

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 07-O-13831-RAP
)	
ROGER CARL CHRISTIANSON)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 54993)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **Roger Carl Christianson** is charged with two counts of misconduct in one client matter. The alleged misconduct includes failing to avoid interests adverse to a client (Count 1) and committing an act of moral turpitude (Count 2 [amended]).¹

For the reasons stated below, it is recommended that respondent be disbarred from the practice of law.

II. PERTINENT PROCEDURAL HISTORY

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on March 24, 2008. On May 2, 2008, respondent filed a response to the NDC.

¹ On April 16, 2009, upon completion of the Office of the Chief Trial Counsel of the State Bar of California’s case-in-chief, the court granted respondent’s motion to dismiss [amended] count two (Count 2) of the Notice of Disciplinary Charges.

A three-day trial was held on the following dates: April 14, 15, and 16, 2009. The State Bar was represented by Deputy Trial Counsel (DTC) Ashod Mooradian. Respondent was represented by attorney David Cameron Carr.

On April 14, 2009, the parties filed a Stipulation as to Facts and Admission of Documents, which the court accepted. As noted, *ante*, on April 16, 2009, on motion by respondent and upon completion of the State Bar's case on culpability, the court issued an order dismissing [amended] count two (Count 2) of the NDC.

On July 20, 2009, following briefing by the parties, the court took this matter under submission.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the evidence, the parties' stipulation,² and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on January 2, 1973, and has been a member at all times since that date.

B. Credibility Determinations

The following witnesses testified at trial: respondent, Susan Castellanos, Mary Duong (telephonically), and Denise Ventura.

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

² The parties agreed that the facts contained in the stipulation constitute an admission of the facts therein.

The court finds the testimony of each witness to be credible. However, the court finds, at times, respondent's testimony, was not credible.

C. The G. E., Jr., Lawsuit

In October 2000, respondent represented G E., Jr ., (GE)³ in a criminal matter. During respondent's representation of GE, respondent asked to borrow money from GE. GE agreed to loan respondent \$27,000; respondent agreed to pay back the \$27,000 loan within two weeks. On October 6, 2000, respondent executed a promissory note for \$27,000, plus 12% interest per annum, naming GE as the beneficiary. At no time did respondent provide security for the loan. Respondent failed to pay back the loan as agreed.

Respondent did not provide GE with any written communication advising him that he may seek the advice of an independent lawyer of his choice. Nor did respondent obtain GE's written consent to the terms of the loan transaction. At trial in this matter, in response to questions from the DTC, respondent admitted that he had not provided GE with any written documents concerning the \$27,000 loan. However, after a recess, in response to questions from his own attorney, respondent testified that he had in fact provided GE with the required written document concerning the loan, but could not find the document. The court finds respondent's initial testimony, that he had not provided GE with any written documents concerning the loan, to be credible; and, the court rejects respondent's self-serving, contradictory testimony as not credible.

From 2000 to 2006, respondent and GE developed a social relationship that sometimes involved meeting for lunch or for drinks. During these meetings, alcoholic beverages were consumed by GE.

³ The court, on its own motion, has identified the client by initials in this Decision and Order of Involuntary Inactive Enrollment.

In or about 2006, GE retained attorney Michael P. Sousa (Sousa) to file a lawsuit against respondent for the money owed. On or about May 15, 2006, Sousa filed a lawsuit on behalf of GE in San Diego Superior Court, entitled *GE v. Roger Christianson* (the civil lawsuit). On or about December 27, 2006, GE and respondent entered into a stipulated judgment in the civil lawsuit. On May 1, 2007, judgment was entered against respondent in the amount of \$55,602.08 (the money judgment). On September 10, 2007, Sousa filed an abstract of judgment with the San Diego County recorder, creating a judgment lien against respondent's real property.

At all relevant times, Sousa represented GE in the civil lawsuit and in subsequent efforts to collect the money judgment from respondent. But, from May 2007 through September 2007, respondent communicated directly with GE regarding the money judgment. GE, however, did not inform Sousa of respondent's communication with him.

On or about June 22, 2007, a felony complaint was filed by the San Diego County District Attorney's Office against GE. In or about September 2007, GE contacted respondent regarding representation in his criminal matter. On September 10, 2007, respondent and GE signed a written agreement, whereby GE would settle the civil lawsuit against respondent in return for respondent's representation of GE in the criminal matter. Respondent's prior existing relationship with GE was a significant factor in obtaining GE's agreement to dismiss or negotiate the money judgment.

