

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

In the Matter of)	Case No. 06-O-11673-RAP
)	
JOHN HARVEY BRAMLETT,)	AMENDED DECISION
)	
Member No. 171763,)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) appeared by Paul T. O'Brien, Alan Gordon and Shari Sveningsen at various times in the proceeding. Respondent JOHN HARVEY BRAMLETT did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that, whether or not the pending disciplinary recommendation in State Bar Court case no. 05-O-03932 is accepted by the Supreme Court, a two-year stayed suspension with a six-month actual suspension to remain in effect until respondent pays the sanctions and files the affidavit as required by the December 9, 2004, order of the United States District Court for the Eastern District of California in *JJ Kent, Inc. v. Terry Mao*, USDC case no. CIV-S-04-1584 MCE/KJM; and until he complies with rule 205 of the Rules of Procedure of the State Bar,¹ among other things, is adequate.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on October 12, 2006, and was

¹Future references to rule 205 are to this source.

properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section² 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On October 19, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on December 12, 2006.

Respondent did not file a responsive pleading to the NDC. On November 9, 2006, a motion for entry of default was filed and properly served³ on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of one year's actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

On November 29, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested.

Pursuant to Evidence Code section 452, subdivision (d)(1), the court judicially notices its records which indicate that none of the correspondence that the court mailed to respondent at his official address was returned as undeliverable.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The matter was submitted for decision without hearing after the State Bar filed a brief on December 15, 2006.

²Future references to section are to the Business and Professions Code.

³The proof of service of this document includes an insignificant error, namely the term "#1908" after the complete and correct post office box number of respondent's address. The address was otherwise correct.

A decision was filed on March 15, 2007. On March 22, 2007, the State Bar filed a motion for reconsideration regarding the decision, which the court granted in part and denied in part. In its order regarding the reconsideration motion, the court also vacated its March 15 decision and the case's submission date and reopened the record. The court also ordered that the matter was submitted as of the date the order was filed and stated that it would be filing this amended decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on October 21, 1994, and has been a member of the State Bar at all times since.

B. Facts

Respondent is not admitted as a member of the bar of the United States District Court for the Eastern District of California (district court) or of the United States Court of Appeals for the Ninth Circuit.

The district court's local rule 83-180(b) requires, in relevant part, that only members of its bar are entitled to practice there.⁴

⁴The NDC did not allege this requirement; however, pursuant to the State Bar's request on March 22, 2007 and to Evidence Code sections 452, subdivision (d)(2) and 458, the court judicially notices the district court's local rule.

On August 9, 2004⁵, respondent filed a complaint in the district court on behalf of the plaintiff in *JJ Kent, Inc. v. Terry Mao*, USDC case no. CIV-S-04-1584 MCE/KJM (Kent matter).

On August 6, 2004, the district court issued an order requiring a joint status report to be filed within 60 days. The order reminded respondent about his duties pursuant to rule 26(f) of the Federal Rules of Civil Procedure (28 U.S.C.) and ordered him to provide the court with a discovery plan and information set forth in the order. Respondent was served with, received and understood the import of the order. He did not file either a joint report or an individual report explaining why the joint report was not filed.

On November 5, 2004, the district court issued an order to show cause why sanctions should not be issued against respondent for not complying with the August 6, 2004, order and set a hearing for December 6, 2004. Respondent was served with, received and understood the import of the November 5, 2004, order.

Respondent did not appear at the December 6 OSC hearing. On December 9, 2004, the district court issued an order, which was filed the next day, imposing \$500 in sanctions against respondent. The court also ordered respondent to file an affidavit along with the payment stating that the sanctions were “paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys’ fees or costs.” The sanctions were to be paid within 10 days of the effective date of the order and respondent was to provide proof of payment within five days of the payment. Respondent was served with, received and understood the import of this order.

Respondent did not pay the sanctions, ask for relief or file any other document with the district court in the Kent matter after the sanctions order was issued.

