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IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JUN 29 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

IN RE: DISCIPLINE OF ROBERT J.
KOSSACK,

CASE NO.: 11-58388

Respondent/Appellant.

RESPONDENT/APPELLANT'S OPENING BRIEF

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11-19385

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1 **JURISDICTIONAL STATEMENT**

2 This is an appeal from the Hearing Panel’s Findings of Fact and Conclusions of
3 Law dated April 18, 2011. This Honorable Court has jurisdiction to hear this appeal
4 pursuant to its automatic review as provided for by SCR 105(3)(b). The Hearing Panels
5 findings were received by this Honorable Court on May 20, 2011. On June 16, 2011, this
6 Honorable Court granted the Stipulation for Enlargement of Time to File Opening Brief
7 granting an extension of time to and including June 27, 2011, for Respondent/Appellant
8 Robert J. Kossack to file his Opening Brief.

9 **ISSUES PRESENTED FOR REVIEW**

10 Should Robert J. Kossack be suspended from the practice of law for a period of
11 three years or should a lesser sanction be imposed?

12 **STATEMENT OF THE CASE**

13 The State Bar alleged that Respondent/Appellant Robert J. Kossack (“Kossack”)
14 failed to supervise his nonlawyer staff and failed to safe keep monies in his trust and
15 general accounts and that his lack of supervision also allowed his nonlawyer staff to
16 engage in the unauthorized practice of law to the detriment of his clients. Two grievance
17 files contained in one formal complaint were filed on May 6, 2010. On April 18, 2011,
18 the Hearing Panel found Kossack violated RPC 1.1 (Competence), RPC 1.3 (Diligence),
19 RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property), RPC 5.3 (Responsibilities
20 regarding Nonlawyers) and RPC5.5 (Unauthorized Practice of Law) but found that
21 Kossack did not violate RPC 9.4 (Misconduct), and the Hearing Panel recommended
22 Kossack be suspended from the practice of law for a period of three years, be required to
23 take and pass the MPRE exam at the end of his suspension and, if reinstated, be required
24 to enter into a mentoring agreement for a period of two years during which time the
25 mentor shall make written quarterly reports to the Office of Bar Counsel. This appeal
26 follows.

27

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1 **STATEMENT OF FACTS**

2 **A sad case of trust and betrayal**

3 This is the story of an attorney, Respondent/Appellant Robert J. Kossack, Nevada
4 Bar No. 2734 ("Kossack"), who foolishly overly delegated the oversight of his general
5 and trust checking accounts to his secretary, Michelle Haehnel ("Michelle"), who came to
6 his office with ulterior motives, stole from him, stole from at least one client and stole
7 from at least one litigation lending company and who misrepresented herself as an
8 attorney to steal another person's identity, all in secret.

9 There are a number of factors which make this a sad case. Michelle's mother had
10 been Kossack's secretary for twelve years before she died of breast cancer, and during
11 that time, Kossack was made part of Michelle's family, becoming Godfather to her
12 youngest child prior to her mother's death and then becoming Godfather to her two older
13 children, and not a holiday or birthday or special school event went by without Kossack
14 being there. Because of this close family relationship, Michelle gained Kossack's
15 complete trust, but meanwhile, behind his back, she was able to recruit the other secretary
16 in Kossack's office, Susan Gutierrez ("Susan"), who was Michelle's aunt, along with
17 Michelle's father, Jerry Pozucek, Sr. ("Jerry, Sr."), Michelle's husband, Victor Haehnel,
18 Sr. ("Victor, Sr."), and Michelle's oldest daughter, Sharon Haehnel ("Sharon"), with
19 whom Kossack also had a very close relationship, to act as accessories to her schemes of
20 embezzlement and identity theft. At the same time these five family members acted in
21 concert to convince Kossack he was loved and respected and a mentor to their family,
22 they were able to keep Kossack in the dark as they stole from him and from others with a
23 psychopathic lack of conscience as they did not care in the least about putting Kossack in
24 debt, ruining his reputation, breaching his client's trust and jeopardizing his license to
25 practice law.

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1 **At first only a public reprimand was recommended**

2 At the beginning of the Bar disciplinary hearing, Bar Counsel, David A. Clark
3 (“Clark”), having already received copies of Kossack’s checks showing that the missing
4 money all went to Michelle, Susan and their families, stated,

5 ...We are confident that we can establish by clear and convincing
6 evidence that Mr. Kossack failed to supervise, failed his ethical duties to
7 supervise his nonlawyer staff to safe keep property, to communicate with
8 clients, be diligent and thorough in managing his practice.

9 Depending on how the testimony vents out given such large sums of
10 money and such what seems to be widespread of malfeasance on
11 somebody’s part, we’ll be seeking a public sanction and the costs of these
12 proceedings. (Volume II, p. 10, hereinafter abbreviated e.g. “II, 10”)

13 As stated by Clark in the middle of the hearing,

14 The structure of this hearing is to keep open of the fact that we’re not
15 sure where the money might go and if it’s an assistant who took the money,
16 that’s one species of sanction, you know, whatever that might be. If it’s
17 Mr. Kossack, that would certainly be a totally different species of sanction.
18 I don’t know if the evidence proves that. I don’t think there’s anything yet
19 in that regard. (II, 227)

20 So at first, the Bar was only seeking a public reprimand, but for some reason which
21 is still not clear, Bar Counsel in closing argument, recommended Kossack’s license be
22 suspended even though all the evidence presented at the hearing, including the cancelled
23 checks and Michelle and Victor, Sr.’s gambling records showing where the money went,
24 proved Kossack had been duped and had no involvement in any of the crimes. In fact, the
25 Hearing Panel found that Kossack was not guilty of misconduct (I, 60) and had given a
26 full and free disclosure to disciplinary authority and a cooperative attitude toward the
27 proceedings. (I, 60-61) It is the Disciplinary Panel’s other findings which are in
28 question.

 To be clear, the State Bar did not make any allegation that Kossack personally
benefitted from the misappropriations and that the evidence was only that Kossack failed
to safe keep client funds. (III, 473) Clark admitted the State Bar could not prove
Kossack personally stole the money saying, “That’s not an issue, but his duty is to make
sure that nobody steals it.” (III, 473-474)

1 **Kossack was asked to become part of Michelle's family to gain his trust**

2 Kossack testified that Michelle's mother, Michelle Pozucek ("Pozucek"), worked
3 for him twelve years from the time he started his law practice as a sole practitioner until
4 the time of her death in May, 2003. (II, 11-12) During that time, Kossack got to know
5 Michelle very well and became Godfather to her youngest daughter, Christina. As
6 Pozucek was dying, Kossack, Michelle, Victor, Sr., and Susan all sat vigil over her, and
7 Kossack paid for Pozucek's funeral. (II, 13-16)

8 Kossack then felt "lucky" that he could hire Michelle, a family member who he
9 could "trust" to take over as the business manager and secretary of his office. (II, 14)
10 Susan, who Kossack had known even longer than Michelle, was later hired as a
11 receptionist, and her main job was to answer phones and run errands. There was no
12 evidence of financial dishonesty in either of Michelle's or Susan's pasts. (II, 14-15)
13 Kossack then treated Michelle and Susan like family. (II, 15-16)

14 **Kossack delegated financial duties to Michelle**

15 Like her mother, Kossack made Michelle a signatory on his general account, and
16 she was charged with signing the checks to pay for rent, utilities, witness fees, and other
17 bills and costs. Kossack was the only signatory on his client trust account. (II, 15)