On September 10, 2007, Sousa filed an abstract of judgment with the San Diego County recorder, creating a judgment lien against respondent's real property. On or about September 19, 2007, the company that handled respondent's escrow, Tiempo Escrow, Inc. (Tiempo), sent Sousa a request to complete an enclosed demand form. The form consisted of a demand for the full amount due on the money judgment (Escrow Demand); it indicated that the full amount due on

the money judgment would be made at the close of escrow. Sousa completed the demand form for the full amount of the money judgment and returned it to Tiempo that same day.

Later that day, Tiempo contacted Sousa, informing him that respondent and GE had already reached a negotiated agreement regarding the money judgment. At no time did Sousa give respondent permission to talk to GE regarding the money judgment. Prior to September 24, 2007, respondent had not disclosed his communications with GE regarding the money judgment to Sousa.⁴

On September 21, 2007, Sousa wrote to Tiempo, stating that he was GE's attorney in the civil lawsuit regarding the money judgment, and that he learned that respondent was improperly negotiating with GE for full release of the judgment. In his letter, Sousa advised, among other things, that any agreement "extracted" from GE would be legally void.

Following the receipt of Sousa's letter, Tiempo declined to release the judgment lien. Escrow closed and the full amount of the judgment lien was paid to Sousa, who deducted his contingent fee and remitted the balance to GE.

At trial, Sousa testified regarding respondent's relationship and dealings with GE. Sousa's testimony shows that it was his belief that respondent took advantage of GE, while GE was under the influence of alcohol. GE did not testify.

D. Conclusions of Law

Count 1 – Rule 3-300 of the Rules of Professional Conduct⁵ – Avoiding Interests Adverse to a Client

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest

⁴ On September 24, 2007, respondent sent a letter to Sousa in response to a letter from Sousa of that same date, regarding the impropriety of respondent's communications with GE.

⁵ All further references to rule(s) are to this source.

adverse to a client unless the transaction or acquisition is fair and reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition. The purpose of this rule is to "recognize the very high level of trust a client reposes in his attorney and to ensure that that trust is not misplaced. [Citations.] Sadly, this case stands with too many others as an example of an attorney's preference of his personal interests in manifest disregard of the interests of his client." (*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 623.)

Here, respondent entered a business transaction with a client when he negotiated and accepted a loan from GE. "A loan from a client to an attorney, like any attorney-client business transaction, is 'scrutinized with the utmost strictness for any unfairness.' [Citations.] 'The burden is on the attorney to demonstrate that the dealings with the client are fair and reasonable. [Citations.]'" (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 242.)

Respondent received the loan from his client GE for \$27,000 in October 2000, and agreed to pay the money back within two weeks. On October 6, 2000, respondent executed a promissory note for \$27,000, plus 12 % interest per annum, naming GE as the beneficiary. Respondent did not provide security for the loan; and, he failed to pay back the loan as agreed.

Respondent willfully violated rule 3-300 by failing to comply with its prophylactic terms. The terms of the loan were manifestly unfair and unreasonable, because it was not secured. Moreover, respondent did not advise his client in writing that he could consult with independent counsel; nor did respondent provide his client with a loan agreement with full disclosure of its terms or obtain his client's written consent to the loan transaction. Thus, the court finds by clear and convincing evidence that respondent willfully violated rule 3-300.

Count 2 – Business and Professions Code Section 6106⁶ – Moral Turpitude

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

Moral turpitude has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not necessary for moral turpitude, at least gross negligence or some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363,384.)

In the instant matter, the State Bar alleges that respondent committed acts involving moral turpitude by taking advantage of GE and intentionally concealing his communications with GE from attorney Sousa, whom GE hired to obtain the money that he had loaned to respondent.

GE did not testify at the trial in this matter. Sousa testified at trial as to respondent’s relationship and dealings with GE. Sousa’s testimony showed that it was his belief that respondent took advantage of GE, while GE was under the influence of alcohol. However, no clear and convincing evidence was presented at trial to support that belief.

⁶ All further references to section(s) are to this source.

An allegation of moral turpitude is a grave charge and should not be brought lightly. Thus, the court finds that there is no clear and convincing evidence that respondent committed acts of moral turpitude and dishonesty in willful violation of section 6106.

