FILED DECEMBER 11, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **DAVID M. CORDREY** **Member No. 136671** A Member of the State Bar.	)	Case No.: **04-O-14136-RAP** **DECISION**

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on September 15, 2008. At the time of submission, the State Bar of California ("State Bar") was represented in this matter by Deputy Trial Counsel Carla L. Garrett. Respondent David M. Cordrey ("respondent") failed to participate in this matter either in-person or through counsel.

The State Bar filed a Notice of Disciplinary Charges ("NDC") against respondent on May 19, 2008. A copy of the NDC was properly served on respondent on May 19, 2008, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California ("Rules of Procedure").[1]

As respondent did not file a response to the NDC, the State Bar filed and properly served a motion for the entry of respondent's default on August 6, 2008.[2]

[1]Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

[2]The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

Following respondent's failure to file a written response within ten days after service of the motion for the entry of his default, the court, on August 26, 2008, filed an order of entry of default and involuntary inactive enrollment.[3] A copy of said order was properly served on respondent at his membership records address; however, it was subsequently returned to the court by the U.S. Postal Service as undeliverable.

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision.[4]

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

II. Findings of Fact

A. Jurisdiction

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar of California at all times since that date.

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[3]Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

[4]Exhibits 1-3 attached to the State Bar's August 6, 2008 motion for the entry of respondent's default are admitted into evidence.

B. Case No. 04-O-14136

On or about January 6, 1999, Joan Conrad (“Conrad”) died bequeathing her entire estate to her daughter Christy Farrar ("Farrar") and naming Farrar as the executrix. Conrad's will disinherited all of Conrad's other children, including Farrar's sisters Joan C. Erwin ("Erwin") and Nancy C. Flynn ("Flynn").

Thereafter, Farrar petitioned for probate in Los Angeles Superior Court case no. SP-004130 - which later consolidated under case no. BP-056417, entitled *The Estate of Joan M. Conrad* ("the probate matter"). Farrar gave proper notice of the probate matter - specifically to Erwin and Flynn. No objections to the admission of the will were filed and Conrad's will was admitted to probate on or about August 16, 1999.

Probate Code sections 8250 and 8270 provide that a challenge to a will must be brought before the will is admitted to probate or within 120 days after the will is admitted to probate. This 120-day period expired on or about December 14, 1999.

On or about August 9, 2001, Farrar filed a Final Account and Report and Petition for Final Distribution in the probate matter and gave proper notice of that Account and Petition. Erwin did not file any objections, however, Flynn filed a series of challenges in the probate matter.

On or about December 11, 2001, the court in the probate matter found that Conrad's will had been admitted to probate in 1999 and that no challenges had been made within the statutory periods. Conrad's will had disinherited Flynn and, consequently, Flynn lacked standing to challenge the administration of the estate.

Thereafter, in or about May 2002, Farrar renewed her Final Report and brought a second Petition for Final Distribution. Farrar noticed a hearing date of May 29, 2002, and gave proper notice to Erwin. Erwin did not appear at the hearing on May 29, 2002.

Flynn interposed new objections in the probate matter and the court set a hearing on Flynn's objections for July 15, 2002.

On or about July 15, 2002, Erwin and respondent made their first appearance in the probate matter where Erwin interposed her objections.[5] The court continued the probate matter for hearing on August 13, 2002, and ordered respondent to properly file Erwin's objections by July 16, 2002.

Respondent failed to properly file objections by July 16, 2002. As a result, on or about August 13, 2002, the court continued the hearing on Erwin's objections and ordered respondent to properly calendar the objections for hearing on or about September 10, 2002.

Also on or about August 13, 2002 - and in respondent's presence - the court overruled Flynn's objections on the grounds that Flynn lacked standing to challenge the administration of Conrad's will. At or about that time, Farrar's attorney, David Coleman ("Coleman"), also advised respondent that Erwin's objections were fully barred by the statute of limitations and that Erwin lacked standing to challenge the administration of Conrad's will.

At all relevant times, Erwin's objections were virtually identical to Flynn's objections. At all relevant times, Erwin lacked standing to challenge the administration of the estate.

Despite the court's findings relating to Flynn, respondent continued pressing Erwin's objections.

Respondent did not properly file Erwin's objections until on or about September 5, 2002. That filing did not comply with the ten-day notice requirements of Code of Civil Procedure section 1005(b) and, consequently, the court would not hear the matter on September 10, 2002.

On or about October 30, 2002, Coleman requested sanctions against respondent for pursuing frivolous and harassing objections.

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[5] Respondent acted as Erwin's attorney.

On or about January 2, 2003, respondent noticed an *ex parte* hearing to be held on January 6, 2003.[6] Respondent subsequently telephoned Farrar's attorney, and left a message stating the hearing would be on January 6, 2003. Respondent failed to appear for the *ex parte* hearing on or about January 6, 2003.

On or about February 1, 2003, respondent signed a declaration in support of an opposition to the sanctions motion. In his declaration respondent stated, among other things, that he would be substituting out of the case and letting new counsel proceed with the objections by Erwin.

