

**FILED**

NOV 20 2009

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION**

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of )  
)  
**ULYSSES LAFOY COOK, JR.,** )  
)  
A Member of the State Bar. )  
\_\_\_\_\_ )

No. **06-O-10243**

**OPINION ON REVIEW**

The State Bar and respondent Ulysses Lafoy Cook, Jr. both request review of a hearing judge's decision recommending a one-year stayed suspension with two years of probation. The State Bar alleges that Cook committed acts involving moral turpitude, failed to obey a court order and failed to promptly pay funds to a lienholder in one client matter. The hearing judge found Cook culpable only of failing to promptly pay the funds. To support a 90-day actual suspension, the State Bar seeks additional findings of culpability and aggravation. It also contends the hearing judge afforded more mitigation than warranted. Cook wants the culpability finding reversed and the case dismissed.

Upon our independent review of the record (*In re Morse* (1995) 11 Cal.4<sup>th</sup> 184, 207), we uphold the hearing judge's finding that Cook failed to promptly pay funds, and also find that he failed to obey a court order. But we find no factors in aggravation and substantial factors in mitigation. Due to the aberrational nature of Cook's violations viewed in the context of his 27-years of discipline-free practice, we find the hearing judge's discipline recommendation appropriate.

## I. FACTUAL FINDINGS AND CONCLUSIONS OF LAW

In May 1997, Cook was hired to represent Carolyn Hamilton in a workers' compensation claim. At the time, Hamilton had another attorney, Lawrence Drasin, representing her in the matter. On May 6, 1997, Hamilton filed a notice with the Workers' Compensation Appeals Board (WCAB) to replace Drasin with Cook. On May 9, 1997, Drasin filed a Notice and Request for Allowance of Lien to secure his attorney fees.

Cook represented Hamilton for several years and ultimately settled her workers' compensation claim. To memorialize the settlement, the parties executed a Compromise and Release, which explicitly provided:

"The parties further agree that attorney fees paid under this Compromise and Release are to be paid to the Law office of Ulysses L. Cook. Mr. Cook agrees to assume responsibility for the division of these fees between his office and applicant's prior counsel(s). It is further agreed that Mr. Cook will hold defendants harmless and indemnify them for any disputes which arise regarding the division of attorney's fees."

To confirm the settlement, Judge Richard Shapiro signed an order on August 27, 2003.

The order stated that Hamilton was awarded \$105,000 "less attorneys fees of \$15,000 payable to \*Ulysses Cook. [¶] \*Ulysses Cook will adjust Attorney's Fee with prior counsel, with jurisdiction reserved on the WCAB." The order did not specify a deadline for Cook to adjust the fees with Drasin. While the order did state that the defendant carrier was responsible for serving it on "all other parties and line claimants," there is not clear and convincing evidence that Drasin was served with a copy. Drasin testified that he does not remember whether or not he received a copy of the order at the time it was filed.

In September 2003, the defendant sent a check for \$15,000 made payable to Cook, who deposited the funds into his general account. Cook never notified Drasin that he had received the funds. Cook knew that Drasin was Hamilton's prior counsel and that Drasin had a lien to secure payment of his fees. Cook also was aware of the order to adjust attorney fees. However, he made no effort to distribute any portion of the fees to Drasin after the settlement.

In 2005, Drasin learned from counsel for the defendant carrier that the case had settled. In late August of that year, Drasin called Cook's office twice, talked with his staff and requested a reasonable share of the fee award. With no response from Cook by late October 2005, Drasin then wrote to him regarding the unpaid fee. Because Cook did not respond to the letter or the calls, in November 2005, Drasin filed a complaint with the State Bar, and scheduled a hearing before the WCAB to address the fee apportionment. Thereafter, Cook contacted Drasin to negotiate the fee allocation. On April 19, 2006, the day the WCAB was to address the issue, Cook resolved the fee sharing issue with Drasin, and paid him \$2,500 about a week later.

