FILED MAY 18, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: **05-O-00935-RAP**
	)	
JAMES FRIEND JORDAN,	)	**DECISION**
	)	
Member No. 74606,	)	
	)	
A Member of the State Bar.	)	

I. Introduction

In this contested, original disciplinary proceeding, respondent **JAMES FRIEND JORDAN** is charged with two counts[1] of misconduct, involving failure to comply with a court order and failure to comply with terms of probation. The court finds, by clear and convincing evidence, that respondent is culpable of both counts.

After having thoroughly reviewed the record, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for three years with conditions, including that he is suspended from the practice of law for the first 90 days of probation.

[1] On August 26, 2008, the court issued an Order Re Respondent's Motion to Dismiss Counts Five, Six, and Seven of the NDC. The court granted respondent's motion as to Count Seven, ordering that it be dismissed with prejudice from the NDC. Count Seven alleged failure to cooperate in a State Bar investigation. In its closing brief, the State Bar requests that the court revisit its "tentative decision" dismissing Count Seven. Having considered the State Bar's request, the court finds no good cause to revisit its order regarding the dismissal with prejudice of Count Seven from the NDC.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California ("State Bar") initiated this proceeding by filing a notice of disciplinary charges ("NDC") on December 21, 2006. On January 30, 2007, respondent filed a response to the NDC. On September 17, 2007, on motion by the State Bar, the court issued an order dismissing counts one, two, three and four of the NDC.

Trial was held on May 19, September 17, and October 15, 2008. The State Bar was represented by Deputy Trial Counsel Christine Souhrada. Respondent was represented by Attorney James R DiFrank.

The court took this case under submission for decision on February 17, 2009.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 28, 1977, and has been a member of the State Bar of California since that time.

B. Credibility Determinations

The following witnesses testified at trial: respondent, Gene W. Choe, Esq., Louis Jacobs, Esq., and Deputy Trial Counsel Charles Calix.

With respect to the credibility of the witnesses, the court carefully weighed and considered each witness's demeanor while testifying; the manner in which each witness testified; the character of each witness's testimony; each witness's interest or lack thereof in the outcome of this proceeding; and each witness's capacity to accurately perceive, recollect, and communicate the matters on which he testified. (See, e.g. Evid. Code section 780 [lists of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of each witness to be credible.

C. The Jin Lawsuit

On or before March 18, 2004, Masahi Ishikawa ("Ishikawa"), the owner and sole shareholder of a company named Jin International ("Jin"), hired respondent to represent Jin in a lawsuit entitled *Srixon Sports USA v. Jin International*, Los Angeles Superior Court Case No. BC310254 ("the *Jin* lawsuit"). Respondent filed an answer to the complaint on behalf of Jin.

Srixon Sports USA ("Srixon") was represented by Louis Jacobs ("Jacobs"). Jacobs filed the initial complaint in the *Jin* lawsuit on February 6, 2004. During the course of the litigation, Jacobs served respondent with standard discovery, including a "Notice of Taking the Deposition of Masahi Ishikawa Authorized Representative of Defendant." Ishikawa did not appear for the deposition. Thereafter, Jacobs filed a motion to compel the deposition, which motion included a request for sanctions.

Respondent did not respond to Jacobs' motion; nor did he make his arguments to the court that would be ruling on the motion, within the time frame for adjudication of the matter.

On September 10, 2004, at the hearing on the motion to compel deposition and for sanctions, the superior court granted Jacobs' motion, ordering Ishikawa's deposition to be completed by September 24, 2004, and further ordering respondent and Ishikawa to pay sanctions in the amount of $3,923.70, within ten days. Respondent did not appear for the September 10, 2004 hearing. On September 14, 2004, the superior court issued a written ruling on the motion to compel deposition and for production of documents, setting forth, among other things, the basis of its order imposing sanctions on respondent. (Ex. 22.) On September 15, 2004, Jacobs served on respondent a "Notice of Ruling on Plaintiff's Motion to Compel . . . ; Imposition of Sanctions on Masahi Ishikawa and Defendant's Attorney of Record James F. Jordan," wherein the terms of the court's order as to the imposition of sanctions against

respondent were set forth. (Ex. 23.) Respondent did not pay the sanctions, nor did he file a pleading with the issuing court for relief from the order imposing sanctions.

