PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED MARCH 2, 2011

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 06-O-11022; 06-O-11190
	)	
ROY CHESTER DICKSON,	)	OPINION
	)	
A Member of the State Bar, No. 105583.	)	
	)	

The hearing judge found respondent, Roy Chester Dickson, culpable of one count of the unauthorized practice of law (UPL) for filing a Petition for Writ of Mandate (Petition) in the California Court of Appeal while he was on disciplinary suspension. The judge dismissed two additional counts of moral turpitude for lack of clear and convincing evidence. Dickson appeals the judge's culpability determination and his finding in aggravation that Dickson was dishonest as the result of misrepresentations in his declaration in support of a request for a continuance in this disciplinary matter. Dickson further contends that the recommended discipline of one year of actual suspension is "excessive." The State Bar asks us to affirm the hearing judge's findings and discipline recommendation because "a one year suspension is within the appropriate range of discipline."

In the exercise of our de novo review of the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's culpability determination and his findings in aggravation. However, we find some evidence in mitigation while the hearing judge found none.

This is Dickson's fourth disciplinary proceeding. Even though the misconduct here does not fall on the more serious end of the spectrum, it occurred while Dickson was on suspension and probation when he should have been keenly aware of the need to adhere to the highest standards of professional conduct. We conclude that the recommended discipline of one year is within the scope of the Standards for Attorney Sanctions for Professional Misconduct[1] as interpreted by the decisional law.

I. PROCEDURAL AND FACTUAL BACKGROUND

The State Bar of California initiated the proceedings in case number 06-O-11022 by filing a notice of disciplinary charges (NDC) on October 10, 2008.[2] The NDC charged Dickson with engaging in UPL and improperly holding himself out as entitled to practice, in willful violation of Business and Professions Code section 6068, subdivision (a).[3] Prior to trial, Dickson entered into a Stipulation as to Facts and Admission of Documents, which established many of the material facts set forth herein.

Pursuant to an order of the California Supreme Court, Dickson was actually suspended on December 3, 2005, from practicing law for 75 days arising from a prior disciplinary proceeding wherein he was found culpable of trust account violations in three client matters. Accordingly, Dickson was not entitled to practice law from December 3, 2005, until February 16, 2006. On February 13, 2006, he filed a Petition in the California Court of Appeal, Fourth District, on his

[1] All further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, unless otherwise noted.

[2] The NDC also alleged two counts of moral turpitude in an unrelated case (No. 06-O-11190), arising from Dickson's 10-month delay in returning a $21,508.80 fee that he had mistakenly obtained due to a judgment lien. At trial, the hearing judge dismissed that case for lack of clear and convincing evidence. The State Bar does not contest the dismissal of these counts, and we see no grounds to disturb that dismissal or to discuss these counts further.

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

own behalf challenging a subpoena of his files and records issued by the Orange County District Attorney, who was conducting an investigation of a capping scheme.[4]

Dickson stated in the Petition that he was appearing in pro per. Additional references in the body of the Petition stated he was "Petitioner Roy C. Dickson, Esq., an Attorney at Law" and "Petitioner, Roy C. Dickson, Esq., dba Dickson & Associates . . . a licensed California Attorney." The Petition was signed "Dickson & Associates, a Professional Corporation by Roy C. Dickson, Esq." In the verification to the Petition, Dickson stated under penalty of perjury that he was "an attorney duly licensed to practice in all courts of the State of California, and am the attorney, in pro per for Petitioner herein." He signed the verification "Roy C. Dickson, Esq. Attorney in pro per for Petitioner."

Dickson was under no deadline pressure to file the Petition and had he waited two days, he would have been entitled to make the above representations. Furthermore, at the time he filed the Petition, the Court of Appeal understood his status to be that of a suspended attorney appearing on his own behalf.

The hearing judge filed his decision on March 9, 2010, finding Dickson culpable of UPL aggravated by dishonesty, and recommended a one-year actual suspension.

II. CULPABILITY DISCUSSION (CASE NO. 06-O-11022)

Count One charged Dickson with violating section 6068, subdivision (a), by holding himself out as practicing law when he was not an active member of the State Bar, in violation of sections 6125 and 6126.[5] We adopt the hearing judge's finding that Dickson engaged in UPL

[4] The record contains no evidence that Dickson was either charged with or convicted of a capping offense.

