer. The total amount sent to Respondent was \$1,631.

16 102. The records were never sealed.

17 103. The Bartons emailed and called Respondent over the course of a year
18 inquiring about the status of the case. At one point, they were told by Respondent that
19 Lara no longer worked at his office and he does not have proof of the payments.

20 104. On March 14, 2006, the Bartons spoke with Respondent. He requested that
21 the Bartons give him until April 17, 2006, to either finalize their case or refund the money.

22 105. The Bartons never heard back from Respondent about their refund, nor did
23 he ever return their money.

24 106. On March 9, 2006, this grievance was hand delivered to Respondent with the
25 instruction to respond by March 19, 2006.

1 107. On March 29, 2006, the Office of Bar Counsel was informed that Respondent
2 retained counsel for the disciplinary matters.

3 108. A letter was sent to Respondent's attorney on April 21, 2006, requesting that
4 Respondent respond to the allegations raised by the Bartons.

5 109. On May 12, 2006, a final letter was sent to Respondent in care of his attorney
6 advising them that the matter would be presented to a screening panel on May 31, 2006,
7 without the benefit of their proper response if one was not received by May 22, 2006.

8 110. On May 3, 2007, Respondent's counsel provided the State Bar with a copy of
9 check number 0118, dated May 10, 2006, made payable to Anrique Barton in the amount
10 of \$1,688.00. This check was endorsed by Mr. Barton on May 15, 2006.

11 111. Based upon the foregoing, the State Bar maintains that Respondent violated
12 SCR 153 (Diligence), SCR 154 (Communication), SCR 165 (Safekeeping property), SCR
13 187 (Responsibilities regarding nonlawyer assistants) and SCR 200 (now RPC 8.1) (Bar
14 association and disciplinary matters, failure to respond to disciplinary authority).

15 **Case No. 06-138-0653 / Archie Davis**

16 112. Archie Davis retained Respondent to represent her granddaughter, Kizzy
17 Edwards in a personal injury matter. Ms. Edwards was severely injured and in a coma.

18 113. Respondent filed a complaint in the Eighth Judicial District Court on July 30,
19 2002 in *Edwards v. Desert Breeze Apartments, Inc. et al.* Case Number A-454119. A
20 settlement for \$1,000,000 was obtained by Respondent for Ms. Edwards in the summer of
21 2003.

22 114. A guardianship was also opened for Ms. Edwards in the Eighth Judicial Court,
23 Case Number G23231.

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213

1 115. Ms. Edwards died May 4, 2003, making the guardianship estate subject to
2 probate. A probate was opened on May 15, 2003 in the Eighth Judicial District Court,
3 Case No. P49677. The attorney handling the probate was Elyse Tyrell.

4 116. According to the Inventory and Record of Value filed in the probate, the value
5 of the estate was \$302,160.96. This was the net of the settlement proceeds transferred to
6 the probate estate after distribution of the guardianship estate.

7 117. Archie Davis was the sole heir of Ms. Edwards estate. A revocable living trust
8 was established for Ms. Davis, wherein Respondent was the trustee. The trust was created
9 by attorney Elyse Tyrell to protect Ms. Davis' assets.

10 118. On May 9, 2006, Ms. Davis sent a letter to the State Bar alleging that
11 Respondent was to distribute \$10,000 to her but only sent a check for \$6,000. She further
12 stated that Respondent was not communicating with her.

13 119. The State Bar sent a letter to Respondent dated June 1, 2006, in care of his
14 counsel, requesting that Respondent provide the Office of Bar Counsel with a detailed
15 accounting of monies received and paid regarding Davis' case, along with copies of the
16 front and back of every check issued.

17 120. When Respondent failed to respond, the State Bar sent a certified letter,
18 dated June 21, 2006, to Respondent's counsel. Counsel responded on June 22, 2006
19 stating that he encouraged Respondent to comply with the State Bar's requests.

20 121. When Respondent again failed to respond, the State Bar sent another
21 certified letter dated July 10, 2006, to Respondent in care of counsel. On July 24, 2006,
22 Respondent hand-delivered photocopies of the front and back of 14 checks. However,
23 there was no cover letter, an explanation of the checks, an accounting or copies of any
24 deposits included.

25

214

1 122. On August 3, 2006, the State Bar sent Respondent a letter asking him to
2 provide a detailed accounting and copies of the deposits. This letter was sent directly to
3 Respondent as counsel was not representing Respondent at that time.

4 123. Respondent did not respond and certified letters were sent on August 25,
5 September 15, and October 3, 2006.