18 Kossack admitted he did not review the cancelled checks drawn on his general or
19 trust accounts because he trusted Michelle to handle his books, and he was completely
20 blind-sided by the thefts which later occurred. (III, 252-253)

21 Kossack did not look at his general account checks from October, 2004, to March,
22 2011. (III, 353) Michelle was able to deposit checks into Kossack's trust account
23 without Kossack's endorsement using his "For Deposit Only" stamp. She would then
24 forge Kossack's signature to a trust account check, transfer the money over to Kossack's
25 general account, and then from that account, spend the money. (II, 32-33) Kossack
26 admitted, "I did not handle the checking accounts, and I did not routinely audit my
27 books, I trusted her, and if that's the crime of trust then I'm guilty..." (III, 371) Kossack
28 testified, which was later borne out through the examination of his bookkeeper, Kay

1 Foster ("Foster"), "[A]pparently what was happening since the income tax returns looked
2 normal, [Michelle] was keeping two sets of check ledgers, the ones that she would be
3 paying legitimate expenses from, which were sent to my bookkeeper, and then the ones
4 that the embezzlements were being taken from, which were kept separate." (III, 371-172)
5 "I just worked away and let the money take care of itself...I suppose you could say that
6 I'm more interested in my work than with actually keeping track of all my pennies." (III,
7 389) "My liability is that somewhere maybe I stepped over the bounds and overly
8 [trusting the] people [who] were the closest to me of all the people I know on earth, but
9 where is that boundary?" (III, 426)

10 **Kossack posted severe restrictions regarding the unauthorized practice of law**

11 Kossack was much more responsible with respect to his attempt to limit Michelle
12 or Susan trying to act like lawyers to the point where he placed under the glass the
13 Michelle's desk, which both Michelle and Susan had an opportunity to read, a copy of
14 Respondent's Exhibit A (II, Ex. A), a document entitled, "Guidelines for Avoiding the
15 Unauthorized Practice of Law" which states,

16 Never provide your independent judgment on which a person may rely in
17 determining their legal rights.

18 Never sign up a client.

19 Never offer your opinion on whether there is a viable case or of the legal
20 theories upon which one might successfully prevail or defend or of the
21 probable value of the claim.

22 Never discuss the statute of limitations or court deadlines or court fees or
23 procedures.

24 Never discuss the scope of the attorney's representation or of the hours
25 required or of the final fee to be imposed or of the total costs to be paid.

26 Do not explain the meaning of documents the client is being asked to sign.

27 Do not discuss or speculate on the route the case will take, whether it will
28 settle or be tried or be appealed.

Learn to say, "When would you like to schedule an appointment with
Mr. Kossack to discuss this?" (II, 162, Ex. A)

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1 **Michael Rosenbach's testimony shows Kossack was not involved in Michelle's**
2 **and Susan's loan fraud scam**

3 Mike Rosenbach ("Rosenbach") runs Interim Funding, a litigation lending
4 company which advances personal injury litigants money at high interest rates, taking a
5 lien on the litigant's case.

6 Rosenbach testified that he received a call from Susan (II, 39), that he never spoke
7 to Kossack with respect to the loans when they were made (II, 39-40, 62), that he always
8 dealt with the secretary (II, 47), that at one time or another he had spoken to both of
9 Kossack's secretaries (II, 57-58, 62-63), that one of the woman said her last name was
10 Kossack and that she was Kossack's wife (II, 58), that he was told Kossack had a heart
11 attack (II, 59), and that he never tried to reach Kossack at his home (II, 59).

12 Admitted as evidence was a document listing borrowers and funds which were
13 wired to Kossack's trust and general accounts. (II, 44, 66, Ex. 1) In particular, one
14 application claimed to have been submitted by Chris Kissner. (II, 44, Ex. 2) The lending
15 rates were extremely high. According to Exhibit 2, \$35,000 was wired to Kossack's
16 account for Kissner on July 2, 2007. If Kissner made repayment from the lien on his
17 settlement or judgment before July 5, 2007 (within three days) Kissner was obligated to
18 pay back \$49,016.00. If Kissner made his repayment after July 5, 2007, Kissner was
19 obligated to pay back \$49,016.00 plus an additional 4.5% per month compounded every
20 month thereafter until paid. (II, Ex. 2, p.0003). Working the math, if Kissner's
21 theoretical case settled after a year, Kissner would need to pay back \$83,125.32 which
22 equates to an APR of 137.5%. So anxious was Rosenbach to make such loans that he
23 accepted copies of driver's licenses in lieu of having the claimant's signature notarized
24 (II, 59-60) and wired funds directly to Kossack's account making Kissner's endorsement
25 unnecessary (II, 66, 69), never called the supposed insurance company to verify the claim
26 number, never verified the authenticity of the police report, never called any of the
27 supposed medical providers (II, 57) and was not bothered that Kossack's signature
28 changed on the various pages of the application. (II, 55) Rosenbach admitted the cases

1 seemed so good, that he made the assumption that Kossack must have had an "in" with a
2 hospital emergency room and was soliciting cases. (II, 71)

3 Michelle was cut off from Kossack's checking accounts shortly thereafter
4 and opened a phony office at 330 East Warm Springs (II, 28-30), and Rosenbach was told
5 that Kossack's office address was changed to the Warm Springs address. (II, 58, 62)
6 Michelle's and Susan's scam came to light when Rosenbach accidentally mailed his update
7 status requests to Kossack's actual address. (II, 62) Kossack then called Rosenbach and
8 told him he did not have the purported borrowers as clients. (II, 50)

9 **Chris Kissner's testimony shows that Kossack was unaware that Michelle**
10 **represented to him that she was an attorney for the purpose of stealing his**
11 **identity**

12 Michelle pretended she was an attorney to gain identity information from
13 Christopher Michael Kissner ("Kissner") which she and Susan used to defraud
14 Rosenbach.

15 Kissner testified he was first introduced to Michelle by his ex-girlfriend's cousin,
16 and in June, 2007, he first went to Michelle's house. (II, 95) There, Michelle presented
17 herself as an attorney working for Kossack and discussed with him the value of his case.
18 (II, 95-96) Kissner was of the impression that Michelle was "an actual main attorney."
19 (II, 110) To make sure Kossack would not be there, Michelle made Kissner an
20 appointment to come into Kossack's office to sign an agreement. (II, 109) Kissner then
21 went to Kossack's office, met with Michelle with Susan present and signed a fee
22 agreement. (II, 96) Michelle had actually taken Kissner into Kossack's personal office,
23 the one with the tools on the wall. (II, 106) Kissner confirmed that Susan knew he had
24 signed a fee agreement. (II, 109)

25 Kissner only spent about an hour in Kossack's office. (I, 105-105) Michelle had
26 asked Kissner for his identifier information along with copies of his social security card
27 and driver's license. (II, 104) Kissner's confirmed that his signature was forged on the
28 application sent to Interim Funding. (II, 103-104)

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1 Kissner never met or communicated with Kossack directly. (II, 102) When
2 Kissner would ask Michelle or Susan if he could see Kossack, he was told Kossack was
3 unavailable or was too busy to see him. (II, 101, 108, 110) Michelle had given Kissner
4 her cell phone number saying it would be the best way to reach here, and she encouraged
5 Kissner to communicate with her on her cell phone, which he did. (II, 98, 108) Michelle
6 even had Kissner fax her his attorney liens directly to her house (II, 98), and Kissner used
7 to go to Michelle's house to speak with her. (II, 98-99) It appeared to Kissner that
8 Michelle was trying to keep him away from Kossack's office. (II, 108) The only person
9 Kissner spoke to when he later went to Kossack's office was Susan. (II, 99-100)