On February 15, 2005, the State Bar opened an investigation on case no. 06-O-11673 pursuant to a notice received from the district court regarding respondent’s unpaid sanctions. On

⁵The NDC states that the complaint was filed in 2005. This appears to be a typographical error because the other dates that are set forth in the NDC are from 2004. However, based on the allegations contained in the NDC, the court cannot ascertain the correct information, i.e., what year the events in question took place, and is finding, based on the repetitiveness of the date, that the events in question took place in 2004.

April 19 and June 12, 2006, a State Bar investigator sent respondent letters asking him to answer in writing specific allegations of misconduct regarding the Kent matter by May 1 and June 22, 2006, respectively. Although respondent received the letters, he did not answer them or otherwise communicate with the investigator.

C. Conclusions of Law

1. Count 1 - Rule of Professional Conduct⁶ 1-300(B)(Unauthorized Practice of Law in Another Jurisdiction)

Rule 1-300(B) prohibits an attorney from practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

There is clear and convincing evidence that respondent wilfully violated rule 1-300(B) by filing a complaint in the Kent matter when he was not admitted to practice in the district court as required by its local rule 83-180(b).

2. Count 2 - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not appearing at the OSC hearing, paying the sanctions, asking for relief or filing any other document with the district court as ordered in the Kent matter after the sanctions order was issued, respondent wilfully disobeyed a court order in wilful violation of section 6103.⁷

⁶Future references to rule are to this source.

⁷The court is not finding respondent culpable of a section 6103 violation for not filing the joint status report or an explanation of why he did not do so. Filing such documents would have necessitated his practicing law which would have been inconsistent with his suspension from the practice of law. (*Cf., In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 573 - 574 [Duties to perform and not to improperly withdraw from representation pursuant to former Rules of Professional Conduct, rules 6-101(A)(2) and 2-111(A)(2), are incompatible with the duty of the suspended attorney to cease practicing immediately and until he or she is returned to good standing].)

3. Count 3 - Section 6068, subdivision (i) (Not Participating in a Disciplinary Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not answering the State Bar's letters of April 19 and June 12, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Kent case in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁸, std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) The State Bar Court's decision in case no. 05-O-03932, filed October 31, 2006, recommends discipline of two years' stayed suspension and actual suspension for 45 days and until respondent complies with rule 205, among other things, for violations of rule 3-110(A) and section 6068, subdivision (i) in one client matter occurring between July 2005 and January 2006.⁹ Aggravating circumstances were multiple acts of misconduct and not participating in the disciplinary proceedings prior to the entry of default. This latter factor was afforded little weight because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

The aggravating effect of this prior discipline is diminished as it is not indicative of

⁸Future references to standard or std. are to this source.

⁹This matter is pending finality in the California Supreme Court. It is, nonetheless, considered a prior disciplinary record. (Rules Proc. of State Bar, rule 216(a) and (c).)

respondent's inability to conform to ethical norms and, therefore, the court will consider the totality of the findings in both cases to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) The "prior" instance of discipline addresses conduct that occurred between July 2005 and January 2006, *after* the gravamen of the misconduct found regarding the Kent case (August - December 2004). Although the State Bar received the district court's notice and opened an investigation in the present case in February 2005, an initial investigatory letter was not sent to respondent until April 2006. His response to that letter was due on April 19, 2006. On May 10, 2006, however, the State Bar filed the NDC solely as to the conduct addressed in the prior disciplinary case. The prior case was resolved by a default decision issued on October 31, 2006, about two weeks after the NDC in the present case was filed.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than nearly nine years of discipline-free practice prior to the commencement of the misconduct in this case. (*In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85, 89.)¹⁰

C. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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

¹⁰Respondent had been admitted to practice for nearly 10 years when the misconduct commenced in August 2004 but he was suspended for about 13 months between September 27, 1999 and November 1, 2000 for nonpayment of State Bar membership fees.

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).)