6 124. This matter was presented to a screening panel without the benefit of
7 Respondent's response.

8 125. The probate assets appear to have been distributed over an eight month
9 period. The last distribution occurred in August 2004. Ms. Davis signed a receipt
10 acknowledging that she received the residue of Ms. Edwards' estate. The receipt was filed
11 on August 30, 2004.

12 126. Based on the three (3) orders filed in the probate case granting distribution,
13 \$192,259.57 was to be distributed to Ms. Davis. Of that amount, \$130,259.57 was sent to
14 Respondent, as trustee of Davis's trust, to be placed in Davis' trust account. The
15 remainder was distributed to Ms. Davis directly from the Administrator of the Estate.

16 127. Respondent stated in a letter to the State Bar on February 23, 2007, that an
17 account was opened for Ms. Davis in which she was the beneficiary.

18 128. On May 11, 2007, Respondent issued a check made payable to Archie Davis
19 in the amount of \$1,101.01 from an account entitled "The Archie Davis Revocable Living
20 Trust." The cover letter that accompanied the check sent to Ms. Davis stated that that figure
21 represented the balance of the trust account.

22 129. Respondent has not provided the State Bar with an accounting of the funds
23 that were in the Archie Davis Revocable Living Trust account.

24 130. Based upon the foregoing, the State Bar maintains that Respondent violated
25 SCR 151 / RPC 1.1 (Competence), SCR 154 / RPC 1.4 (Communication), SCR 165 / RPC

1 1.15 (Safekeeping property) and SCR 200(2) / RPC 8.1 (Bar admission and disciplinary
2 matters).

3 **Case No. 06-166-0653 / Minerva Mouawad**

4 131. Minerva Mouawad, is a Rhode Island resident, who was hit by a taxi while on
5 vacation in Las Vegas. She retained Rhode Island attorney Bennett Bergman, who
6 associated Respondent to handle the matter in Las Vegas.

7 132. Respondent filed a complaint in the Eighth Judicial District Court on
8 November 30, 2004. The matter was diverted to court-mandated arbitration and the
9 arbitration was held on May 24, 2006. Respondent told Mouawad that he would contact
10 her in ten (10) days with the outcome of the arbitration.

11 133. In her September 14, 2006, grievance to the State Bar, Mouawad alleged that
12 she had not heard from Respondent, nor had Bergman. Bergman had written several
13 letters to Respondent requesting a status of the arbitration award. These letters were
14 dated June 9, July 5, July 5 (sic), August 23, and September 8, 2006.

15 134. The State Bar forwarded the grievance to Respondent by letter dated
16 September 18, 2006. Respondent responded to the State Bar on September 22, 2006. He
17 stated that sometimes matters do not move as quickly as we would like, but he believed the
18 Arbitration Award would resolve the matter.

19 135. Respondent attached a copy of a letter he sent to Mouawad dated September
20 22, 2006, wherein he advised her that the arbitration award was \$8,475. He further
21 informed Mouawad that he received the paperwork to finalize the personal injury matter on
22 December 7, 2002 (sic). He requested that she sign the paperwork and return it to him.

23 136. In Mouawad's response to the State Bar, she stated that the arbitration award
24 was non-binding and could have been rejected. She stated that she was not given the
25 opportunity to accept or reject the offer since she had not been contacted by Respondent

1 following the arbitration hearing. Mouawad also asked Respondent to provide her with a
2 breakdown of the distribution.

3 137. Mouawad's letter was forwarded to Respondent on October 9, 2006,
4 requesting that he update the State Bar concerning this matter. Respondent did not
5 respond and certified letters were mailed to him on November 6 and 21, 2006. To date, the
6 State Bar has not received a reply from Respondent.

7 138. Defense counsel Mark Trafton mailed Respondent the release documents in
8 July 2006. The settlement documents were sent to Respondent again by fax and U.S. Mail
9 in December 2006.

10 139. The release has not been signed and Trafton has not distributed the
11 settlement check.

12 140. On June 4, 2007, Respondent's counsel sent Mouawad a copy of the Notice
13 of Entry of Judgment and Judgment on Arbitration Award that was recovered in her lawsuit.
14 A check in the amount of \$8,425.00 was also sent to Mouawad. Respondent did not take
15 any portion of the award for attorney fees.