10 In 2008, Michelle called Kissner and told him that she and Kossack were having
11 problems, that she was no longer employed by Kossack and recommended he go to
12 attorney Paul Wommer. (II, 99-100) Kissner later received a letter from Kossack stating
13 that he did not have any proof or any knowledge of him being a client and that there was a
14 possibility that Michelle posed as an attorney and a possibility that she had taken a loan
15 on his lawsuit and that he should contact Detective Linda Williams with the Las Vegas
16 Metropolitan Police Department ("Metro"). (II, 103)

17 The first time Kissner ever met Kossack was at the bar hearing (II, 96), and in
18 Kossack's examination of Kissner, the first thing Kossack did was apologize to Kissner
19 for what had happened to him as a result of his contact with Kossack's office personnel.
20 (II, 105)

21 **Michelle and Susan settled Linda Gutierrez's case out from under Kossack**
22 **and then stole her settlement money and her purse**

23 In the case involving Linda Gutierrez ("Linda" who is of no relation to Susan),
24 Michelle settled Linda's case behind Kossack's back, and Michelle or Susan forged
25 Linda's endorsement, deposited the settlement check, and then stole Linda's money and
26 her purse. In this instance, Susan and Michelle just acted like secretaries, not lawyers.
27 (II, 91)

28

1 Kossack signed Linda up as a client and sent out a demand letter. Unfortunately,
2 when Linda called Kossack after Michelle's and Susan's scam to settle her case and steal
3 her settlement check was discovered, he had to report to her that the secretaries had
4 shredded her file. (II, 84)

5 Whenever Linda would call, Susan always answered and said Kossack was in
6 court. (II, 87, 93) Susan later called Linda and told her a \$1,000.00 check had been
7 received, and asked her to come in and sign papers. (II, 77, 87) When Linda came in to
8 pick up the \$1,000 check, she met with Susan and Michelle. (II, 80, 90) They had her
9 sign a piece of paper. (II, 80) According to Linda, "They made it sound like that was...all
10 I got." (II, 80) Linda never attempted to call or reach Kossack to confirm what Michelle
11 and Susan were telling her. (II, 91)

12 Linda left her purse at the office, and Susan claimed she could not find it; Michelle
13 and Susan even stole Linda's purse. (II, 92)

14 Linda then receive a copy of the settlement check the insurance company had sent
15 for \$11,000.00, and Linda's signature had been forged to endorse the check. (II, 82-83,
16 91) Linda's check was not endorsed by Kossack but simply stamped. (II, 91, Ex. 4,
17 p. 003) Linda's medical liens then went unpaid. (II, 86)

18 When Kossack found out what had happened to Linda, he invited her in to sign a
19 statement against his secretaries to be given to Metro but Linda declined. (II, 88)

20 The first thing Kossack did was apologize to Linda for what had happened to her
21 as a result of his contact with Kossack's office personnel. (II, 89)

22 Unfortunately, Michelle's and Susan's embezzlements and failure to take client
23 calls left Kossack financially destitute, and he was not able to pay Linda back at the time.
24 (II, 27-28, 353-354, 368) Hopefully, by the time this case is heard by this Honorable
25 Court, restitution will have been made.

26 **Michelle fooled the bookkeeper by submitting false check register sheets**

27 Kossack's bookkeepr was Kay Foster ("Kay") who would pick up the check
28 registers (journals) and copies of the bank statements, but she never saw the cancelled

1 checks. (III, 428, 433) Kay testified that she would receive her information from
 2 Michelle or Susan, and when she would take the work back, the envelope was given to
 3 Michelle because most of the time [Kossack] wasn't there or was with a client. "I had no
 4 need to speak to [Kossack], I was dealing with Michelle." (III, 439) "I didn't speak to
 5 [Kossack] that often. There was no need to. I delivered it to Michelle, Michelle would
 6 give it to [Kossack] assumingly." (III, 439)

7 The problem was that Kay was only receiving a photostatic copy of the check
 8 register. (III, 433-434) "I didn't see any irregularities. Understand, I never saw canceled
 9 checks, and I was working with carbon photostatic copies of everything." (III, 440) In
 10 2005, "I didn't see anything. I saw checks going out to court reporters, checks going out
 11 to normal stuff that I had seen all along, payroll checks. I never say anything that would
 12 slap me in the face." (III, 443) But Kay brought in a list of checks which was on one of
 13 the copies of the check registers she had received and compared it to actual copies of the
 14 cancelled checks, thereby comparing Exhibit 6 to Exhibit 12 (III, 445, Ex. 6, Ex. 12), and
 15 here is what the record showed (III, 447-448):

16	Check Date	Check No.	Payee as Shown on the Register	Payee as Shown on the Check	Amount
17	02-15-05	2892	Cameo Kaiser	Victor Haehnel	\$1,340.62
18	02-15-05	2895	Verizon Wireless	Susan Gutierrez	463.35
	02-15-05	2896	Thompson West	Susan Gutierrez	872.60
19	02-15-05	2897	APEX	Susan Gutierrez	625.50
	02-18-05	2901	M Haehnel	Victor Haehnel	1,097.64
20	03-01-05	2902	Haehnel (Med. Ins.)	Smiles for Life	500.00
	03-01-05	2931	R. Kossack	Susan Gutierrez	1,000.00
21	03-04-05	2933	APEX	Susan Gutierrez	823.00
	03-12-05	2941	AMEX	Victor Haehnel	1,648.90
22	03-11-05	2942	Cameo Kaiser	Victor Haehnel	827.62
	03-10-05	2945	R. Kossack	GMAC Mortgage	1,400.00
23	03-11-05	2946	CSR Assoc.	Susan Gutierrez	726.50
	03-14-05	2947	Staples Credit Plan	Susan Gutierrez	1,425.00

24
 25 According to Kay, "I've only had three instances in 20 years of doing books that
 26 the checks were not represented like they were in the check register." (III, 449) "I had
 27 two other clients that was robbed blind because [they] trusted the person at the desk
 28 handling the checkbook, and all I ever saw was faxed copies. I would have no way of

1 knowing if that check matched that journal because I never saw canceled checks.”

2 (III, 440) Unfortunately, Kay did not tell Kossack that accepting photostats of the
3 original ledgers was right for mishandling. (III, 468) No problems were evident, so no
4 problems were discussed with Kossack. (III, 449)

5 Toward the end when Michelle was in cancer and was not at the office very often,
6 it was with Susan to whom Kay would drop deliver the financial statements. (III, 454)
7 “If I knew anything was going on, I would have been in [Kossack’s] office with an
8 appointment giving [Kossack] what I thought as happening. I had no clue whatsoever
9 what was going on in [his] office. (III, 455)

10 Michelle and Susan had covered their tracks well. Then they caused Kay to quit
11 by refusing to communicate with her or never being at the office. Kay testified that in
12 2006 she could not get the information from Kossack’s office. (III, 436, 442)
13 Unannounced to Kossack, Kay’s last tax return was for the tax year 2005, and she only
14 worked a few months into 2006. (III, 432, 435) “I practically plead for it, Michelle was
15 ill, I thought she had died, and Susan was giving me the information, which wasn’t
16 working very well.” (III, 436-437) However, Kay continued to do the payroll deductions
17 through 2006. (III, 437) By 2007, she could not get any information out of the office and
18 quit. (III, 438) However, she never called Kossack to tell him she could not get the
19 financial information out of the office. “I think I sent notes over, I faxed things over...”
20 (III, 442) Kay’s notes were obviously intercepted. “I sent a fax over and I put everything
21 I had in an envelope for payroll and so forth for that year and sent it over there, I mailed it
22 over. I could never get anybody on the phone, it was always the answering machine.”
23 (III, 443, 455) Kay would leave messages on Kossack’s answering machine, but to no
24 avail. (III, 456) They too were being intercepted by Michelle or Susan and then erased.
25 So with the forged check registers, Kay did a complete bank reconciliation every
26 month, but the total amount of checks written as shown on the statements matched the
27 amount of the checks, and everything added up. (III, 457) “[T]he deposits going into the
28

