

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 05-O-03874-RAP
	)	
<b>ROGER C. CHRISTIANSON,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 54993,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this contested matter, respondent **ROGER C. CHRISTIANSON** is charged with two counts of misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of both counts: employing means inconsistent with the truth and seeking to mislead a judge (Bus. & Prof. Code, section 6068, subdivision (d))<sup>1</sup> and moral turpitude (section 6106).

The State Bar urges that respondent be disbarred from the practice of law. Respondent argues that any actual suspension should not exceed 60 days. The court recommends, among other things, that respondent should be actually suspended for two years and until he complies with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

**II. Pertinent Procedural History**

The State Bar filed a notice of disciplinary charges (NDC) on September 5, 2006, to which a response was filed on October 5, 2006.

On October 1, 2007, the parties filed a stipulation as to facts and jurisdiction which the court approves.

At the October 1, 2007, trial, the State Bar was represented by Assistant Chief Trial Counsel

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<sup>1</sup>Future references to section are to this source.

Jayne Kim. Respondent was represented by David Cameron Carr.

No witnesses testified at trial. At the conclusion of the State Bar's case, respondent made an oral motion to dismiss the NDC, arguing that the stipulated facts did not provide clear and convincing evidence of ethical violations. The court denied the motion.

The court issued a tentative finding of culpability on both counts charged in the NDC and then heard evidence on mitigation and aggravation. The matter was submitted for decision on October 24, 2007, after the parties submitted briefs.

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

The respondent was admitted to the practice of law in California on January 2, 1973, and has been a member of the State Bar since that time.

#### **B. Facts**

On August 2, 2005, respondent appeared in Ventura County Superior Court to represent Jerry Bordeaux at the trial of a traffic violation. (*People v. Jerry Bordeaux*, case no. 2005554083.) Judge James P. Cloninger presided over the case.

It is common practice for defense attorneys to check in with the bailiff or court clerk when appearing for a defendant in traffic court. On the day in question - and despite having ample opportunity to do so - respondent did not check in with the bailiff or court clerk or otherwise notify anyone that he was Bordeaux's attorney.

Pursuant to Judge Cloninger's instructions, all defendants and witnesses seated in the courtroom gallery were instructed to stand up and be sworn under oath by the court clerk, Denise Rivas. Respondent stood up when Ms. Rivas was going to administer the oath, raised his right hand and took the oath along with the defendants and witnesses expected to testify before Judge Cloninger that day. At that time, respondent was not reading or reviewing paperwork.

Before the Bordeaux trial started, respondent approached California Highway Patrol Officer Edward Coronado, who had cited Bordeaux for the traffic violation at issue. Respondent did not identify himself as Bordeaux but asked the officer whether there was any additional evidence

regarding the traffic violation.

When Judge Cloninger was ready to hear the Bordeaux trial, he called out the name, “Jerry Bordeaux.” Respondent instructed Bordeaux to remain seated in the courtroom gallery and then approached Judge Cloninger himself.

Judge Cloninger addressed respondent as “Mr. Bordeaux” and asked him whether he heard an earlier explanation of how the trial would be conducted. Respondent informed the court that he had heard the explanation and was ready.

When the trial started, Officer Coronado took the stand to testify as the sole witness. During cross-examination, respondent asked several questions of Officer Coronado regarding the traffic citation in question. Those questions included the following:

“And what was I wearing?”

“ Had I cut off my beard that day?”

“Was I wearing a beard that day?”

“I am the driver?”

During the trial, respondent also objected to Officer Coronado’s reading of a report and argued to the court, “I have a right to confront and cross-examine.”

After Officer Coronado identified respondent as the driver (i.e., Bordeaux), respondent revealed himself to be Bordeaux’s attorney and referred to Mr. Bordeaux sitting in the audience.

Judge Cloninger then asked respondent for his name and State Bar number, which respondent provided. Judge Cloninger reminded respondent that the court had addressed him as “Mr. Bordeaux” and that respondent had answered to that. Respondent told Judge Cloninger that he had merely said, “we’re ready.”

Judge Cloninger then took a recess in order to listen to an audio recording of the proceeding. Respondent listened to the audio recording. After the break, respondent acknowledged that Judge Cloninger had addressed him as “Mr. Bordeaux” and that respondent had not informed the court that he was not, in fact, Bordeaux.

Judge Cloninger ordered respondent to appear for a contempt proceeding on September 28,

2005 and disqualified himself from hearing it. He told respondent that he believed respondent was guilty of contempt of court and thought that respondent possibly lied under oath.

On September 28, 2005, respondent appeared for the contempt hearing before Judge Barry B. Klopfer of the Ventura County Superior Court.