**A. Count One (Failing to Obey a Court Order, Bus. & Prof. Code, § 6103<sup>1</sup>)**

Under section 6103, disbarment or suspension may be appropriate for an attorney who willfully violates an order of a court requiring him to do or forbear an act. The State Bar alleges Cook willfully disobeyed Judge Shapiro's order in violation of section 6103 by failing to notify Drasin that Hamilton's case had settled and by waiting until April 2006 to resolve the attorney fee issue with Drasin. We find that Cook willfully violated the WCAB order by failing to contact Drasin for over two years about the attorney fees lien and failing to timely adjust the fees.

Cook defends his failure to timely adjust the fees by arguing that it is the "custom and practice" in workers' compensation cases to require the lienholder to initiate contact to collect attorney fees. According to Cook, the attorney holding the funds would be at a disadvantage if he were required to start the negotiations because he would be bidding against himself by making the first offer. Even if we were to accept that this is the custom,<sup>2</sup> it is not a practice that can be endorsed. In fact, it contradicts the explicit regulations in workers' compensation cases

---

<sup>1</sup> Unless otherwise noted, further references to section(s) are to this source.

<sup>2</sup> Since we find Cook's evidence regarding custom and practice unpersuasive, we need not address the State Bar's argument that such evidence was inappropriately admitted.

that require parties to make good faith attempts to contact the lienholders and resolve the liens before submitting a resolution to the WCAB. (8 Cal. Code Regs. §10888 [good faith attempt requires at least one contact of each lien claimant by telephone or letter].) Moreover, it violates an attorney's fiduciary obligation to lienholders. (*In Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632 [once attorney has notice of lien, he has fiduciary obligation to lienholder as to funds].)

Cook also argues that he was not required to contact Drasin about the fees because Judge Shapiro ordered the defendant carrier to serve the WCAB order on "all other parties and lien claimants." However, this provision did not relieve Cook of his obligation to timely adjust the fees with Drasin. Even if he believed that the notice from the defendant carrier should have prompted Drasin to make a demand, Cook was required to take action when he did not hear from Drasin for over two years.

Finally, the absence of a specific date in the order for completion of the fee adjustment in no way excused Cook from promptly complying. (*In the Matter of Lantz* (Review Dept. 2000) 4 Cal State Bar Ct. Rptr. 126, 133-134 [where WCAB order directed attorney to refund attorney fee without specifying date, attorney was obligated to promptly comply with such order and withholding attorney fee for over two years without justification was section 6103 violation].) Instead, Cook did nothing for over two years, and his failure to promptly comply with Judge Shapiro's order constitutes a violation of section 6103.

**B. Count Two (Failure to Promptly Pay, Rules Prof. Conduct, rule 4-100(B)(4)<sup>3</sup>)**

By failing to pay promptly Drasin's attorney fees pursuant to the order, the State Bar alleges that Cook also violated rule 4-100(B)(4). Under this rule, an attorney shall promptly pay or deliver, as requested by a client, funds, securities, or other properties in the attorney's

---

<sup>3</sup>Unless otherwise noted, further references to rule(s) are to this source.

possession that the client is entitled to receive. Although not a client, Drasin was a third-party lienholder and Cook was obligated to promptly pay him. The requirements of rule 4-100(B)(4) apply under these circumstances. (See, e.g., *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127-128 [rule requiring prompt payment of client funds on request applies to obligation to pay third parties and attorney violated rule 4-100(B)(4) when he failed to promptly pay liens after request by medical lienholder].)