Standard 2.6 (a) and (b) applies in this matter. It recommends, in relevant part, suspension or disbarment for violations of sections 6068 and 6103, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

Another applicable standard is standard 1.7(a), which provides that, when an attorney has one prior record of discipline, the discipline imposed in the current proceeding shall be greater than that imposed in the prior. However, standard 1.7(a) is not to be strictly applied in the present proceeding because, as previously noted, the misconduct found herein was committed prior to the time period as the misconduct found in respondent's prior disciplinary case and, therefore, is not indicative of his inability to conform to ethical norms. Therefore, the court will consider the totality of the findings in both cases to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

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

Respondent has been found culpable of violating sections 6068, subdivision (i) and 6103 and Rules of Professional Conduct 1-300(B) in one client matter. In the prior case, he was found culpable of violating section 6068, subdivision (i) and rule 3-100(A). In aggravation, the court

herein considered, but discounted, the effect of one prior disciplinary record. In the prior case, the court found multiple acts of misconduct and discounted the negative effect of respondent's lack of participation in the proceedings prior to the entry of default. There were no mitigating factors except nearly nine years of discipline-free practice.

The State Bar suggests three years' stayed suspension and actual suspension for six months and until respondent complies with rule 205 as adequate discipline. The court agrees as to the actual suspension but adds the recommendation that respondent remain actually suspended until he pays the sanctions and files the affidavit as ordered by the district court on December 9, 2004.

The State Bar cited *In the Matter of Wells* (Rev. Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896 in support of its discipline recommendation. Respondent Wells received a two-year stayed suspension with two years' probation on conditions, including actual suspension of six months and until he made restitution. He was found culpable, in two client matters, of misconduct including violations of rules 1-300(B), 4-200(A), 3-700(D)(2), 4-100(A) and section 6106. Respondent Wells participated in the proceedings. Aggravating factors included a prior record of discipline, multiple acts of misconduct, significant harm to the public, the administration of justice and her clients and indifference toward the consequences of her misconduct. In mitigation, the court found extreme emotional distress, evidence of good character and cooperation with the State Bar by entering into a stipulation of material facts. *Wells* presents greater misconduct, mitigation and aggravation than the present case but he participated in the proceedings. Respondent herein did not participate in this or in his other discipline case, a significant concern for the court.

Respondent's misconduct and lack of participation in this and the prior disciplinary matter raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can glean none.

Because the prior disciplinary recommendation is pending with the Supreme Court, the court must make alternate discipline recommendations in this case. (Rules Proc. of State Bar, rule 216(c).) Accordingly, having considered the evidence and the law, the court believes that, whether or not the pending disciplinary recommendation in State Bar Court case no. 05-O-03932 is accepted, a six-month actual suspension to remain in effect until respondent pays the sanctions and files the affidavit as required by the December 9, 2004, order of the United States District Court for the Eastern District of California in *JJ Kent, Inc. v. Terry Mao*, USDC case no. CIV-S-04-1584 MCE/KJM; and until he complies with rule 205, among other things, is adequate to protect the public and proportionate to the misconduct found.

V. DISCIPLINE RECOMMENDATION

Whether or not the discipline recommendation in State Bar Court case no. 05-O-03932 is accepted by the Supreme Court, IT IS HEREBY RECOMMENDED that respondent JOHN HARVEY BRAMLETT be suspended from the practice of law for two years; that said suspension be stayed; and that he be actually suspended from the practice of law for six months and until he pays the sanctions and files the affidavit as required by the December 9, 2004, order of the United States District Court for the Eastern District of California in *JJ Kent, Inc. v. Terry Mao*, USDC case no. CIV-S-04-1584 MCE/KJM; and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court. (Rule 205(a), (c), Rules Proc. of State Bar.)

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

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of 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. (See also, rule 205(b).)

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.¹¹

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year from the effective date of the Supreme Court's order or during the period of his actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar.

¹¹Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

VI. COSTS

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

Dated: April 2, 2007

RICHARD A. PLATEL
Judge of the State Bar Court