1 trust account were always identified as to what case they belong to and the checks going
2 out of the trust account were always identified by what case they belong to.” (III, 460)

3 Kossack testified that he was unaware that Kay had stopped doing the
4 bookkeeping because he was presented a 2006 income tax return to sign, apparently
5 compiled by Kay, which Susan had brought to him for his signature, but when given back
6 to Susan, was never mailed out. (III, 387) After everything came to light, after all the
7 damage was done, Kossack could not find Kay and, apparently, neither could the FBI
8 which was investigating the allegations of identity theft. (III, 386, 461) Kay’s company
9 “Fats” is not listed in the telephone directory (III, 450), and Michelle had taken Kay’s
10 card out of Kossack’s Rolodex. (III, 376)

11 Kay definitely agreed that had she detected anything untoward, had Michelle and
12 Susan not been so clever and diabolical in the way they were switching things to deceive,
13 that she would have notified Kossack. (III, 459)

14 **Michelle’ s testimony was not found to be credible**

15 It is perhaps a waste of space commenting on the testimony of Michelle since the
16 Hearing Panel, “found that [Michelle’s] testimony was largely not credible.” (I, 61).
17 After all, the testimonies of Kissner, Linda and Kay were credible and upon what the
18 Bar’s complaint is based. In direct contradiction to their testimonies, Michelle claimed
19 under oath,

20 That she never opened up an office at 330 East Warm Springs (II, 265);

21 That she never stole any money (III, 203);

22 That Kossack had met with Kissner (III, 205-206);

23 That she never represented to Kissner that she was an attorney (II, 207, 279);

24 That she did not tell Kissner to call her on her cell phone (II, 280);

25 That she did not tell Kissner to fax documents to her house (II, 280);

26 That Susan and Robert exclusively handled Linda Gutierrez’s case (II, 221);

27 That she only saw Linda the first time she came into the office (II, 221); and,

28

1 That Kay did not leave for lack of payment until September or October, 2007.
2 (II, 216)

3 **Michelle came to work for Kossack with an ulterior motive**

4 What Kossack did not know at the time he hired Michelle was that she had come
5 to work for him with a plan to avenge her mother's death for which she blamed Kossack.
6 Michelle admitted telling others that her mother would be alive today if not for Kossack
7 and that she blamed Kossack for her mother's death. (II, 274-275) So at the time
8 Michelle came to work for Kossack, Michelle hated Kossack for what he "did" to her
9 mother. (II, 276)

10 Michelle's other motive was to steal money to gamble. Records received from just
11 twelve of the numerous casinos within Las Vegas and Lake Tahoe where Michelle and
12 her husband could have gambled showed that they lost the following amounts in the given
13 years (III, Ex. D), and this was only for rated play,

14	2002	\$1,100
15	2003	19,007 (Began working for Kossack in June, 2003)
16	2004	102,498
17	2005	84,818
18	2006	114,116
19	2007	152,838 (Had no access to accounts after July 5, 2007)
20	2008	82,997
21	2009	55,892
22	2010	41,531

23 So during her time of employment with Kossack, Michelle and her husband lost, at
24 a minimum, over \$385,000.00. The records would suggest that even after leaving
25 Kossack, Michelle continued her litigation lending scams from her phony satellite office
26 on East Warm Spring as testified to by Kossack. (II, 30)

27 **Michelle and Susan overpaid themselves**

28 Michelle and Susan were put on a volunteer basis in June, 2005 (II, 21), and
Kossack's testimony in this regard is supported by the fact that after that time, Kay had a
hard time reaching anyone at the office. But even if one assumes Michelle and Susan
were getting paid through June, 2007, the records show that Michelle (or her husband
accepting a check on her behalf) was overpaid \$246,359.00 prior to the Interim Funding

1 loan scam (prior to January 1, 2007) and an additional \$61,260.36 after Michelle started
2 defrauding Interim Funding. (III, 478-479, Ex. E). In addition, Michelle's other
3 embezzlements, paying money to her father, her husband, her daughter, and other parties
4 for her benefit and calling it something other than payroll, totaled \$142,263.36 between
5 December 1, 2003, and December 31, 2006. Michelle's further embezzlements between
6 January 1, 2007, and June 11, 2007, totaled \$56,351.23. (II, 279-280, Ex. F)

7 The payroll Michelle was paid but should not have received while occasionally
8 working on a voluntarily basis adds another \$57,077.28 she is accused by Kossack of
9 stealing between July 1, 2005, and July 1, 2007. ($\$1,097.64 \times 26 \times 2 = \$57,077.28$.)

10 All money Michelle defrauded from Interim Funding was accounted for by the
11 records which show \$234,682.67 in unauthorized payments being made out of Kossack's
12 general account between January 1, 2007, and June 22, 2007. (III, 480-481, Ex. G).

13 Michelle testified that as many as eight months to a year would go by when she
14 and Susan would go without being paid (II, 211), but the payroll records show they barely
15 missed a beat, and if they did miss a beat, they had already been way overpaid in advance
16 (III, 478-479, Ex. E; 481-482, Ex. H), and then they had their other embezzlements.

17 **Michelle made certain admissions against her interest**

18 Only Michelle's admissions against her interest are worthy of belief; they are,

19 That she admitted she was not in the office very much (II, 199);

20 That she was getting paid when she was at home sick. (III, 286)

21 That her salary was \$1,097.64 every two weeks. (III, 286)

22 That she was a signer on the general account (II, 201);

23 That she was *not* a signer on the trust account (II, 201);

24 That she filled out paperwork and sent it to Interim Funding (II, 208);

25 That the documentation submitted to Interim Funding was fraudulent (II, 203-204)

26 That she wrote and signed checks with false memos to family members
27 (II, 213-214);

28 That she took monies out of the general account in the form of markers at a casino
(II, 215);

1 That she told Kossack that Kay had moved to Michigan (II, 218);

2 That she recognized Exhibit A, which were the rules for avoiding the unauthorized
3 practice of law (II, 225); and,

4 That she was testifying while high on liquid morphine. (III, 301)

5 **Michelle denied all culpability and falsely claimed that all the stolen money
6 was delivered to Kossack in contradiction of all the documentation**

7 Every criminal needs a cover story, and Michelle is no different. She had already
8 been questioned by Bar Counsel or the FBI, so she knew what Kossack had told them and
9 how to go on the attack against Kossack, either to avenge her mother's death or to simply
10 spin her way out of the criminal allegations made against her. For example, Michelle
11 apparently already knew that Kossack explained his absence from the office except to
12 meet with clients, and being at home except to go to court, attorney meetings and
13 depositions because he needed a high speed Internet access which was unavailable at the
14 office when the federal court went exclusively to e-filing beginning January 1, 2006, and
15 because his office computer had crashed, because he had been in an automobile accident
16 and was taking Flexeril which made him drowsy and in need of an afternoon nap, and
17 because he was doing a study in animal behavior. (II, 24-25; III, 421)