Despite assuming responsibility to adjust the fee, and being ordered to do so in 2003, Cook did nothing for over two years. Then, when finally confronted by Drasin in August of 2005, Cook ignored the requests for payment. Even according to Cook's testimony, the earliest he responded to Drasin was on November 11, 2005. The fee issue was ultimately resolved in April 2006, but only after Drasin sought redress with the WCAB and filed a State Bar complaint against Cook. Under the circumstances, we find Cook culpable of violating rule 4-100(B)(4). (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [six-week delay in disbursing funds sufficient for violation of rule 4-100(B)(4)].)<sup>4</sup>

### **C. Count Three (Moral Turpitude, § 6106)**

Section 6106 provides that an attorney's commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for disbarment or suspension. The State Bar alleges that Cook violated section 6106 when he failed to give Drasin notice of Judge Shapiro's order and failed to adjust the attorney fees until April 19, 2006 – the same facts relied upon to support a finding that Cook violated the court order in count one. These facts, without more, support neither a finding of gross negligence nor the necessary intent or guilty knowledge to establish moral turpitude. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State

---

<sup>4</sup> We do not find this violation duplicative of count one. An attorney has a statutory duty to obey court orders issued in connection with the attorney's profession (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. 592), which is distinct from the attorney's duty to a client or third party to promptly pay funds.

Bar Ct. Rptr. 234, 241; Cf. *Bambic v. State Bar* (1985) 40 Cal.3d 314, 324 [gross negligence establishing moral turpitude for issuing *numerous* checks with insufficient funds].)

Moreover, a finding of moral turpitude would be at odds with the hearing judge's finding in support of mitigation that Cook had a good faith belief that he had no obligation to notify Drasin.<sup>5</sup> Although this belief was insufficient to protect Cook from a charge of violating a court order, it does "militate against a finding of clear and convincing evidence of ill will or dishonesty establishing moral turpitude." (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 905.)

The State Bar also argues that Cook violated section 6106 because he misappropriated Drasin's share of the fee by placing the funds in his general account and failing to pay Drasin for over two years. However, the State Bar neither alleged nor established that Cook misappropriated the funds. Had the State Bar intended to argue that Cook either misappropriated or converted the funds, it could have properly alleged such misconduct in the Notice of Disciplinary Charges (NDC), thereby providing Cook with notice and affording him opportunity to respond to such allegations at trial. For these reasons, we dismiss count three with prejudice.

## II. PROCEDURAL ISSUES ON REVIEW<sup>6</sup>

The State Bar contends the hearing judge committed multiple errors. First, it argues the hearing judge found several irrelevant facts (i.e., Cook did a better job on Hamilton's case than Drasin; and Drasin "inexplicably destroyed" his file). This argument is meritless since the State Bar did not establish that it suffered actual prejudice as a result. (*In the Matter of Johnson*

---

<sup>5</sup>We do not agree with the hearing judge's finding that Cook's conduct was surrounded by good faith. Cook may have honestly believed that he did not have to notify Drasin, but we find that belief unreasonable. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 976 [good faith beliefs must be honestly held and reasonable].)

<sup>6</sup>Finding no good cause, we deny the State Bar's motion to strike evidence not supported by the record. We also reject as meritless the parties' remaining contentions not specifically addressed in this opinion.

(Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [hearing judges accorded “wide latitude to receive all relevant evidence and actual prejudice must be established before any party is entitled to relief”].) The State Bar also argues that the hearing judge improperly admitted testimony interpreting the meaning of the WCAB order and relied on such testimony to dismiss count one. Since we find Cook culpable as charged in Count One, we need not and do not decide this issue.

We also find no merit to Cook’s contention that the hearing judge denied him due process by refusing to admit the State Bar’s responses to various Requests for Admission. Cook asserts that the State Bar admitted the following: (1) that Hamilton, not Drasin, was Cook’s client; (2) that Hamilton did not ask Cook to pay Drasin; (3) that Drasin wrongly represented to the State Bar that the WCAB order required Cook to place the funds in trust; and (4) that the State Bar certified it had evidentiary support for the factual contentions asserted in the NDC. Cook failed to establish how these facts exonerate him from culpability or cause him actual prejudice. His claim that the hearing judge denied him due process is meritless.