16 141. Based upon the foregoing, the State Bar maintains that Respondent violated
17 SCR 151 / RPC 1.1 (Competence), SCR 153 / RPC 1.3 (Diligence), SCR 154 / RPC 1.4
18 (Communication), SCR 171 / RPC 3.2 (Expediting litigation) and SCR 200(2) / RPC 8.1
19 (Bar Admission and Disciplinary Matters).

20 **Case No: 06-120-0653 / State Bar of Nevada**

21 142. This grievance was brought to the attention of the State Bar of Nevada by
22 David Childress, who was an independent paralegal employed by Ron Brown of
23 Professional Paralegals.

24 143. From May 2006 to July 2006, Childress was contracted by Respondent.
25

1 144. Childress stated that as an independent contractor for Respondent, he would
2 communicate with Respondent or his staff via telephone, email, or in person. He has an in-
3 box at Respondent's office and would come to the office to pick up files to work on them.
4 Childress was given a client list of approximately 80 clients. He was asked to review each
5 file on the list and provide a status of what needed to be done.

6 145. Childress informed the State Bar of files that caused him concern because he
7 was not certain that money was being properly distributed. He gave the State Bar the
8 names of the following clients: Nina Fair, Jason Hamly, Shane Delance, and Sharon
9 Vidaure.

10 146. Following the meeting, the State Bar issued subpoenas to Wells Fargo Bank
11 and to Childress for documents he referenced in the meeting.

12 147. The State Bar investigator prepared a reconciliation of Respondent's trust
13 account in an effort to determine if any money was unaccounted for.

14 148. A certified letter, return receipt requested, was sent to Respondent on
15 January 19, 2007, asking him to provide a complete account to the State Bar regarding
16 those clients named by Childress. Respondent was also to provide an explanation as to
17 why money had not been distributed to the proper interested parties. Respondent was
18 asked to provide copies of settlement distribution sheets, copies of checks paid, and a list
19 of all of his trust accounts. His response was due on February 2, 2007.

20 149. After not receiving a response from Respondent, the State Bar sent him a
21 certified letter, return receipt requested, on February 9, 2007. His response was due on
22 February 20, 2007.

23 150. Respondent provided a partial response on March 5, 2007. Respondent
24 stated that he would provide an accounting when his bookkeeper completed the
25 reconciliation of the accounts. His response was calendared for March 15, 2007.

1 151. Respondent's father passed away on March 8, 2007. Respondent and his
2 bookkeeper called the State Bar investigator on March 19, 2007, to find out exactly what
3 the State Bar was requesting. They were informed that the State Bar needed client
4 distribution sheets, a QuickBooks spreadsheet for each client from August 2003 to present
5 and the current balance of the trust account.

6 152. Respondent asked for an extension in which to provide the requested
7 information. An extension was granted and Respondent was given the deadline of noon on
8 March 26, 2007.

9 153. On March 26, 2007, Respondent's bookkeeper emailed a QuickBooks
10 spreadsheet. However, the spreadsheet was for the time period of January 2001 to
11 September 2005 and did not include the time period requested. Further, the email did not
12 include any distribution sheets.

13 154. Since the documents received on March 26, 2007, were not complete, the
14 State Bar served a Subpoena on Respondent's counsel on March 28, 2007. The
15 subpoena requested that Respondent provide a QuickBooks account of each client from
16 April 2003 to present, distribution sheets for each client listed in the QuickBooks
17 spreadsheet, and a reconciliation of account for James Hamly, Shane Delance, Sharon
18 Vidaure, Jason Foca, as well as for four other clients that are the subject of a prior
19 Complaint filed by the State Bar. The subpoenaed documents were due on April 9, 2007.

20 155. Respondent provided his partial response to the subpoena on April 16, 17
21 and 20, 2007. Based on the accumulation of all his responses, which included client
22 distribution sheets and trust account records, the following was discovered in relation to the
23 four (4) clients mentioned by Childress:

- 24 a) **Nina Fair (minor):** A petition for minor's compromise was filed in this
25 matter on May 22, 2006, in Eighth Judicial District Court. However,

1 pro of the blocked account was never ad with the court. Nina's case
2 settled on July 14, 2004, for \$57,500. Some checks were issued from
3 the trust account but \$25,887.36 of the settlement remains to be
4 distributed. The remaining funds should be deposited into a blocked
5 account for Nina and distributed to her lien-holders.

6 b) **James Hamly:** James Hamly's case settled in August 2004. An
7 overpayment of \$2,794.94 was made from Posin's trust account from
8 Hamly's settlement funds. The overpayment was made to Posin &
9 Posin for attorney fees.