18 Michelle then offered up the following false testimony in her effort to maliciously
19 take Kossack down with her, most of which testimony was unsolicited,

20 That Kossack knew she was paying her gambling markers off with money drawn
21 from his general account (II, 215);

22 That there was no limit on her authority (II, 202);

23 That Kossack was not involved in a motor vehicle accident injuring his knee
24 (II, 198);

25 That Kossack was always at home "on Lortabs, Flexeril, all of the painkillers,
26 every drug you can think of and alcohol" and went through \$100.00 of marijuana a
27 day when he was not stranded drunk at a strip club (II, 198-199);

28 That it was a fight to get Kossack to come to the office, that "he would start
screaming, always screaming, screaming, screaming" and missed the statute of
limitations "on a lot of people's stuff because he was always messed up" (II, 200);

That the only time she wrote checks out of Kossack's general account stating in
the memo that it was for a purpose other than that for which it was used, the real
purpose was to get cash and drugs to deliver to Kossack (II, 202, 213-214);

1 That with respect to her involvement with Interim Funding, "I did everything that Robert told
2 That she was "made to talk to Mike Rosenbach" (II, 204);
3 That it was Kossack who faxed the applications to Interim Funding (II, 209-210);
4 That Kossack borrowed money from her and her husband and never gave it back
5 (II, 212);
6 That Kossack instructed her to transfer the Interim Funding money (II, 212);
7 That every month she put in Kossack's in-box Kay Foster's monthly income
8 statements and balance sheets (II, 217);
9 That the money she lost gambling which she covered with Kossack's checks was
10 money Kossack already owed her (II, 236);
11 That she did not destroy all the check ledgers, checkbooks and monthly statements
12 (II, 237);
13 That she was not banned from the office beginning July, 2007 (II, 239);
14 That there were no problem with the Internet at the office (II, 239);
15 That the e-filing requirement was just an excuse and that a computer tech was paid
16 to come into the office and fix everything (II, 240);
17 That she did not sabotage the office phone system or destroying any files (II, 274);
18 That she never admitted to Kossack shredding the office checks or the office
19 ledger sheets, or that she transferred money by forging Kossack's signature from
20 the trust account to his general account (II, 282-283); and,
21 That she was allowed to sign up clients. (III, 280)
22 At best, Michelle should be used as a "reverse barometer;" take the opposite of
23 what she say, and it may be true.

24 **Michelle offered incriminating evidence against Susan**

25 Misery loves company, and Michelle was more than anxious to turn on Susan by
26 offering the following testimony,

27 That she gave Susan pre-signed checks with which Susan could, "do whatever she
28 wanted with them" (II, 215);

That Susan was lying when she testified that she had nothing to do with the checks
(II, 215);

That Susan was lying when she testified that she (Michelle) handled Linda's case
and came to Susan and said, "Here, hand this check to Linda and get her signature
on the release" (II, 222);

1 That Susan could have written (III, Ex. C, p. 3) the letter dated April 2 regarding
2 Russell M. Libby v. ACN, that she did not sign Susan's name to the letter, and she
never used Susan's notary stamp (III, 268);

3 That Susan paid her plastic surgeon doctor with a check Kossack signed (III, 285-
4 286); and,

5 That she admitted signing the April 2, 2007, letter regarding Robin Carlise v. ACN
(III, Ex. C), but said Susan could have typed it, and the same with all three letters
6 (III, 269-270);

7 **Kossack did not know of or permit the unauthorized practice of law**

8 The evidence demonstrated that Kossack was unaware that Michelle ever
9 represented herself as an attorney, but the issue became whether Kossack permitted the
10 unauthorized practice of law by allowing Michelle to communicate with insurance
11 companies.

12 Panel member Sigal Chattah seemed to think having a secretary nag the insurance
13 company to get the insurance company to raise its offer was somehow encouraging the
14 practice of law without a license when she said, "...he admitted that he had them nag the
15 insurance companies up. I mean, this is clearly an admission on the record." (II, 229)

16 However, as Kossack explained, the procedure was for Michelle and Susan to start
17 drafting demand letters, Kossack would then review and correct those demand letters, the
18 demand letters would then go out, negotiations would begin, Michelle would nag the
19 insurance company and get them up to the top figure she could, Kossack would then get
20 on the phone, Kossack would then nag the insurance company up to a higher figure, and
21 Kossack would discuss the final figure with the client to see whether or not they wanted
22 to accept it, and the final approval would be up to the client. (II, 160-161, 223, 229-230)
23 This practice did not authorize Michelle to settle any case on her own or to advise the
24 client. In no way was Kossack allowing Michelle to provide her independent judgment
25 on which the client could possibly rely in determining their legal rights.

26

27

28

1 **Kossack was deprived of any meaningful cross-examination of Michelle by**
2 **her invocation of her Fifth Amendment rights**

3 At the beginning of her cross examination, Michelle made clear that she would not
4 allow Kossack the opportunity to effectively cross-examine her when she informed the
5 Panel that she was “pleading the Fifth today completely because I’m not going to be able
6 to elaborate on what happened to me and how I was tortured and still am tortured by you,
7 Mr. Kossack.” (III, 257)

8 Michelle then refused to answer whether she paid her father money from any of
9 Kossack’s accounts, whether she filled out the applications sent to Interim Funding,
10 whether she listed checks as being for tuition expenses when she did not attend any
11 school, whether she had paid her daughter, whether she over paid herself and her
12 husband payroll of \$307,619.00, whether she overpaid Susan payroll of \$54,872.82,
13 whether Susan was knowledgeable about any of her activities with respect to Interim
14 Funding, whether she would text back and forth to Susan to keep track of Kossack’s
15 whereabouts, whether she and Susan stole Linda Gutierrez’s purse, whether she and
16 Susan stole Linda settlement money and whether she was present when Susan handed
17 Linda the check for \$1,000.00. (III, 259-262, 295-296)

18 When asked if she purchased items with the Office Depot credit card, Michelle
19 answered, “Maybe Susan did, but you know what, I’m going to plead the Fifth.” (281)

20 Michelle also refused to answer questions regarding specific checks. (III, 289,
21 312-313)

22 Michelle then ended Kossack’s examination by saying, “I want to plead the Fifth to
23 everything now because that’s how he is.” (III, 291)

24 **Source of stolen funds**

25 Prior to the Interim Funding loan scam, and based on Kay Foster’s testimony, it
26 appears that Michelle and Susan stole from Kossack directly and by not paying the
27 monthly bills and, instead, substituting in their names for the names of the proper payee,
28 but Michelle also claimed she was merely paying herself back money she lent to Kossack,

1 but she could not remember the date of any such loans and later said she only loaned
2 \$20,000.00 to Kossack from the \$240,000 to \$260,000 she received from refinancing her
3 house. (III, 281-282, 284)

4 Michelle would not answer why she lent Kossack money. (III, 295) She claimed
5 she was not destroying checks made out to pay off doctor's liens. (III, 285)

6
7 **Certain objections which were sustained support the conclusion there was no
8 issue regarding whether Kossack personally benefitted from any stolen funds**

9 An objection was sustained to the question to Michelle, "So why when you paid
10 yourself did you put in the memo things like, payroll instead of cash for Bob?" (III, 263)

11 Objections were sustained going toward Michelle's bias regarding whether she
12 tried to facilitate Kossack's murder, or slash his tires or pour sugar down his gas tank.
(III, 296)

13 Objections were sustained with respect to a communication Michelle sent to Susan
14 regarding getting their stories straight. (III, 272-273)

15 An objection was sustained about whether it was Michelle's testimony that
16 Kossack would have gone through a half a million dollars in drugs. (III, 295)