### **III. DISCIPLINE**

We determine the appropriate level of discipline in light of all relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Cook must establish mitigation by clear and convincing evidence while the State Bar has the same burden of proof for aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(e) and 1.2(b).<sup>7</sup>)

#### **A. No Factors in Aggravation**

We do not adopt the hearing judge’s finding that Cook committed multiple acts of misconduct. (Std. 1.2(b)(ii).) We have found him culpable of only two violations that arose

---

<sup>7</sup> Unless otherwise noted, further references to standard(s) are to this source.

from a single transaction – specifically, Cook’s failure to timely adjust a lien. This does not constitute multiple acts of misconduct for the purposes of aggravation. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [violations did not constitute multiple acts where misconduct involved collecting illegal fee and committing act of moral turpitude, and both counts arose from single transaction].)

We also do not adopt the hearing judge’s finding that Cook’s misconduct caused significant harm to Drasin. (Std. 1.2(b)(iv).) While a delay in payment of funds generally causes some degree of inconvenience or frustration to the intended recipient, the State Bar did not offer any evidence to establish that Cook’s delay in paying Drasin \$2,500 caused “significant” harm.

The State Bar contends additional aggravating factors exist. However, it did not sufficiently prove these factors – that Cook committed uncharged misconduct, displayed a lack of candor, failed to cooperate or refused to acknowledge wrongdoing. We do not find clear and convincing evidence of any aggravating factors.

#### **B. Significant Mitigation**

Cook has no prior record of discipline since his admission to practice on June 25, 1976. We accord significant mitigating weight to his 27 years of discipline-free practice. (Std. 1.2(e)(i); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [17 years with no prior record of discipline significant mitigating factor].)

Cook demonstrated good character. (Std. 1.2(e)(vi).) He provided declarations from 15 character witnesses who attested to his overall good moral character and reputation for honesty. These witnesses consisted of a judge, two doctors, and 12 attorneys. Because attorneys and judges have a “strong interest in maintaining the honest administration of justice” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319, “[t]estimony of members of the bar . . . is entitled to great consideration.” (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

But few of these character witnesses demonstrated knowledge of Cook's misconduct, thus reducing the weight we give to this mitigation. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 939.)

Cook displayed nominal remorse. (Std. 1.2(e)(vii).) The hearing judge believed Cook was sincere when he expressed remorse for causing the State Bar to pursue this proceeding. We accord Cook some mitigation under standard 1.2(e)(vii).

Cook's asserted good faith belief does not mitigate his misconduct. (Std. 1.2(e)(ii).) The hearing judge considered this fact in mitigation by finding that Cook honestly believed Drasin should have contacted him to adjust the attorney fees. Even if honestly held, this belief must be reasonable to warrant mitigation. (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 50 [good faith mitigation requires attorney's belief to be honestly held and reasonable].) We find it unreasonable for Cook to think he could ignore compliance with Judge Shapiro's order and simply do nothing but wait for years for Drasin to contact him. Cook's two and one-half year delay in adjusting the fee was neither reasonable nor justified. Therefore, we do not find mitigation under this standard.

### **C. Level of Discipline**

In determining the appropriate level of discipline, we first consider the standards applicable to this case. While we are "not compelled to strictly follow [the standards] in every case," we look to them for guidance. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) They should generally be given great weight to ensure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220.)

We find that standard 2.2(b) is the most pertinent to the disciplinary analysis in this case. This standard states that Cook's violation of rule 4-100(B)(4) "shall result in at least a three

month actual suspension from the practice of law, irrespective of mitigating circumstances.”<sup>8</sup>

The State Bar acknowledges that this standard has not been applied in every case involving a rule 4-100 violation. Indeed, the Supreme Court has found that departures from standard 2.2(b) are warranted where substantial mitigation exists. (*Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1099-1100 [standard 2.2(b) not applied and public reproof imposed where trust account violations were aberrational and where “there was much mitigation” in good faith and good character].) We believe that the present case warrants such a departure.