10 c) **Shane Delance:** Shane Delance's case settled in December 2005 for
11 \$500,000. Checks were issued from the trust account but were to Posin
12 & Posin for attorney fees and costs, Professional Paralegals, court
13 reporters, experts, with a partial distribution to the client. A balance of
14 \$113,120.31 needs to be distributed to lien-holders, Posin & Posin and
15 the client.

16 156. Based upon the foregoing, the State Bar maintains that Respondent violated
17 SCR 153 / RPC 1.3 (Diligence), SCR 154 / RPC 1.4 (Communication), SCR 165 / RPC
18 1.15 (Safekeeping property), and RPC 8.1 (Bar Admission and Disciplinary Matters).

19 **Case No. 06-156-0653 / Sharon Vidaure**

20 157. Sharon Vidaure, a California resident, retained Respondent to represent her
21 in a personal injury matter against the Rio Hotel and Casino.

22 158. On November 1, 2006, Vidaure wrote a letter to the State Bar stating that her
23 case settled for \$20,000 over six months ago and she had not heard from Respondent in
24 over four (4) months, even after leaving numerous messages for him.
25

1 159. Attached to her grievance was a copy of a letter Vidaure sent to Respondent
2 on October 11, 2006, requesting that he communicate with her about her settlement.

3 160. The State Bar sent Vidaure's letter to Respondent on November 2, 2006.
4 After Respondent failed to respond, the State Bar sent another letter certified, return receipt
5 requested, dated January 26, 2007.

6 161. On March 5, 2007, State Bar received a letter from Respondent stating that
7 his trust account showed no deposits or withdrawals made regarding Vidaure. He stated
8 that he was looking into why it appeared that the settlement check was never received and
9 would report back to State Bar by March 15, 2007.

10 162. Respondent did not provide a reason for the lack of communication with
11 Vidaure regarding her settlement.

12 163. Respondent's father passed away on March 8, 2007. Respondent and his
13 bookkeeper called the State Bar investigator on March 19, 2007, to find out exactly what
14 the State Bar was requesting. They were informed that the State Bar needed client
15 distribution sheets, a QuickBooks spreadsheet for each client from August 2003 to present
16 and the current balance of the trust account.

17 164. Respondent asked for an extension in which to provide the requested
18 information. An extension was granted and Respondent was given the deadline of noon on
19 March 26, 2007.

20 165. On March 26, 2007, Respondent's bookkeeper emailed a QuickBooks
21 spreadsheet. However, the spreadsheet was for the time period of January 2001 to
22 September 2005 and did not include the time period requested.

23 166. Further, the email did not include any distribution sheets or information
24 regarding the status of Vidaure's settlement.
25

1 167. Since the documents received on March 26, 2007, were not complete, the
2 State Bar served a Subpoena on Respondent's counsel on March 28, 2007. In relation to
3 Vidaure, the subpoena sought a status report of her settlement, or in the alternative, a
4 QuickBooks reconciliation of her settlement. The subpoenaed documents were due on
5 April 9, 2007.

6 168. On April 20, 2007, Respondent provided a statement and documents in
7 response to the subpoena. Respondent stated that Vidaure's matter settled in June 2006
8 and Vidaure signed the release on June 7, 2006. Respondent stated a review of the trust
9 account did not reveal a deposit or disbursement of Vidaure's settlement.

10 169. Further, Respondent stated he was in contact with defense counsel, George
11 Lyles, to determine whether the settlement checks were issued.

12 170. The State Bar investigator contacted Mr. Lyles on April 26, 2007, to request a
13 copy of the front and back of the settlement check. Mr. Lyles indicated that the file was in
14 storage but he would have it pulled.

15 171. On May 10, 2007, Mr. Lyles's office contacted the State Bar. The investigator
16 was informed that the check was released without obtaining a signature of the runner who
17 picked it up. However, the insurance company informed Mr. Lyles that the check had not
18 been cashed and a stop payment would be issued.

19 172. Based upon the foregoing, the State Bar maintains that Respondent violated
20 RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping property), and
21 RPC 8.1 (Bar Admission and Disciplinary Matters).

22 **Case No. 07-015-0653 / Jason Foca**

23 173. Jason Foca retained Respondent for a personal injury matter. His case
24 settled in June 2005.
25

222

1 174. In grievance letter dated February 2, 2007, Foca alleged that he had
2 numerous telephone conversations with paralegals of Posin & Posin and they informed him
3 that his medical bills would be paid from the settlement.