Respondent was aware of the sanctions order when it issued; he was aware of the sanctions order when the settlement stipulation was reached; and he was aware of the sanctions order when the stipulation was filed with the court. Respondent, however, did not raise the subject in settlement negotiations or attempt to have some type of determination regarding the sanctions entered into the stipulation.[2]

On July 18, 2005, Jacobs served respondent with "Post Judgment Interrogatories to Defendant Judgment Debtor" ("Interrogatories") and "First Demand for Production of Documents" ("Demand for Production") in the *Jin* lawsuit, in an effort to collect the $3,923.70 in sanctions from respondent. Respondent received the Interrogatories and Demand for Production.

Thereafter, Jacobs filed a motion to compel answers to post judgment interrogatories and for sanctions. The court heard the motion on October 12, 2005. Respondent did not appear; but attorney Mitchell Geyer ("Geyer") appeared for and represented respondent at the hearing. The court ordered, among other things, that respondent pay sanctions in the amount of $1,827.60 to

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[2] In the instant proceeding, respondent entered into evidence a letter he claims to have sent to Jacobs, which letter is dated October 5, 2004. In that October 5th letter, respondent states that it was his understanding that by stipulating to the settlement in the *Jin* lawsuit, the sanctions were waived. Prior to the October 5th letter, respondent sent a letter ("the first letter") to Jacobs regarding the stipulation. The first letter that respondent wrote to Jacobs does not contain any mention of a waiver of sanctions. Jacobs testified that he did not receive the second letter, i.e., the letter dated October 5, 2004. Additionally, Gene Choe ("Choe"), an attorney hired to help Ishikawa with the sanctions issue, testified that when he received the Jin file from respondent, the October 5, 2004 letter to Jacobs was not in the file. Choe testified that he first saw the October 5th letter when it was furnished to him by the State Bar.

The State Bar argues that respondent's October 5, 2004 letter, concerning the issue of sanctions waiver, is highly suspicious. The evidence, however, is not sufficient for the court to find that the October 5, 2004 letter was fabricated by respondent for the purpose of this litigation. The court does finds that the October 5, 2004 letter was never received by Jacobs and that the letter was not in the client file when Choe examined the file some months later.

Srixon within ten days. The order was served on Geyer. (Ex. 31.) Respondent has never paid the sanctions or filed a pleading for relief from the sanctions with the issuing court.

Count 5: Failure to Obey Court Orders (Bus. & Prof. Code § 6103)[3]

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

The State Bar alleges that by failing to comply with the superior court's September 10, 2004 order and the October 12, 2005 order, respondent willfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of his profession, which he ought in good faith to do.

a. Respondent's Arguments

i. Arguments Regarding the September 10, 2004 Order

Respondent argues that he was the attorney of record for Jin and that Ishikawa was not his client. Respondent claims that although he attempted to arrange for Ishikawa to appear for deposition pursuant to the notice of taking of deposition, he never represented Ishikawa in defending the *Jin* lawsuit. Respondent also contends that during the litigation of the *Jin* lawsuit, Ishikawa had never been designated as the authorized representative of Jin. It is respondent's position that the sanctions order against him, based upon Ishikawa's failure to appear at the September 10, 2004 hearing, is unjust. Respondent argues that since he was the attorney of record for Jin and not for Ishikawa, he cannot be responsible for the inaction of Ishikawa.[4] Respondent further argues that Jacobs filed misleading pleadings with the court in order to obtain the sanctions order. According to respondent, Jacobs waited until after the case had settled and a stipulated settlement had been approved by the court, before obtaining a judgment based on the

[3] Unless otherwise noted, all further references to section are to the Business and Professions Code.

[4] There are some documents in evidence indicating that on occasion respondent identified Ishikawa as his client.