17 **Susan was not particularly credible in her claim of innocense**

18 Although Rosenbach testified he communicated with both of the secretaries in
19 Kossack's office, specifically Susan, Susan claimed she never picked up the phone and
20 talked to anyone from Interim Funding, never had any personal communications with
21 anyone at Interim Funding, never caused any facsimiles to be sent to Interim Funding,
22 never received any written communication from Interim Funding, and never received any
23 monies paid by Interim Funding. (II, 155-157)

24 Although Linda testified that Susan had her sign a release, Susan claims she does
25 not remember having Linda sign anything. (II, 152, 341)

26 Susan claims she never embezzled any money from Kossack (II, 163-164), but that
27 she would simply cash checks and give the money to Michelle regardless of what was
28 stated in the check memo. (II, 144; III 236-237) "All I know is that I used to go to the

1 bank and cash checks for [Michelle]. I did what I was told to do because I thought that
2 was her money.” (II, 167-168) Although Susan claims Michelle told her that she
3 (Michelle) put money into the office, Susan admitted she never heard Kossack mention
4 anything about it. (II, 159-160)

5 Susan admitted she never informed Kossack that Michelle had her cashing checks,
6 that she would cash the check and then deliver the money to Michelle. (III, 336) Susan
7 also claimed Michelle told her that Kossack said they could make small purchases using
8 the Office Depot credit card so long as she paid Kossack back (II, 157), but this
9 information supposedly only came from Michelle because Susan admitted that Kossack
10 never approved of the practice. (III, 340) In fact, Susan admits she never asked Kossack
11 whether Michelle was telling her the truth. (III, 337)

12 Susan said she had no knowledge about being overpaid. (III, 326) “I don’t even
13 know where I stand with payroll because I was cashing checks at the bank for Michelle,
14 then bringing back the money, then she would give [Kossack] \$100 here, \$100 there, I
15 don’t even know where I stand with the payroll.” (III, 334-335) If Susan received checks
16 where the memo said “bonus,” she said, “it was to go ahead and cash those for Michelle.”
17 (III, 335) Susan claims to have no memory of being written a bonus in the Bunch case for
18 \$5,000.00 or cashing a check in that amount (327), but the proof is on the check itself.
19 (III, Ex. J, p. 000517, Check 5098, dated 05-23-07) Bunch was one of the people who
20 had his identity stolen as part of Michelle’s Interim Funding loan scam, and his money
21 was wired on May 22, 2007, just one day before Susan got her cut. (II, Ex. 1) This is
22 despite the fact that Susan admitted she was not in the office very much in 2007. (III,
23 324)

24 Susan’s defense was that Michelle was allowed to go ahead and just run the whole
25 show (II, 154), and she was just “following orders,” which is essentially the same defense
26 Michelle used except that Michelle claims her orders came from Kossack while Susan
27 claims her orders came from Michelle.

28

1 **Susan made some admissions**

2 Given Susan's disclaimer of having any knowledge of any wrongdoing in the face
3 of overwhelming contrary evidence, nothing she may have testified to can be called clear
4 and convincing, but she did make some admissions as follows,

5 That she handed Linda a check for \$1,000.00 (III, 341);

6 That the office did not have Internet access from 2006 to 2007 (II, 135);

7 That Kossack was in a motor vehicle accident (II, 136);

8 That in 2006, Kossack was in the office two to three times a week and sometimes
9 at night (137-138);

10 That she did not know whether Kossack was actually getting any of the money (II,
11 145);

12 That she was never asked to deliver drugs to Kossack (III, 335);

13 That Michelle was the one who said Kay had moved away (II, 147-148);

14 That she had no memory of ever hearing Michelle discuss with any client whether
15 or not they should settle a case (II, 161).

16 That Victor, Sharon and Jerry, Sr. were not on the payroll (III, 329, 338);

17 That the last person to talk with Kay Foster was Michelle (339);

18 That lots of times Michelle would not come into the office claiming she was sick
19 because of the chemotherapy (339);

20 That Kossack never asked her (Susan) to do anything shady (345);

21 That Michelle never discussed Kossack having approved of her gambling (III,
22 347); and,

23 That Kossack was godfather to Sharon and Victor, Jr. upon Michelle's request (II,
24 141; III, 349-350) which was contrary to Michelle's testimony. (III, 277)

25 Susan described Kossack's relationship with Michelle's family as follows,

26 ...you (Kossack) were always at her (Michelle's) house, you went to every
27 school function, you went to every football game, you were always together
28 with her even when she was having her cancer treatments or to go to the
doctor in California, you went with her and not her husband. (III, 336)

29 The remainder of Susan's testimony is highly suspect. Susan claimed she was not
30 aware that Michelle was gambling (III, 331) or representing herself as a lawyer (II, 153),
31 and Susan denied Michelle ever gave her a signed but otherwise blank check. (III, 328)

1 Certainly one has to question Susan's testimony that Kossack admitted that Michelle's
2 mother said Michelle had gambled away \$100,000 in the past (which is not supported by
3 the gaming records, the total loss for 2002 being only \$1,100.00) or that she witnessed
4 Kossack smoking marijuana at his house. (349) Susan also claims her notary signatures
5 found in Exhibit C are forgeries. (III, 332-333)

6
7 **Regina Harris and Ann Rouse confirmed that Michelle tried to keep her
activities hidden from Kossack**

8 Regina Harris ("Harris") testified (II, 169) that if Kossack came over to Michelle's
9 house, Michelle would panic and tell her family to pretend she was gravely ill in her
10 room sick because she did not want Kossack to know she was well enough to be out and
11 about. (II, 171, 176-177, 181-182)

12 In December, [2007], when Michelle was no longer working for Kossack, Michelle
13 wanted Harris to go with her to Kossack's house to distract Kossack so Michelle could go
14 into his home office and steal his client log, and Michelle told Harris she needed to take
15 the information without Kossack knowing about it. (II, 172) Michelle told Harris she
16 had opened an "office" at East Warm Springs and Las Vegas Boulevard by the Beltz
17 outlet mall, a little cubical setup. (II, 172-173) Harris was also able to confirm
18 Michelle's plot to murder Kossack. (II, 174-176, 179)

19 Ann Rouse ("Rouse") told Kossack that Interim Funding had been calling, and
20 confirmed that Kossack did not know what she was talking about. (114)

21 And I opened the letter because I remembered the name [Interim Funding]
22 and I took it to Robert, he was sitting in his tool office and he took his
23 glasses off and he put them down and he said, What is this? He sat up in
the chair, and he said, "Oh, my God." And that's when he found out that
she was pretending to be an attorney. (II, 115)

24 Michelle and her daughter knew that with a new secretary in Kossack's office the
25 gig was up, so they called and threatened Rouse, called her a black bitch, and threatened
26 to cut her head off and that they were going to come in and "we'll going to fuck you up
27 black bitch if we see you." (II, 115-116)

28

1 Rouse confirmed Kossack had no money to pay back any clients. (II, 121)

2 According to Rouse, “[Susan] told me some of the things that they had did wrong.
3 She said, “I knew I was wrong, but it was Shelly’s idea, and they hate [Kossack].”
4 (II, 121)

5 Once Kossack got a settlement which gave him enough money that he was able to
6 get his office back on its feet, he bought new computers. (II, 125) Then the IRS executed
7 on Kossack’s account, and then Linda made her claim.