On or about February 11, 2003, the court in the probate matter granted the motion for sanctions, in the amount of $8,100.00 plus costs. On or about May 28, 2003, the court issued a written order finding that Erwin's objections were frivolous and that respondent's actions in the probate matter were presented with the intent to harass or cause needless litigation **and** were not warranted by existing law or by non-frivolous extension, modification, or reversal of existing law.

The court sanctioned respondent in the amount of $8,125.30. An abstract of judgment was issued on or about December 31, 2003.

At all relevant times, respondent knew that Erwin's objections were fully barred by the statute of limitations and that Erwin lacked standing to challenge the administration of Conrad's will.

At no time did Respondent pay the aforementioned sanctions. At no time did Respondent report the sanctions to the State Bar of California.

[6] The NDC appears to contain a minor typographical error stating that respondent noticed an ex parte hearing to be held on January **3**, 2003. Based on the evidence before the court, said hearing was actually held on January 6, 2003.

III. Conclusions of Law

A. Count One: Business and Professions Code Section 6068, Subdivision (c)[7] [Maintaining an Unjust Action]

Section 6068, subdivision (c), provides that it is the duty of an attorney to counsel or maintain those actions, proceedings, or defenses only as to appear to him or her legal or just, except the defense of a person charged with a public offense.

By filing and pursuing Erwin's objections, which respondent knew were contrary to the clear state of the law and the court's rulings against Flynn, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just in willful violation of section 6068, subdivision (c).

B. Count Two: Section 6068, Subdivision (o)(3) [Failure to Report Judicial Sanctions]

Section 6068, subdivision (o)(3), provides that it is the duty of an attorney to report the imposition of judicial sanctions against the attorney to the State Bar, in writing, within 30 days of the time the attorney has knowledge of the imposition of the sanctions. The evidence before the court, however, fails to establish, by clear and convincing evidence, whether or not respondent was ever served with the sanction order. Further, there is no evidence establishing that respondent otherwise became aware of said order.[8] Consequently, the court cannot determine if and when respondent had knowledge of the sanction order. Count Two is therefore dismissed with prejudice.

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[7] All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

[8] The evidence before the court demonstrates that respondent was aware that a request for sanctions had been filed, but there is no indication whether or not respondent had knowledge of the subsequent sanctions order.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factors were submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[9]

B. Aggravation

Respondent has a prior record of discipline. (Std. 1.2(b)(i).)

On July 31, 2008, the California Supreme Court issued an order (S163891) suspending respondent from the practice of law for three years, stayed, with a four-year probationary period including a nine-month actual suspension and until restitution.[10] This discipline stemmed from respondent's misconduct in seven matters, involving six different clients. Said misconduct included failing to perform legal services competently, failing to refund unearned fees, failing to communicate, failing to return a client's file, practicing law while suspended, and driving under the influence of alcohol resulting in a criminal conviction. In mitigation, respondent had no prior record of discipline; promptly took objective steps to spontaneously demonstrate remorse and recognition of wrongdoing; and, at the time of the misconduct, suffered extreme difficulties in his personal life. In aggravation, respondent's misconduct evidenced multiple acts of wrong doing or demonstrated a pattern of misconduct.

Respondent's present misconduct also significantly harmed the administration of justice. (Std. 1.2(b)(iv).) By knowingly bringing and maintaining an unjust action, respondent wasted the Los Angeles Superior Court's valuable time and resources.

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[9] All further references to standard(s) are to this source.

[10] Pursuant to Evidence Code section 452(h), the court takes judicial notice of respondent's prior record of attorney discipline in the State of California.

V. Discussion

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 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.6 and 1.7(a).) Standard 1.7(a) states that if a member has a record of one prior imposition of discipline then the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was remote in time or so minimal in severity that it would be manifestly unjust.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar has requested, among other things, that respondent be actually suspended for two years. In support of this recommendation, the State Bar cites *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. *Varakin*, however, involved considerably greater misconduct than that found in the present matter and resulted in a recommendation of disbarment. In *Varakin*, the attorney engaged in a repeated pattern of frivolous motions and

appeals in four different cases over a 12-year span. In addition to section 6068, subdivision (c), the attorney in *Varakin* was also found culpable of committing moral turpitude and violating subdivisions (b), (f), (g), (i), and (o)(3) of section 6068. In mitigation, the attorney had no prior record of discipline, however, this factor was greatly outweighed by several factors in aggravation including the attorney's lack of insight and remorse, the great harm he caused to individuals and the administration of justice, and his refusal to mend his ways.

Consequently, the court agrees with the State Bar that, despite respondent's prior record of discipline, the present misconduct does not warrant a recommendation of disbarment. That being said, respondent's failure to participate in these proceedings gives the court little assurance that he no longer poses a threat to the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standards for attorneys. Therefore, the court recommends, among other things, that respondent be actually suspended for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

VI. Recommended Discipline

Accordingly, the court recommends that respondent **DAVID M. CORDREY** be suspended from the practice of law for four years and until he complies with the requirements of standard 1.4(c)(ii), as set forth more fully below, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for two years and until:

(1) The court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California; and

(2) He has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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 order in this matter.[11]

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein or during the period of his actual suspension, whichever is longer.

VII. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December 9, 2008.

RICHARD A. PLATEL
Judge of the State Bar Court

[11] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)