September 10, 2004 sanctions order. Moreover, it is respondent's position that since Jacobs drafted the stipulation and did not raise the sanctions issue, Jacobs waived the sanctions.

ii. Arguments Regarding the October 12, 2005 Order

Respondent maintains that because the State Bar did not call Geyer to testify as to whether Geyer had notified respondent of the October 12, 2005 sanctions order, there is no evidence that respondent was served with said order. Therefore, according to respondent, he was not required to comply with the order.

b. Respondent Failed to Obey the Court Orders

i. Respondent Failed to Obey the Superior Court's September 10, 2004 Order

In sum, respondent contends that he should be excused from complying with the September 10, 2004 order against him because that order was "improper" and "unjust." Respondent bases his contention on the following: (1) respondent claims to have attempted to get Ishikawa to appear at deposition pursuant to the notice of taking deposition; (2) respondent maintains that Ishikawa was not respondent's client; (3) respondent asserts that during the litigation of the *Jin* lawsuit, Ishikawa had never been "designated" as the authorized representative of Jin; (4) respondent alleges that Jacobs filed misleading pleadings with the court in order to obtain the sanctions order;[5] and (5) respondent contends that since Jacobs drafted the stipulation and failed to raise the sanctions issue, Jacobs waived the sanctions.

The court finds respondent's arguments to be without merit. Respondent's beliefs as to the "fairness" and "propriety" of the superior court's order are irrelevant to this proceeding. The proper venue for respondent to have challenged the order was in the issuing court within the time frame for adjudication of the matter. As set forth, *ante*, respondent was aware of the September 10, 2004 order when it issued; he was aware of the order when the settlement stipulation was

[5] Although not all the information in Jacobs' motion is correct, there is insufficient evidence to show that Jacobs willfully attempted to mislead the court in his sanctions motion.

reached; and he was aware of the order when the stipulation was filed with court. Although respondent could have raised the issue of the sanctions order with Jacobs, he did not do so. It was respondent's responsibility to challenge the sanctions order, not Jacobs' responsibility; respondent cannot delegate to Jacobs the responsibility of raising the subject in settlement negotiations.

It is well-established that "[o]bedience to court orders is intrinsic to the respect attorneys...must accord the judicial system. . . . In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed." (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389,403; see also *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal.State Bar Ct. Rptr. 862, 868.) "Regardless of respondent's belief that the order was issued in error, he was obligated to obey the order, unless he took steps to have it modified or vacated, which he did not do." (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9.)

Respondent did not move to modify or vacate the September 10, 2004 order in the issuing court within the time frame for adjudication of the matter. Instead, respondent did not pay sanctions in the amount of $3,923.70 as ordered. Respondent's failure to do so was in willful disobedience of the court order, requiring him to do an act connected with or in the course of his profession which he ought to have done in good faith. Thus, respondent willfully violated section 6103.

ii. Respondent Failed to Obey the Superior Court's October 12, 2005 Order

As set forth, *ante*, respondent contends that that because the State Bar did not call Geyer to testify as to whether he had notified respondent of the October 12, 2005 sanctions order, there is no evidence that respondent was served with said order. The court finds respondent's argument to be without basis.

"It is a longstanding principle that in 'our system of representative litigation. . . each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney." ' [Citations.]" (*Garcia v. I.N.S.* (9th Cir. 2000) 222 F.3d 1208, 1209.) "The general rule of agency is that notice to or knowledge possessed by an agent is imputable to the principal. [Citations.] This rule ordinarily applies in the relation of attorney and client. [Citations.]" (*Chapman v. College v. Wagener* (1955) 45 Cal.2d 796, 802.)

Since Geyer, who appeared for and represented respondent at the October 12, 2005 hearing, was served with the notice of the October 12, 2005 court order (Ex. 31), the notice to Geyer is imputed to respondent. Since Geyer appeared for and acted as respondent's attorney at the October 12, 2005 hearing, service of the court order on Geyer is service on respondent.

Pursuant to the October 12, 2005 sanctions order, respondent was required to pay sanctions in the amount of $1,827.60 to Srixon within 10 days. Respondent's failure to do so was in willful disobedience of the court order requiring him to do an act connected with or in the course of respondent's profession which he ought to have done in good faith. Thus, respondent willfully violated section 6103.

