

FILED

MAR 15 2018

**STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 17-Q-03117
)	
MITCHELL LEE POSIN,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 115151.)	
_____)	

Respondent Mitchell Lee Posin was admitted to practice law in California on December 3, 1984, and has not been eligible to practice law in California since January 13, 2011. Posin has also been licensed to practice law in Nevada since 1986. He has one prior record of discipline in California, based on misconduct he committed in Nevada, and one currently pending California disciplinary matter, also based on misconduct in Nevada.

On May 30, 2017, Posin filed a resignation with charges pending. On August 1, 2017, the Office of Chief Trial Counsel of the State Bar (OCTC) filed its report on the resignation and the parties' "Stipulation as to Facts and Conclusions of Law" (Stipulation). The Stipulation included information about Posin's prior discipline and detailed the pending disciplinary charges against him. As to the pending matter, however, the Stipulation referred to the Nevada rules and statutes Posin violated, but not the corresponding California authorities. On September 14, 2017, we ordered OCTC to file a supplemental stipulation clarifying which California rules and statutes Posin violated.

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On September 28, 2017, OCTC filed a new “Stipulation as to Facts and Conclusions of Law” (Revised Stipulation), but it did not file a new report. We deem that the Revised Stipulation supplements OCTC’s August 1, 2017 report.

OCTC recommends that Posin’s resignation be accepted. Based on this recommendation and in light of the grounds set forth in California Rules of Court, rule 9.21(d),¹ as detailed below, we recommend that the Supreme Court accept the resignation.

I. BACKGROUND

A. Prior California Discipline (2011)

Posin has one prior record of discipline in California from 2011, which involved reciprocal discipline for misconduct he committed in Nevada. (*In re Mitchell Lee Posin* (S187090); State Bar Court Case No. 08-J-14788.) Posin stipulated to committing numerous acts of misconduct in 12 client matters in Nevada, which equated to the following violations of misconduct in California: (1) seven violations of failure to perform competently (Rules of Prof. Conduct, rule 3-110(A)); (2) five violations of failure to communicate (Bus. & Prof. Code, § 6068, subd. (m)); (3) one violation of improper withdraw from employment (Rules of Prof. Conduct, rule 3-700(A)(2)); (4) ten violations of failure to timely cooperate in State Bar investigation (Bus. & Prof. Code, § 6068, subd. (i)); (5) five violations of failure to promptly disburse funds (Rules of Prof. Conduct, rule 4-100 (B)(4)); (6) one violation of failure to render an accounting (Rules of Prof. Conduct, rule 4-100 (B)(3)); and (7) one act of moral turpitude misrepresentation (Bus. & Prof. Code, § 6106). In aggravation, Posin had significant client harm; in mitigation, he had more than 19 years of discipline-free law practice, remorse, and severe financial hardship.

¹ All further references to rules are to the California Rules of Court unless otherwise noted.

The Supreme Court issued an order, effective January 13, 2011, suspending Posin for two years, stayed, with two years of probation and conditions that included a one-year actual suspension to remain in effect until he demonstrated proof of rehabilitation and present learning and ability to practice law. To date, Posin has not been reinstated to practice law in California.

B. Pending California Disciplinary Matter

Reciprocal disciplinary charges are currently pending against Posin in State Bar Court Case Number 16-J-18214. On March 25, 2016, the Nevada Supreme Court issued an order, suspending Posin for two years, with 18 months stayed, and two years of probation after he entered into a conditional guilty plea to 11 ethical violations in five client matters. On June 7, 2017, OCTC filed a Notice of Disciplinary Charges based on the misconduct in Nevada.

In the Revised Stipulation, Posin stipulated that his misconduct in Nevada equated to the following violations of misconduct in California: (1) six violations of failure to perform competently (Rules of Prof. Conduct, rule 3-110(A)); (2) four violations of failure to communicate (Bus. & Prof. Code, § 6068, subd. (m)); and (3) one violation of failure to return client property after termination of employment (Rules of Prof. Conduct, rule 3-700(D)(1)).

OCTC represents that, as of the date of its report (August 1, 2017), as supplemented by the September 28, 2017 Revised Stipulation, there are no other disciplinary complaints, investigations, or proceedings pending against Posin.

OCTC also represents that there are no pending Client Security Fund claims, nor have any previously been paid based on alleged misconduct by Posin. OCTC further reports that Posin is 59 years old, is prepared to forfeit his license, and will be 64 years old before he is eligible for reinstatement.

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II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered Posin's resignation under the grounds set forth in rule 9.21(d). We summarize below the relevant information for each ground:

1. Whether the preservation of testimony is complete.

OCTC reports that the perpetuation of the evidence is not necessary in the pending matter.

2. Whether after transfer to inactive status, Posin has practiced law or has advertised or held himself out as entitled to practice law.

OCTC reports that there is no evidence that Posin has practiced law in California or held himself out as entitled to practice law in California since he tendered his resignation or since January 13, 2011, the effective date of his suspension in California.

3. Whether Posin performed the acts specified in rule 9.20(a)-(b).

OCTC reports that, consistent with rule 9.20(a)-(b), Posin has attested he has no clients, no client papers or other property to return, no unearned fees, and no pending client matters. Accordingly, it appears that there were no acts that Posin was required to perform.

4. Whether Posin provided proof of compliance with rule 9.20(c).

Posin filed a rule 9.20(c) compliance declaration on May 30, 2017.

5. Whether the Supreme Court has filed a disbarment order.

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment.

The State Bar Court has not filed a decision recommending disbarment.

7. Whether Posin previously resigned or has been disbarred and reinstated to the practice of law.

Posin has not previously resigned or been disbarred in California and reinstated.

8. Whether Posin entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.

Posin and OCTC entered into a stipulation as to facts and conclusions of law in the pending disciplinary matter.

9. Whether accepting Posin's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

We recommend accepting Posin's resignation for the reasons OCTC presented in its filings in this matter. Posin: (1) submitted a rule 9.20 compliance declaration; (2) cooperated with OCTC by submitting a Stipulation and Revised Stipulation; (3) has not practiced law in California since January 13, 2011; (4) has no other disciplinary complaints, investigations, or proceedings pending against him which are not included in the report and Revised Stipulation; and (5) has no Client Security Fund claims or issues pending against him. Further, Posin is 59 years old, prepared to forfeit his license, and will be 64 years old before he is eligible for reinstatement. Under these circumstances, we believe that public confidence in the discipline system will not be undermined by accepting the resignation, and acceptance is consistent with the need to protect the public, the courts, and the legal profession.

III. RECOMMENDATION

We recommend that the Supreme Court accept the resignation Mitchell Lee Posin, State Bar number 115151. We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6068.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 March 15, 2018, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED MARCH 15, 2018

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

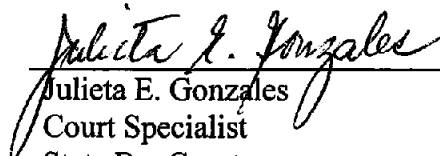
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MITCHELL LEE POSIN
410 S RAMPART BLVD STE 390
LAS VEGAS, NV 89145

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

Hugh G. Radigan, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 15, 2018.



Julieta E. Gonzales
Court Specialist
State Bar Court