Judge Klopfer asked respondent whether he wanted to respond to Judge Cloninger's written statement of the events of August 12, 2005. In response, respondent told Judge Klopfer:

(1) During the incident in Judge Cloninger's courtroom, respondent had been reading his notes from the Bordeaux case and was "not really paying much attention";

(2) When Judge Cloninger called the Bordeaux case, respondent basically said, "ready";

(3) When Judge Cloninger asked respondent whether he heard what had been previously said about trial, respondent answered, "Yes, I heard your instructions and I'll follow them";

(4) Respondent explained that he assumed his name was on the Bordeaux case file as the attorney of record. Respondent also thought it was obvious that he was an attorney and that he was the only person in a suit that day; and

(5) Respondent said the atmosphere in traffic court was fast-paced. Judge Cloninger "wanted to get out of there" and there were more pressing things that day. The traffic calendar was a "bit of a herding through."

Judge Klopfer concluded the contempt hearing by giving respondent a warning for his misconduct. He told respondent that he took into account respondent's description and explanation of the circumstances and assumed that this was a "first-time" occurrence for respondent.

Contrary to what respondent told Judge Klopfer, at no time during the Bordeaux trial on August 12, 2005, did Judge Cloninger rush or hurry through the proceeding.

### **C. Conclusions of Law**

#### ***Count 1: Employing Means Inconsistent with Truth and Seeking to Mislead a Judge (Section 6068, subdivision (d))***

Section 6068, subdivision (d) provides that it is the duty of an attorney to employ, for the purposes of maintaining the causes confided to him or her, those means only as are consistent

with truth, and never to seek to mislead a judge or any judicial officer by an artifice or false statement of fact or law.

The court finds, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (d), by engaging in deception, feigning to be his client, the defendant in a traffic court matter, by taking the oath intended for those testifying before the court in order to further his deception, by responding affirmatively to the court when it addressed him as “Mr. Bordeaux,” respondent intentionally sought to mislead the judge by an artifice or false statement of fact.

### ***Count 2: Moral Turpitude (Section 6106)***

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

The court finds by clear and convincing evidence, that respondent wilfully violated section 6106 by intentionally employing a trial strategy that required that he mislead and deceive the trial court and a witness into believing that respondent was the defendant in the traffic court matter, respondent committed an act involving moral turpitude, dishonesty or corruption.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

The court finds no mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>2</sup>

### **B. Aggravation**

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

Respondent has a prior record of discipline. (Std. 1.2(b)(i).). By order effective on February 10, 1982, the State Bar Court issued a private reproof in case no. 80-O-241 SD for a

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<sup>2</sup>Future references to standard or std. are to this source.

violation of former rule 6-101 of the Rules of Professional Conduct in 1979 by missing one court appearance. This court finds that this prior misconduct was minor and so remote in time (28 years) that it would be manifestly unjust to give it any weight in considering it as an aggravating factor. (Standard 1.7(a).) It was also found too remote in time at the time the second disciplinary matter, discussed below, was resolved by the parties' stipulation in 1994.

By order no. SO46413 (State Bar Court case no. 93-C-14790), filed on July 13, 1995, the California Supreme Court suspended respondent for nine months based upon his conviction in federal district court on February 18, 1994, of two counts of misprison of felony, an offense involving moral turpitude.

Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).) He was dishonest to the superior court during the traffic proceedings and the contempt hearing and, as discussed below, to the State Bar.

Respondent's misconduct was surrounded by or followed by dishonesty. (Std. 1.2(b)(iii).) During his civil contempt hearing held on September 25, 2005, in the Ventura County Superior Court respondent made numerous misleading statements in his response to the charging documents and later in his statements to the court concerning his conduct at the traffic court hearing. Respondent's statements were a continuation of dishonest behavior directed to the court.

Respondent's deceitful behavior in this matter continued. On September 16, 2005, respondent wrote a letter to a State Bar investigator regarding his conduct in the Bordeaux matter. The letter contained numerous false statements concerning his conduct at the traffic court hearing, including that he had no opportunity to announce his appearance as Mr. Bordeaux's attorney; that he never indicated that he was Mr. Bordeaux; that he did not expect the police officer to testify regarding the personal identification of Mr. Bordeaux; that he asked the officer *if* Mr. Bordeaux had a beard at the time of the citation and, when the officer started describing him at trial, he asked the officer why he was describing respondent; and that Judge Cloninger wanted to push through the Bordeaux case. The evidence clearly shows that respondent was aware that

his statements to the court in the civil contempt hearing and his statements in his letter to the State Bar were not truthful when made.