In sum, by failing to comply with the September 10, 2004 and October 12, 2005 orders of the superior court, respondent willfully disobeyed and violated the court orders requiring him to do an act connected with or in the course of respondent's profession which he ought to have done in good faith in willful violation of section 6103.

D. Probation Violation (Supreme Court Case No. S126155)

On September 23, 2004, in Supreme Court case No. 126155 (State Bar Case Nos. 97-O-10193, 98-O-03301, 99-O-12963, 99-O-12135 (Cons.)), the California Supreme Court ordered that respondent be suspended from the practice of law for one year and until he makes specified

restitution, that execution of the suspension be stayed, and that he be placed on probation for two years subject to certain conditions, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation, filed on April 12, 2004, as modified by its order filed May 14, 2004. (Ex. 32.) Among other probation conditions, respondent was required to comply with the provisions of the State Bar Act and Rules of Professional Conduct during the term of his probation.

Notice of the Supreme Court order was duly and properly served upon respondent's counsel in the manner prescribed by California Rules of Court, rule 29.4 (renumbered as rule 8.532, effective January 1, 2007), at respondent's counsel's address. The Supreme Court order became effective on October 23, 2004.

The discipline imposed by the Supreme Court, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation, was based upon the stipulation that respondent and his counsel signed; the stipulation contained all of the probation conditions. (Ex. 32.) At all relevant times, respondent knew the terms and conditions of his probation and understood that he was required to comply with the terms thereof, including compliance with the provisions of the State Bar Act and Rules of Professional Conduct during the term of his probation.

During the term of his probation, respondent failed to comply with a court order, issued on October 12, 2005, to pay sanctions in the amount of $1,827.60 within 10 days. By failing to comply with the order, respondent violated section 6103, a provision of the State Bar Act. (See, section C, Count 5: Failure to Obey Court Orders, *ante*.)

Count 6: ***Failure to Comply with Conditions of Probation (Bus. & Prof. Code, § 6068, Subd. (k))***

Business and Professions Code section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation. Among the conditions attached to respondent's disciplinary probation was the requirement that he comply with all provisions of the State Bar Act and Rules of Professional Conduct during the term of his probation. Section 6103 is a provision of the State Bar Act.

Respondent violated section 6103, while on probation in 2005, by disobeying the October 12, 2005 court order. Thus, the evidence is clear and convincing that respondent willfully violated section 6068, subdivision (k), by failing to comply with a provision of the State Bar Act and Rules of Professional Conduct, i.e., section 6103, during the term of his probation.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)[6]

A. Mitigation

The record establishes there are no mitigating circumstances, as respondent offered no evidence in mitigation and the court finds none. (Std. 1.2(e).)

B. Aggravation

There are two aggravating factors. (Std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).)

1. In respondent's first disciplinary matter, the State Bar Court imposed a public reproval upon respondent in State Bar Court case Nos. 84-O-12508

[6]All further references to standards are to this source.

and 87-O-17308 for misconduct that ended in 1988. Respondent stipulated to failing to promptly pay, as requested by a client, funds in his possession, which the client is entitled to receive (former rule 8-101(B)(4), now rule 4-100(B)(4)) and improperly withdrawing from employment (former rule 2-11(A),now rule 3-700(A)(2)). In mitigation, the parties stipulated that respondent had no prior record of discipline and was candid and cooperative with the State Bar. There were no aggravating circumstances.

2. On September 23, 2004, in Supreme Court case No. 126155 (State Bar Case Nos. 97-O-10193, 98-O-03301, 99-O-12963, 99-O-12135 (Cons.)), the California Supreme Court ordered that respondent be suspended from the practice of law for one year and until he makes specified restitution, that execution of the suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including restitution, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation, filed on April 12, 2004, as modified by its order filed May 14, 2004. Respondent stipulated in two client matters to two counts of failing to pay promptly, as requested by the clients, funds in his possession, which the clients were entitled to receive (rule 4-100(B)(4)). There were no mitigating circumstances. In aggravation, the respondent stipulated to a prior record of discipline and harm to a client.