4 175. When his case settled, Foca was given a distribution sheet that indicated
5 money was going to be held by Posin & Posin to pay Desert Radiologist and University
6 Medical Center. Foca received his portion of the settlement funds at that time.

7 176. Foca alleged that in the beginning of 2007, he applied for a credit card. He
8 was informed that his application was denied because of negative credit. When he
9 received a copy of his credit report, the University Medical Center bill was listed as a
10 creditor. The amount owing was \$808 but the original bill was only \$587.

11 177. On February 5, 2007, the State Bar sent Foca's grievance to Respondent.
12 Respondent responded on March 5, 2007. He stated that his bookkeeper is in the process
13 of reconciling every case. At first review, Respondent stated it appeared that there was a
14 \$970.23 balance to be distributed to Foca. Respondent stated that more information would
15 be provided once the bookkeeper completed the reconciliation of the trust account.
16 Respondent's response was calendared for March 15, 2007.

17 178. Respondent's father died on March 8, 2007. Respondent and his bookkeeper
18 called the State Bar investigator on March 19, 2007 to find out exactly what the State Bar
19 was requesting. They were informed that the State Bar needed client distribution sheets, a
20 QuickBooks spreadsheet for each client from August 2003 to present and the current
21 balance of the trust account.

22 179. Respondent asked for an extension in which to provide the requested
23 information. An extension was granted and Respondent was given the deadline of noon on
24 March 26, 2007.
25

1 180. On March 26, 2007, Respondent's bookkeeper emailed a QuickBooks
2 spreadsheet. However, the spreadsheet was for the time period of January 2001 to
3 September 2005 and did not include the time period requested. Further, the email did not
4 include any distribution sheets.

5 181. Since the documents received on March 26, 2007, were not complete, the
6 State Bar served a subpoena on Respondent's counsel on March 28, 2007. The
7 subpoena sought a distribution sheet of Foca's settlement, along with an indication as to
8 whom the \$970.23 belonged. The subpoenaed documents were due on April 9, 2007.

9 182. On April 16, 2007, Respondent provided the State Bar with a copy of the
10 disbursement sheet for Foca and a reconciliation of his settlement funds. Posin stated that
11 there is a total of \$1,045.23 that needs to be distributed to two (2) lien holders and an
12 arbitrator. The discrepancy of \$75 between the balance of the trust account (\$970.23) and
13 the balance that needs to be distributed (\$1,045.23) was due to a refund given to the client
14 for bank charges for a returned check fee.

15 183. Based upon the foregoing, the State Bar maintains that Respondent violated
16 SCR 153 / RPC 1.3 (Diligence), SCR 154 / RPC 1.4 (Communication), SCR 165 / RPC
17 1.15 (Safekeeping property), and RPC 8.1 (Bar Admission and Disciplinary Matters).

18 **Case No. 07-018-0653 / Monica Allison**

19 184. Monica Allison needed an attorney to represent her in a federal criminal
20 matter in Texas. Her mother called her friend, Ron Brown of Professional Paralegals, who
21 referred them to Respondent.

22 185. In March 2006, Allison spoke with Respondent over the phone. He informed
23 her he would need \$15,000 plus travel costs to go to Dallas.

24 186. Allison paid the airfare, hotel and meals for Respondent and Ron Brown to
25 travel to Texas.

224

1 187. On March 28, 2006, Respondent and Robert Brown arrived in Dallas to meet
2 with Allison, U.S. Attorney, Shamoil Shipchandler, and Secret Service Agents. Allison was
3 questioned and then asked to leave the room so they could talk to Respondent.

4 188. Mr. Shipchandler had sent a misdemeanor plea arrangement to Respondent
5 on April 13, 2006, two (2) weeks after the meeting.

6 189. In a letter written by Shipchandler to Respondent dated October 5, 2006, he
7 detailed the various telephone calls and extensions given to Respondent concerning
8 Allison's misdemeanor plea. Shipchandler informed Respondent that if he did not hear
9 from him by October 25, 2006, the misdemeanor offer would be retracted.

10 190. On January 8, 2007, two (2) Secret Service Agents arrived at Allison's place
11 of employment and arrested her on 24 felony counts.

12 191. Allison sent Respondent a letter on January 12, 2007, terminating his
13 services. She has since retained another attorney to represent her in the criminal matter.

14 192. Respondent responded to Allison's grievance on March 5, 2007. He stated
15 that he accompanied Allison to a debriefing. Then he stated that "for a long time, we heard
16 nothing from the prosecutor."