Respondent's misconduct harmed significantly a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Judge Cloninger's calendar was disrupted by his having to stop the proceedings and address respondent's misbehavior. Further, the superior court had to conduct additional proceedings (the contempt hearing) because of respondent's conduct.

Respondent lacks an appreciation or understanding of his misconduct. (Std. 1.2(e)(v).) Respondent made the misleading statements in the contempt hearing *after* being contacted by the State Bar about the initial incident with Judge Cloninger - a time when his sensibility toward his ethical responsibilities should have been heightened.<sup>3</sup>

## **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 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the review department noted in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) The court also looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be

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<sup>3</sup>The contempt hearing was held on September 28, 2005. Respondent answered the State Bar investigator's contact by letter dated September 16, 2005.

balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Std. 1.7.)

Respondent has been found culpable in one client matter of violating section 6068, subdivision (d) and 6106 because he misled a court as to his identity in a court proceeding. He presented no evidence mitigation. There are serious aggravating factors, more fully discussed above, including prior discipline,<sup>4</sup> multiple acts of misconduct, other instances of uncharged misconduct (misleading the court in the contempt hearing and misleading the State Bar in its investigation), harming the administration of justice and demonstrating a lack of appreciation or understanding of his misconduct.

Standards 2.3 and 2.6 apply in this matter as to the level of discipline. The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

The State Bar seeks disbarment, relying on standard 1.7's recommendation of disbarment after two prior disciplinary matters unless the most compelling mitigating circumstances clearly predominate, but without analyzing the levels of discipline imposed in comparable cases.

Respondent seeks 60 days' actual suspension and, in any case, no more than nine months' actual suspension.

The court found instructive *Davis v. State Bar* (1983) 33 Cal.3d 231. In *Davis*, discipline consisting of three years' stayed suspension, three years' probation and one year actual

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<sup>4</sup>As previously noted, the first of the two prior disciplinary matters is not considered in aggravation because it is so remote in time. It was considered too remote at the time the parties stipulated to resolve the second disciplinary case in 1994.



suspension was imposed for failing to perform and making misrepresentations in pleadings. In one client matter, Respondent Davis did not file suit or settle his client's case before the statute of limitations expired. Moreover, in the client's malpractice action against him, he filed a verified answer containing false statements, namely that he had not been her attorney and that he had only represented her as to her property damage claims. No mitigating factors were noted. In aggravation, the court considered two prior instances of discipline for similar misconduct - recurring failures to perform and deception. One prior discipline resulted in two years' stayed suspension and probation and the other in one year's stayed suspension and probation. His two prior instances of discipline for similar misconduct demonstrate "an ongoing, substantial disregard for his clients, for the rules of professional behavior, as well as a recurring lack of candor." (*Id.* at p. 241.) The attorney participated in the proceedings. The present case presents more serious misconduct and much greater aggravation.

In this matter, the court is concerned with respondent's calculated employment of a trial tactic that resulted in an abuse of the judicial system. That is a serious breach of an attorney's ethical responsibilities as an officer of the court. However, this wrongdoing was greatly compounded by offenses not charged in the NDC: misleading the court during the contempt proceeding and the State Bar during its investigation. It is particularly noteworthy that respondent misled the court during the contempt hearing after he had responded to the State Bar investigator's contact with him about his conduct with Judge Cloninger. This considerable disregard for the court, the rules of professional behavior and recurring lack of candor, as noted in *Davis*, compel this court to recommend, among other things, substantial discipline of actual suspension for two years and until he complies with standard 1.4(c)(ii), among other things, to protect the public, the courts and the legal profession.

## **VI. Recommended Discipline**

The court recommends that respondent **Roger Carl Christianson** be suspended from the practice of law in the State of California for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the

general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of the stayed suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. Respondent is actually suspended from the practice of law in the State of California during the first two years of probation and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the terms and conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a)(1).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (See Bus. & Prof. Code, 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which he is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, he may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:
  - (a) in the first report, whether he has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all other terms and conditions of probation since the beginning of probation; and
  - (b) in each subsequent report, whether he has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all other terms and conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying

or has complied with the terms and conditions of this probation.

6. During the period of his actual suspension, respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord Rules Proc. of State Bar, rule 3201.)
7. Respondent's probation will commence on the effective date of the Supreme Court order in this matter. And, at the end of the probationary term, if respondent has complied with the terms and conditions of probation, the Supreme Court order suspending respondent from the practice of law for three years and until he complies with standard 1.4(c)(ii) will be satisfied, and the suspension will be terminated.

### **VII. Professional Responsibility Examination**

The court further recommends that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

### **VIII. Rule 9.20 & Costs**

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. Finally, the court 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: January 23, 2008.

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**RICHARD A. PLATEL**  
Judge of the State Bar Court