Respondent committed multiple acts of wrongdoing by violating a court order and failing to comply with a condition of a disciplinary probation. (Std. 1.2(b)(ii).)

The court does not find that the State Bar has met its burden of showing by clear and convincing evidence the existence of any additional aggravating factors. The State Bar contends that respondent's testimony lacked candor regarding the October 5, 2004 waiver of sanctions letter. However, no clear and convincing evidence was introduced to show that respondent fabricated the letter for purposes of this litigation, as argued by the State Bar, or that respondent was lacking in candor.

The court also finds that the State Bar failed to make a showing by clear and convincing evidence that respondent is indifferent to the allegations of misconduct in this matter. Rather, the court finds that respondent has a good faith belief in his position regarding culpability based on an honest, though mistaken and unreasonable, belief that his failure to obey the court orders was justified.

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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (Drociak v. State Bar (1991) 52 Cal.3d 1085, 1090; In the Matter of Koehler (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) But, the standards "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has been long-held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) While the standards are entitled to great weight (*In re*

Silverton (2005) 36 Cal.4th 81, 92), they do not provide for mandatory disciplinary outcomes. Although the standards were established as guidelines, "ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case." (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

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.

The applicable standards provide a range of sanctions from suspension to disbarment. (Stds 1.7, 2.6(a), and 2.6(b).)

Standard 2.6(a) provides for discipline ranging from suspension to disbarment, depending on the gravity of the offense or the harm to the victim, for violations of section 6103; standard 2.6(b) also provides for discipline ranging from suspension to disbarment, depending on the gravity of the offense or the harm to the victim, for violations of any of the provisions of section 6068.

Respondent requests that the court enter an order dismissing this disciplinary action with prejudice because the State Bar failed to meet its burden of showing by clear and convincing evidence that respondent is culpable of violating counts five and six. The court disagrees for the reasons set forth, *ante*, in the discussion of culpability as to counts five and six.

The State Bar urges that respondent be disbarred under standard 1.7(b), which provides, "[i]f a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

But, the State Bar does not acknowledge that respondent's first imposition of discipline occurred more than 17 years previous to the misconduct at issue in this proceeding. Imposition of a public reproval, occurring approximately 17 years previous to the misconduct at issue in this proceeding, is too remote in time to merit significant weight on the issue of degree of discipline. (See *In the Matter of* Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 105; *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713.) Additionally, the court notes that the State Bar cites no case law in support of its disciplinary recommendation.

Both the Review Department of the State Bar Court and the Supreme Court have declined to rigidly apply the standards as mandatory sanctions. In *In re Young* (1989) 49 Cal.3d 257, 268, the Supreme Court stated: "The Standards for Attorney Sanctions are instructive, but they are simply guidelines for the State Bar and we are not compelled to follow them. [Citations.] We do not apply rigid disciplinary standards, but rather resolve each case on its own facts." "[I]n the final analysis, as the Supreme Court has made clear, our consideration of the Standards cannot yield a recommendation which, on the record, is arbitrary or rigid [citation], or about which 'grave doubts' exist as to the recommendation's propriety. [Citation.] Moreover, the weight to be accorded the Standards will depend on the degree to which they are apt to the case at bench." (*In the Matter of Oheb, supra,* 4 Cal. State Bar Ct. Rptr. 920, 940.)

In determining the appropriate level of discipline in this matter, the court finds guidance in *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal.State Bar Ct. Rptr. 862; *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 592, and *In the Matter of* Rose (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 646.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal.State Bar Ct. Rptr. 862, the review department upheld the hearing judge's conclusion that respondent willfully violated section 6103 by not paying the sanctions order that had been imposed by the superior court

requiring him to pay $1,000 in sanctions for engaging in bad faith tactics and actions in that court. Additionally, the review department agreed with the hearing department's conclusion that respondent Y was culpable of misconduct for failing to report the imposition of the sanctions to the State Bar. Respondent Y appealed the sanctions order. The review department found that given respondent Y's lack of a prior record and the "narrow violations" before the court, the hearing department's private reproval was the appropriate level of discipline. (*Id.* at 869.)