[5] Conduct constituting UPL is a crime under section 6126. Thus, "charging a respondent with a violation of section 6068(a) by reason of [an] alleged violation of section . . . 6126 provides the basis for the imposition of professional discipline . . . ." (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.)

when he improperly held himself out as entitled to practice before the Court of Appeal, thereby willfully violating section 6068, subdivision (a). (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575.) Dickson correctly argues that it was permissible for him to represent himself and to file the Petition in the Court of Appeal on his own behalf even though he was not entitled to practice law. It has long been the general rule in California that "'any person may represent himself, and his own interests, at law and in legal proceedings . . . .' [Citation.]" (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 965.)

Nevertheless, it was impermissible under section 6126, subdivision (b), for Dickson to represent, under penalty of perjury in the verification to the Petition, that he was entitled to practice as "an attorney duly licensed to practice in all courts of the State of California." This misrepresentation, as well as several others in his Petition as to his then-current status as a practicing attorney, constituted UPL. (C*rawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes mere holding out that one is entitled to practice law]; (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 88-89, 91 [suspended attorney found to have created false impression that he was currently able to practice by using term "Member, State Bar of CA" and honorific "ESQ." next to his signature on job application].) An attorney simply "cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present . . . ability to practice law." (*In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. at p. 91.)

Although the Court of Appeal understood Dickson was appearing in pro per as a suspended attorney, we find that his misrepresentations about his status as entitled to practice constitute a violation of section 6126, subdivision (b). The mere act of holding himself out was sufficient to establish culpability; it does not matter that the court did not rely on those

misrepresentations or was not in fact deceived. (*In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. at pp. 91-92.)

Dickson admitted at trial that the Petition contained errors in listing his law firm as a petitioner, identifying himself as a licensed attorney, and using the term "Esq." According to Dickson, these mistakes occurred when he inadvertently used an old macro from another petition to draft the Petition. The court rejected his claim of inadvertence or mistake as "inexcusable" and "not credible."

Like the hearing judge, we reject Dickson's claim that his UPL was "a simple oversight." He did not misrepresent that he was entitled to practice just once, but did so several times. Given his status as a suspended attorney with three prior disciplines and the fact that his statements were made under penalty of perjury, Dickson was at least grossly negligent in failing to carefully review the Petition to ensure its accuracy in every respect, including the description of his status as an attorney on suspension. (*In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. at p. 91 [finding UPL based on gross negligence].)

III. DISCIPLINE DISCUSSION

A. MITIGATION

The hearing judge found no factors in mitigation. However, upon our independent review, we accord Dickson some mitigative weight because he cooperated with the State Bar by entering into a Stipulation as to Facts and Admission of Documents. Although the stipulated facts were not difficult to prove (compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable]), the stipulation was relevant and assisted the State Bar's prosecution of the case. We therefore assign limited mitigation for cooperation. (Std. 1.2(e)(v).)

B. AGGRAVATION

The record establishes two serious factors in aggravation.

First, Dickson has three prior disciplines. (Std. 1.2(b)(i).) In 1998, he was given a public reproval for misconduct in two matters. He stipulated to failing to act competently, promptly return files and property to a client, respond to a client, cooperate in the investigation and maintain his official membership records. In mitigation, Dickson was candid and cooperative during the proceeding, was suffering from emotional/physical difficulties and returned client funds.

In 2001, Dickson was suspended for six months, stayed, and placed on probation for four years. He stipulated to two counts of incompetence and two counts of failing to respond to clients or keep them apprised of significant developments. In aggravation, Dickson had a prior record of discipline. In mitigation, he was candid and cooperative during the proceeding, suffered from eye ulcers and was regularly attending Alcoholics Anonymous meetings.

The State Bar stipulated in the instant case that the prior misconduct in 2001 coincided with the earlier misconduct in 1998, which would have resulted in one instance of discipline had they been prosecuted simultaneously. Based on the State Bar's stipulation, the hearing judge determined that the 1998 and 2001 matters should be treated as one prior record of discipline, and we concur.

In 2005, Dickson was again disciplined, actually suspended for 75 days and placed on probation for two years. On this occasion, Dickson stipulated to misconduct involving trust account mismanagement in three matters and failing to support the laws of California. In aggravation, Dickson had a prior record of discipline and trust funds or property were involved. In mitigation, Dickson was remorseful and acted in good faith.

The second factor in aggravation is that the present misconduct was followed by dishonesty and concealment. (Std. 1.2(b)(iii).) Dickson's sworn declaration in support of a continuance of the disciplinary trial below contained misrepresentations about his various commitments to legal proceedings that purportedly conflicted with his trial date. Some of those misrepresentations were untrue at the time he drafted the declaration on July 1, 2009, and others were untrue after he failed to correct or update the information. For example, Dickson stated with respect to the case of *People v. Edgar Perez*: "Trial is set for July 13, 2009, but is trailing [another case] in Department C-38." As of the date Dickson signed the declaration, this representation was untrue. In fact, on June 19, 2009, Dickson was present at the Trial Setting Conference in the *Perez* case when the superior court issued a minute order vacating the July 13, 2009 trial because the defendant failed to appear. The judge did not continue the case, set a new trial date or order that it trail another matter. Rather, the judge issued a bench warrant for the arrest of the defendant. The hearing judge in this matter, who relied on the misrepresentations in granting a continuance of Dickson's trial, was in the best position to know whether he was actually deceived, and we find no reason to reverse his finding of dishonesty.