17 193. Respondent admitted that he received the plea offer and that "we" did not
18 respond timely. He also stated he deeply regrets any difficulties he caused Allison.

19 194. Based upon the foregoing, the State Bar maintains that Respondent violated
20 RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.2
21 (Expediting litigation), RPC 8.1(a) (Bar admission and Disciplinary Matters: Knowingly

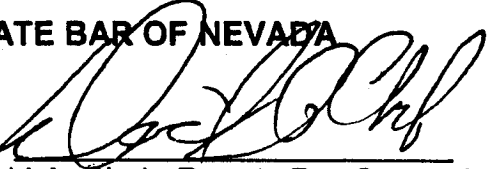
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1 make a false statement of material fact) and 8.4 (Misconduct).

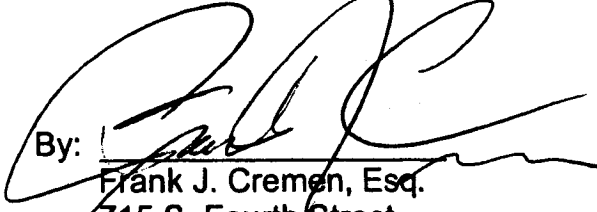
2 DATED: 6/25/07

DATED: 6-25-07

3 **STATE BAR OF NEVADA**

4 

5 By: David A. Clark
6 David A. Clark, Deputy Bar Counsel
6 600 East Charleston Blvd.
7 Las Vegas, Nevada 89104
7 Attorney for State Bar of Nevada

By: 

Frank J. Cremen, Esq.
715 S. Fourth Street
Las Vegas, NV 89101
Attorney for Respondent


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CERTIFICATE OF SERVICE BY MAIL

I, Tara Duenas, certify that I am a citizen of the United States, over 18 years of age, a resident of Clark County, and not a party to the within action. That I am an employee of the State Bar of Nevada and my business address is 600 East Charleston Blvd., Las Vegas, Nevada 89104.

That I served a copy of the attached RECORD ON APPEAL (VOLUME 1) by placing a copy in an envelope addressed to Mitchell Posin, Esq., c/o Frank Cremen, Esq., 715 South Fourth Street, Las Vegas, NV 89101, which envelope was then sealed and postage fully prepaid thereon for first-class mail and was deposited in the United States mail in Las Vegas, Nevada on the 2nd day of March, 2008. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.



Tara Duenas
Office of Bar Counsel


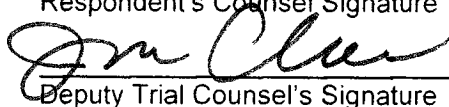
(227)

(Do not write above this line)

In the Matter of Mitchell L. Posin	Case number(s): 08-J-14788
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>8/19/10</u> Date	 Respondent's Signature	<u>Mitchell L. Posin</u> Print Name
<u>8/24/10</u> Date	 Respondent's Counsel Signature Deputy Trial Counsel's Signature	<u>Jean Cha</u> Print Name

(Do not write above this line.)

In the Matter Of Mitchell L. Posin	Case Number(s): 08-J-14788
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

09-01-10

Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 1, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

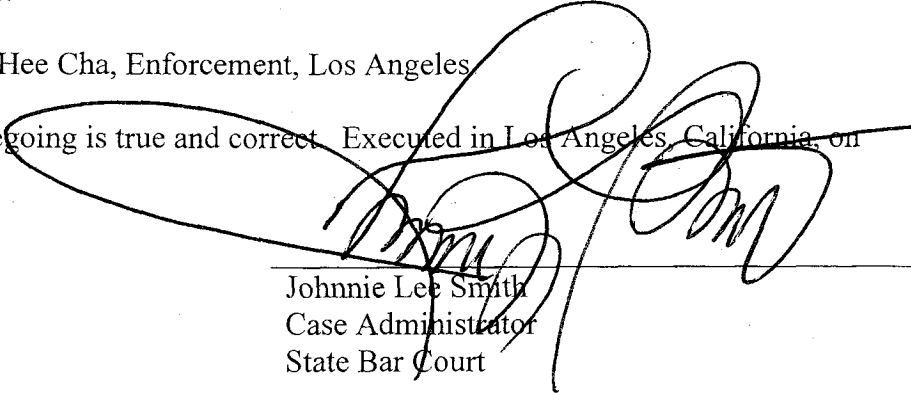
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MITCHELL LEE POSIN
POSIN & POSIN
601 S 10TH ST
LAS VEGAS, NV 89101**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Jean Hee Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 1, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court