In *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 592, respondent X was found culpable of misconduct for violating section 6103, by violating the confidentiality provision of a superior court order enforcing a settlement agreement in a lawsuit in which respondent X represented the plaintiff. Respondent X admitted to violating the confidentiality provision because he believed it to be void in that, among other things, it was an illegal agreement to suppress evidence. Respondent X sought appellate review of the order, but was unable to have it declared void. The review department agreed with the hearing judge's determination that a private reproval was the appropriate level of discipline. There were no aggravating factors and several mitigating factors including respondent X's 18 years of practice without prior discipline.

Here, respondent's misconduct is somewhat similar to that of respondents X and Y. Like respondents X and Y, respondent violated court orders; but, unlike respondents X and Y, respondent did not attempt to challenge the validity of the orders he violated by motion or appeal. Additionally, respondent has a prior record of discipline, while respondents X and Y had no prior disciplinary record.

In *In the Matter of Rose* (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 646, the attorney, was disbarred for his probation violation. During 18 of the 26 years of his practice, he committed professional misconduct or was actually suspended as a result of that misconduct,

including client abandonments, probation violations, and failure to timely file the affidavit required by Rules of Court, rule 955 (now renumbered as rule 9.20). As a result, the review department found that the attorney in *Rose* had ample opportunity to conform his conduct to the ethical requirements of the profession, but repeatedly failed or refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate.

Here, disbarment would be grossly disproportionate to respondent's misconduct. Respondent's misconduct is clearly distinguishable from that of the attorney in *Rose*, who had four prior records of discipline and a long history of serious and ongoing professional misconduct. While respondent's misconduct is not minor, it does not rise to the level of misconduct that merits disbarment.

After considering the standards and case law and after balancing all relevant factors, including respondent's misconduct and the aggravating factors, the court concludes that a 90-day actual suspension would be appropriate to protect the public and the courts and preserve confidence in the legal profession.

Additionally, the court concludes that the State Bar's request that the court require respondent to comply with the underlying sanctions orders should be granted. "To conclude otherwise would terminate respondent's professional obligation under section 6103 to obey the order[s] and pay the sanctions. Such a result would be inconsistent with the purposes of attorney discipline." (*In the Matter of Respondent Y, supra,* 3 Cal.State Bar Ct. Rptr. at p. 869.)

Accordingly, the court recommends that a condition be attached to respondent's probation, requiring him to pay $3923.70 in sanctions to the plaintiff in the *Jin* lawsuit as ordered by the superior court in its September 10, 2004 order and to pay $1827.60 in sanctions to the plaintiff in the *Jin* lawsuit as ordered by the superior court in its October 12, 2004 order.

VI. Recommendations

A. Discipline

The court recommends that respondent **JAMES FRIEND JORDAN** be suspended from the practice of law in the State of California for two years, that execution of the two year suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. Respondent must be suspended from the practice of law for the first 90 days of probation;
2. Respondent must obey the September 10, 2004 and October 12, 2005 orders of the Superior Court of California for the County of Los Angeles by paying sanctions to Srixon Sports, USA, Inc., plaintiff in *Srixon Sports USA v. Jin International*, Los Angeles Superior Court Case No. BC310254, in the amounts of $3,923.70, together with 10% interest per annum from September 21, 2004 and $1,827.60, together with 10% interest per annum from October 22, 2005 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Srixon Sports, USA, Inc., in accordance with Business and Professions Code section 6140.5). Respondent must provide satisfactory proof of such sanctions payments to the State Bar's Office of Probation in Los Angeles within the period of probation. Any reimbursement owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);
3. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

6. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1;

7. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session.

Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement ("MCLE"), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201);

8. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and
9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years that is stayed, will be satisfied and that suspension will be terminated.

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the Supreme Court's disciplinary order. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department of the State Bar Court, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

C. California Rules of Court, Rule 9.20

The court 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. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.[7]

D. Costs

The court further recommends 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: May 18, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court

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[7] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)