8 SUMMARY OF ARGUMENT

9 There is insufficient evidence or no evidence to support the Hearing Panel’s
10 findings with respect to whether Kossack acted with a dishonest or selfish motive, refused
11 to acknowledge the wrongful nature of the conduct, took advantage of vulnerable victims,
12 was indifferent to making restitution or illegally used marijuana. Further, the facts do not
13 support findings of incompetence, lack of diligence, lack of communication, failure to
14 exercise responsibilities regarding nonlawyer assistants or that Kossack knew of or
15 encouraged the unauthorized practice of law. Kossack was victimized by secretaries who
16 took him into their families to gain his trust but entered his employ ulterior motives to
17 ruin him, and also being the victim of their crimes, Kossack should not be twice made the
18 victim by being severely sanctioned for the misplacement of his trust to the extent that he
19 should be suspended from the practice of law for three years.

20 LEGAL ARGUMENT

21 **Insufficient evidence or no evidence supports the Hearing Panel’s findings of** 22 **aggravating factors**

23 No restraining order regarding funds held by Kossack in his trust account was
24 applied for as provided by SCR 102(3) showing there twas no perceived threat of future
25 danger of client funds being abducted. No temporary suspension of Kossack was applied
26 for as provided by SCR 102(4) because the problem was known to lie in the dishonesty of
27 the two secretaries who both quit after they knew the gig was up because Kossack did not
28 appear to pose a substantial threat of serious harm to the public.

1 The aggravating and mitigating circumstances alleged by the hearing panel are not
2 supported by the record and were not proven by clear and convincing evidence. A review
3 the aggravating factors as set forth in SCR 103.5 listed in the panel's decision (I, 60)
4 reflects the following:

5 a. Prior disciplinary offenses. True, but the last issued for an event which
6 occurred more than eighteen years ago.

7 b. Dishonest or selfish motive. The evidence showed that Kossack lost or
8 became responsible for over \$300,000.00. There was no evidence that Kossack was in
9 any way dishonest or that he acted with any type of selfish motive.

10 c. A pattern of misconduct. Not picking up on each theft because of the past
11 mistake of deferring the accounting tasks to his secretary and bookkeeper hardly
12 constitutes a pattern of misconduct.

13 d. Multiple offenses. The sanctionable offense was the deferring of all
14 accounting tasks to his secretary and bookkeeper. The secretaries used this mistaken trust
15 as a means for them to commit more than one offense, but the secretaries' multiple
16 offenses were not based on Kossack committing multiple offenses.

17 e. Refusal to acknowledge the wrongful nature of conduct. At the beginning
18 of the hearing, this counsel acknowledged he made an error of trust by deferring all
19 accounting tasks to his secretary and his bookkeeper, and thereby admitted the wrongful
20 nature of his conduct in that regard.

21 f. Vulnerability of victim. Neither Linda nor Kissner were shown to be
22 especially vulnerable by either advanced age or incapacity. The non-complaining victim,
23 Rosenbach, was a professional loan shark, and no one would ever suggest that he was
24 vulnerable except for his greed and quest for easy money.

25 g. Substantial experience in the practice of law. Kossack does have
26 substantial experience in the practice of law, just not enough experience if it takes one to
27 know one because he has no experience in being a liar or a criminal.

28

1 h. Indifference to making restitution. Kossack was never indifferent to
2 making restitution; he was simply unable to do so due to IRS liens and his own personal
3 financial condition.

4 i. Illegal conduct, including that involving the use of controlled substances.
5 With Michelle Haehnel's testimony found not credible, and with Susan testimony at odds
6 with the complaining witnesses, there was simply insufficient evidence on this point.
7 Further, even if Kossack occasionally smoked marijuana in the privacy of his own home,
8 such misdemeanor was not shown to be the cause of the secretaries' thefts as they were
9 occurring behind Kossack's back even when he was at the office. Kossack's invocation
10 of his Fifth Amendment right in refusing to answer whether he occasionally used
11 marijuana in the privacy of his own home (III, 419), was held against him which was
12 improper in the quasi-criminal proceeding.

13 The only mitigating circumstance the panel found was Kossack's full and free
14 disclosure to the disciplinary authority and his cooperative attitude toward the proceeding.
15 However, the following other mitigating circumstances are supported by the record:

- 16 a. Absence of a dishonest or selfish motive. Kossack was a victim;
- 17 b. Character or reputation. The importance of Kossack's civil rights work is
18 well known;
- 19 c. Physical disability. Kossack's physical disability caused by the motor
20 vehicle accident; not significant, but a cause of him being at home due to drowsiness
21 caused by his prescription medication, could have been a factor, although the thefts were
22 already occurring;
- 23 d. Imposition of other penalties or sanctions. While not imposed by the Bar,
24 Kossack's error of trust cost him considerable money and time spent uncovering the
25 crime, reporting to Metro police and the FBI, handling grievances and defending against
26 Interim Funding's lawsuit (with was dismissed by stipulation of the parties with no
27 amount paid).

28

1 e. Remorse. The very first thing Kossack did was apologize to the
2 complainants for the trouble they had been caused.

3 n. Remoteness of prior offenses. The offenses cited occurred a generation
4 ago.

5 **The facts do not support all the charges.**

6 The charges made in the Complaint (I, 6, ¶ 33) are not supported by the facts,

7 Rule 1.1. Competence. A lawyer shall provide competent representation to a
8 client. Competent representation requires the legal knowledge, skill,
9 thoroughness and preparation reasonably necessary for the representation.

10 There was no evidence presented that Kossack did not provide competent
11 representation.

12 Rule 1.3. Diligence. A lawyer shall act with reasonable diligence and
13 promptness in representing a client.

14 There was no evidence presented that Kossack did not act with reasonable
15 diligence.

16 Rule 1.4. Communication.

17 (a) A lawyer shall:

- 18 (1) Promptly inform the client of any decision or circumstance
19 with respect to which the client's informed consent is required
20 by these Rules;
- 21 (2) Reasonably consult with the client about the means by which
22 the client's objectives are to be accomplished;
- 23 (3) Keep the client reasonably informed about the status of the matter;
- 24 (4) Promptly comply with reasonable requests for information; and
- 25 (5) Consult with the client about any relevant limitation on the lawyer's
26 conduct when the lawyer knows that the client expects assistance not
27 permitted by the Rules of Professional Conduct or other law.

28 (b) A lawyer shall explain a matter to the extent reasonably necessary to permit
the client to make informed decisions regarding the representation.

Linda's case was admittedly settled out from under her and Kossack by Michelle
and Susan without Kossack's knowledge or consent for the purpose of stealing her

.....

1 money. These acts were not the act of the lawyer, were done in secret and were in direct
2 violation of Kossack's posted rules.

3 Rule 1.15. Safekeeping Property.

- 4 (a) A lawyer shall hold funds or other property of clients or third
5 persons that is in a lawyer's possession in connection with a
6 representation separate from the lawyer's own property. All funds
7 received or held for the benefit of clients by a lawyer or firm,
8 including advances for costs and expenses, shall be deposited in one
9 or more identifiable bank accounts designated as a trust account
10 maintained in the state where the lawyer's office is situated, or
11 elsewhere with the consent of the client or third person. Other
12 property in which clients or third persons hold an interest shall be
13 identified as such and appropriately safeguarded. Complete records
14 of such account funds and other property shall be kept by the lawyer
15 and shall be preserved for a period of seven years after termination
16 of the representation.

11 * * * *

- 12 (d) Upon receiving funds or other property in which a client or third
13 person has an interest, a lawyer shall promptly notify the client or
14 third person. Except as stated in this Rule or otherwise permitted by
15 law or by agreement with the client, a lawyer shall promptly deliver
16 to the client or third person any funds or other property that the client
17 or third person is entitled to receive and, upon request by the client
18 or third person, shall promptly render a full accounting regarding
19 such property.