For more than 27 years of practice, Cook has never been disciplined. We find this very significant. When considered with his character evidence, Cook’s discipline-free practice leads us to conclude that his ethical lapse here was aberrational. Moreover, Cook poses no threat to the public. The compelling mitigation “demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in [the] standards. . . .” (Std. 1.2(e).) Under these facts, we find that it would be “unduly harsh” to recommend a 90-day actual suspension. (*Brockway v. State Bar* (1991) 53 Cal.3d 51, 66 [minimum one-year suspension under std. 2.2(a) for misappropriation not imposed].)

The purpose of a State Bar disciplinary proceeding is not to punish the attorney, but to protect the public, to preserve confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3.) With this goal in mind, we find appropriate the hearing judge’s recommendation of a one-year period of stayed suspension with two years of probation. This determination is supported by precedent that found it appropriate under similar circumstances to deviate from strict application of the minimum three-month suspension under standard 2.2(b). (*In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354,

---

<sup>8</sup>The other relevant standard is 2.6, which states that violation of section 6103 “shall result in disbarment or suspension depending on the gravity of the offense, or the harm, if any, to the victim . . . .” In light of the three-month minimum suspension suggested under standard 2.2(b), we focus on it as the more severe sanction. (Std. 1.6(a).)

370-371 [45-day suspension recommended where attorney posed no threat to public and where good faith, absence of harm, emotional difficulties, good character, remorse, and cooperation constituted substantial mitigation]; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [two months' stayed suspension and one year probation for unilateral withdrawal of fees from trust account not involving moral turpitude, plus failure to notify client of receipt of settlement and to render accounting]; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716 [private reproof for failure to place disputed funds in trust account by attorney with no prior record, strong character evidence and extensive pro bono activities as mitigation].)

#### IV. RECOMMENDATION

We recommend that Ulysses Lafoy Cook, Jr. be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for two years subject to the following conditions

1. During the period of probation, Ulysses Lafoy Cook, Jr. must comply with the State Bar Act and the Rules of Professional Conduct.
2. Ulysses Lafoy Cook, Jr. 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.
3. Subject to the assertion of applicable privileges, Ulysses Lafoy Cook, Jr. must answer fully, promptly, and truthfully any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
4. Within 10 days of any change, Ulysses Lafoy Cook, Jr. must report to the Membership Records Office of the State Bar, 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 of the Business and Professions Code.
5. Within one year after the effective date of the discipline, Ulysses Lafoy Cook, Jr. must provide to the Office of Probation satisfactory proof of attendance at a session

of the State Bar Ethics School and State Bar Client Trust Accounting School, and passage of the test given at the end of each session.

6. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter. At the expiration of the period of this probation, if Ulysses Lafoy Cook, Jr. has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for one year will be satisfied and that suspension will be terminated.

### **PROFESSIONAL RESPONSIBILITY EXAMINATION**

We also recommend that Ulysses Lafoy Cook, Jr. take and pass the Multistate Professional Responsibility Examination (MPRE) administered 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. Failure to pass the MPRE within the specified time results in actual suspension, without further hearing, until passage.

### **COSTS**

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 20, 2009, I deposited a true copy of the following document(s):

**OPINION ON REVIEW FILED NOVEMBER 20, 2009**

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

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

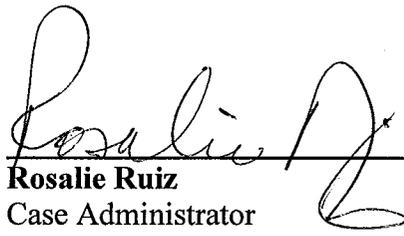
**PHILLIP FELDMAN**  
**LAW OFFICE OF PHILLIP FELDMAN**  
**14401 SYLVAN ST STE 208**  
**VAN NUYS, CA 91401**

**ULYSSES L. COOK JR**  
**3255 WILSHIRE BLVD #705**  
**LOS ANGELES, CA 90010 - 1411**

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

**KIMBERLY G. ANDERSON, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 20, 2009.

  
\_\_\_\_\_  
**Rosalie Ruiz**  
Case Administrator  
State Bar Court