C. LEVEL OF DISCIPLINE

In determining the appropriate level of discipline, we look to the applicable standards for attorney misconduct as well as the case law for guidance. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) The standards are guidelines and do not mandate the discipline to be imposed (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5), but we afford them great weight to further the uniform application of disciplinary measures. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 1.3 states that the purposes of disciplinary proceedings and sanctions are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 2.6, which applies to cases involving violations of sections 6068, 6125 and 6126, provides for suspension or disbarment depending on the gravity of the offense or the harm. Clearly, the most relevant standard is standard 1.7(b), which provides for disbarment when an attorney has two or more prior disciplines unless "the most compelling mitigating circumstances clearly predominate."

Dickson's mitigation evidence is not compelling nor does it clearly predominate over the strong evidence in aggravation. However, the Supreme Court has not in every instance ordered disbarment under standard 1.7(b) even in the absence of compelling mitigation. (*Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year actual suspension despite lack of compelling mitigation].) In fact, the Supreme Court does not apply standard 1.7(b) in a rote fashion, and neither does this court. Rather, we examine the nature and chronology of prior discipline records in standard 1.7(b) cases, recognizing that "[m]erely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

When considering the facts and circumstances unique to this case, we conclude that disbarment is unnecessary to protect the public, the courts and the profession. Dickson cooperated with the State Bar in these proceedings, and in the past, he stipulated to all of his prior disciplines. More importantly, while Dickson's earlier misconduct was serious, his current offense is not as serious nor did it result in significant harm. His UPL occurred as the result of one pleading. We thus take into account that there is no "continuing misconduct of increasing severity." (*In the Matter of Trousil, supra,* 1 Cal. State Bar Ct. Rptr. at p. 241.)

Disbarment may be rejected, even in those cases where standard 1.7(b) is applicable, if the misconduct is deemed not serious. (See, e.g., *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [attorney with four prior disciplines received 11-month actual

suspension for six probation violations including failing to cooperate with probation monitor].) Cases involving UPL generally range from 30 days' to six months' suspension where there has been repeated prior misconduct. (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. 229 [attorney with three prior disciplines received 30-day actual suspension for single charge of UPL due to compelling mitigation and no misconduct for six years after UPL]; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 [90 days' suspension for UPL, aggravated by moral turpitude and one prior suspension for 75 days].) Even with the additional weight given to the aggravating circumstances under standard 1.2(b)(iii), such conduct would not necessarily warrant disbarment. (See, e.g., *Bach v. State* Bar (1987) 43 Cal.3d 848 [60 days' actual suspension for attorney who intentionally misled judge about order to produce his client even though attorney previously received public reproval].) Indeed, where deceit is involved, the Supreme Court has not necessarily "ordered disbarment except where there is other serious *and habitual* misconduct." (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958, italics in original.)

Even though Dickson's misconduct should not necessarily result in the most serious of discipline, the fact remains that it occurred after he had been involved in three prior disciplinary proceedings and while he was on probation. Given his extensive experience with the discipline system, he should have taken the utmost care in meeting his professional obligations. "Each of [the prior] disciplinary orders provided him an opportunity to reform his conduct to the ethical strictures of the profession." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) After weighing the case law, the standards, and the factors in mitigation and aggravation, we adopt the hearing judge's recommendations, including, inter alia, that Dickson be actually suspended from the practice of law for a period of one year.

IV. RECOMMENDED DISCIPLINE

Accordingly, it is recommended that Roy Chester Dickson be suspended from the practice of law for two years, that execution of the suspension be stayed, and that Dickson be placed on probation for two years, with the following conditions:

1. He must be suspended from the practice of law for the first year of his probation;

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation;

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar Office of Probation;

4. He 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 of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 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, he must answer fully, promptly, and truthfully any inquiries of the Office of Probation that are directed to him, personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;

6. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School; and

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAM

We further recommend that Roy Chester Dickson be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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 Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. RULE 9.20

We further recommend that Roy Chester Dickson be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 proceeding.[6] Failure to do so may result in disbarment or suspension.

VII. 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.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.

[6] Dickson 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.)