17 At best, Kossack has *respondeat superior* liability if the secretaries were acting
18 within the scope and course of their employment, which they obviously were not. Even
19 though the accounts were properly set up, through forgery of Kossack's signature, the
20 secretaries got around that safeguard. Nevertheless, Kossack's name was on the door,
21 and he is responsible for Linda's loss. Rosenbach's loss was more due to his own greed
22 and utter lack of due diligence. Kissner suffered no loss. Kossack was unable to comply
23 with SCR 1.15(d) solely due to the embezzlements engaged in by Michelle and Susan and
24 their conspiratorial coverups. Michelle did destroy files.

25 Rule 5.3. Responsibilities Regarding Nonlawyer Assistants. With respect to
26 a nonlawyer employed or retained by or associated with a lawyer:

- 27 (a) A partner, and a lawyer who individually or together with other
28 lawyers possesses comparable managerial authority in a law firm
shall make reasonable efforts to ensure that the firm has in effect

1 measures giving reasonable assurance that the person's conduct is
2 compatible with the professional obligations of the lawyer;

3 (b) A lawyer having direct supervisory authority over the nonlawyer
4 shall make reasonable efforts to ensure that the person's conduct is
5 compatible with the professional obligations of the lawyer; and

6 (c) A lawyer shall be responsible for conduct of such a person that
7 would be a violation of the Rules of Professional Conduct if engaged
8 in by a lawyer if:

9 (1) The lawyer orders or, with the knowledge of the specific
10 conduct, ratifies the conduct involved; or

11 (2) The lawyer is a partner or has comparable managerial
12 authority in the law firm in which the person is employed, or
13 has direct supervisory authority over the person, and knows of
14 the conduct at a time when its consequences can be avoided
15 or mitigated but fails to take reasonable remedial action.

16 Kossack had clearly posted policies which, if followed, would not have allowed
17 any violation of Rule 5.3. Kossack, by his failure to personally audit his books on a
18 regular basis, could be deemed to not have made reasonable efforts to ensure that his firm
19 had in effect measures giving reasonable assurance that his secretaries' conduct was
20 compatible with his professional obligations. Kossack clearly did not order or, with
21 knowledge of specific conduct, ratify Michelle's and Susan's conduct.

22 Rule 5.5. Unauthorized Practice of Law.

23 (a) General rule. A lawyer shall not:

24 * * * *

25 (2) Assist another person in the unauthorized practice of law.

26 Kossack did not assist another person in the unauthorized practice of law.

27 Michelle being allowed to nag the insurance companies between the time of Kossack's
28 demand letter and the time Kossack spoke with the insurance company and with the client
to raise or approve the settlement amount does not constitute an unauthorized practice of
law.

Rule 8.4. Misconduct. It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct,
knowingly assist or induce another to do so, or do so through the acts
of another;

1 (b) Commit a criminal act that reflects adversely on the lawyer's
2 honesty, trustworthiness or fitness as a lawyer in other respects;

3 Kossack was not found to have engaged in misconduct. He did not himself violate
4 or attempt to violate the Rules of Professional Conduct. He did not knowingly assist or
5 induce another to do so, or do so through the acts of another. He committed no criminal
6 act. He was not dishonest or untrustworthy or unfit.

7 **Kossack should not be suspended from the practice of law**

8 The Hearing Panel's Findings of Fact and Conclusions of Law was only signed by
9 the Chairman of the Hearing Panel on April 18, 2011; it states among its conclusions of
10 law that the Hearing Panel unanimously found that Kossack violated Rules of
11 Professional Conduct (I, 60, ¶2) and under the decision and recommendation, it states that
12 the Panel, by unanimous vote, concludes and respectfully recommends to the Supreme
13 Court of the State of Nevada that Kossack be suspended from the practice of law for a
14 period of three years.

15 The Chairman's sole signature is not enough. SCR 105(2)(d) states that a decision
16 to impose or recommend discipline requires the concurrence of four members of the
17 panel. If a suspension was to be recommended, then at least four of the five Hearing
18 Panel members should have signed the Panel's findings. Without the signatures of four
19 of five Hearing Panel members, the findings are inadequate to confer upon the Supreme
20 Court a recommendation for suspension, and a lesser sanction must be considered.

21 SCR 105(2)(e) states in pertinent part, "The findings of the panel must be
22 supported by clear and convincing evidence." Most of the findings of the panel were not
23 supported by clear and convincing evidence.

24 Kossack had taken certain safeguards. He posted strict rules on avoiding the
25 unauthorized practice of law. He hired people with whom he had long familiarity and
26 thought he could trust. He took his employees to lunch and discussed their
27 responsibilities. There was a bookkeeper, but she was fooled, and she stopped working
28 for Kossack notifying only Michelle. Only Kossack was an authorized signer on his

1 client trust account, but Michelle forged Kossack's signature. Michelle forged Linda
2 Gutierrez's signature. Michelle forged Kossack's signature on loan applications sent to
3 Rosenbach. Michelle also stole directly from Kossack's general account. Michelle paid
4 checks to her husband, her father and her daughter, each of whom could have notified
5 Kossack, but none of whom did. Michelle paid checks to Susan who made the conspiracy
6 complete and gave each the increased opportunity to screen Kossack's telephone calls, to
7 screen Kossack's mail, to monitor Kossack's whereabouts and to schedule around it.
8 Michelle's thefts from Kossack began before Kossack's motor vehicle accident or the
9 federal court filing system changed to email or Kossack's office computer going on the
10 blink, but with Kossack out of the office, Michelle and Susan became more daring, and
11 Kossack did not successfully close off opportunities Michelle and Susan had to pretend to
12 be something they were not and to steal and defraud people who engaged the trust of
13 dealing with Kossack Law Offices, a shame to Kossack's reputation and the reason for
14 these proceedings.

15 Kossack is only guilty of lax, overly-trusting oversight which resulted in a loss of
16 client funds. His work is important. He should not be suspended from the practice of
17 law. He should not be victimized yet another time by the acts of Michelle and Susan.

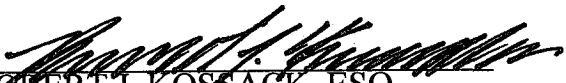
18 **CONCLUSION**

19 In conclusion, Kossack should not be suspended from the practice of law, and a
20 less severe sanction should be considered.

21 **Dated this 27th day of June, 2011.**

22 KOSSACK LAW OFFICES

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24 By


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Kossack in proper person*

1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any improper
4 purpose. I further certify that this brief complies with all applicable Nevada Rules of
5 Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the
6 brief regarding matters in the record to be supported by a reference to the page and
7 volume number, if any, of the transcript or appendix where the matter relied on is to be
8 found. I understand that I may be subject to sanctions in the event that the accompanying
9 brief is not in conformity with the requirements of the Nevada Rules of Appellate
10 Procedure.

11 **Dated this 27th day of June, 2011.**

12 **KOSSACK LAW OFFICES**

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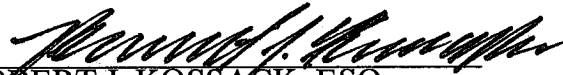
1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 27th day of June, 2011, I mailed a true and correct copy
3 of the foregoing RESPONDENT'S OPENING BRIEF via first class mail, postage
4 prepaid, in a sealed envelope, by depositing same in a receptacle marked for mailing with
5 the United States Postal Service and addressed to the following:

6 David A. Clark
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