Accordingly, Count 2 is dismissed with prejudice.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)⁷

A. Mitigation

The record does not establish any significant mitigation by clear and convincing evidence. (Rule Proc. of State Bar, tit. IV, Stds for Atty. Sanctions of Prof Misconduct (“standards”), std. 1.2(e).)

B. Aggravation

The record establishes three factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Respondent has three prior records of discipline. (Std. 1.2(b)(i).)

1. By order effective on February 10, 1982, the State Bar Court issued a private reproof in case number 80-O-241 SD for a violation of former State Bar Rules of Professional Conduct, rule 6-101, which occurred in 1979, when respondent failed to properly supervise an attorney to ensure that a court appearance was made on behalf of respondent’s client.

2. In his second disciplinary matter (Supreme Court Order number S046413), effective March 23, 1995, respondent stipulated to a nine-month actual suspension, resulting from a guilty plea in 1994 to two felony counts of violating section 4 of title 18 of the U.S. Code

⁷ All further references to standards are to this source.

(misprision of a felony). The convictions were based on respondent's knowledge of the commission of a felony and his failure to inform federal authorities of the crime. The hearing judge declined to afford respondent's first prior any weight in aggravation due to its remoteness in time and because the misconduct warranted a private reproof.

3. On July 22, 2009, effective August 21, 2009, the Supreme Court suspended respondent from the practice of law for three years, stayed, and placed him on probation for a period of three years, subject to conditions, which include among others, that respondent be suspended from the practice of law for a minimum of the first two years of probation, and that he remain suspended until the he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).) Respondent was found culpable of misleading a judge, a violation of section 6068, subdivision (d), and engaging in misconduct constituting moral turpitude, a violation of section 6106.⁸ There were several aggravating circumstances including respondent's prior record of discipline, a finding of uncharged, but proven misconduct, significant harm to the administration of justice, and lack of recognition of the seriousness of misconduct. Respondent's cooperation with the State Bar in reaching a stipulation was considered as mitigation. (Supreme Court case No. S173413; State Bar Court case No. 05-O-03874.)⁹

⁸ In its Opinion on Review, the court noted that its finding under count one, relating to the section 6068, subdivision (d) allegation, was duplicative of its culpability determination under count two, relating to the section 6106 allegation, since the facts relied on in count one were also included within count two. The court, therefore, assigned no additional weight to the section 6068, subdivision (d) violation alleged in count one in determining the appropriate level of discipline.

⁹ The court takes judicial notice of Supreme Court case No. S173413, which was filed on July 22, 2009, effective August 21, 2009, and which occurred after this matter had been submitted. (Rules Proc. of State Bar, rule 216(a), Evid. Code, § 452.)

Respondent's present misconduct significantly harmed his client. (Std. 1.2(iv).) As a result of respondent's misconduct, his client was forced to retain counsel (Sousa). The client lost the use of his money for seven years; it was not until 2007, that the client received payment on the loan.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent's testimony at trial concerning his non-compliance with rule 3-300 clearly evidences his indifference toward rectification of or atonement for the consequences of his misconduct. Additionally, respondent did not repay the money he had borrowed from GE. After respondent entered into a stipulated judgment in the civil lawsuit, he did not pay the money judgment. Rather, attorney Sousa had to file an abstract of judgment, thereby creating a judgment lien against respondent's real property. Thereafter, the escrow company that was handling the refinancing of respondent's house paid Sousa the full amount of the judgment lien. Sousa deducted his contingent fee and remitted the balance to GE.

V. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "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 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standards 1.7(b) and 2.8. apply in this matter.

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has three prior records of discipline and no mitigation in the instant matter.

Standard 2.8 provides that culpability of a willful violation of rule 3-300 must result in suspension, unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline must be reproof.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Respondent argues that count one of the NDC should be dismissed or, in the alternative that if discipline is imposed it should not exceed one year actual suspension to run concurrently with the recommended discipline in Supreme Court case No. S173413 (State Bar Court case No. 05-O-03874). The State Bar urges that respondent be disbarred; the court agrees.

In this matter, respondent has been found culpable under rule 3-300 of an improper business/loan transaction, which occurred in October 2000, with his client. In aggravation, respondent has three prior records of discipline,¹⁰ has caused significant harm to a client, and has demonstrated indifference toward rectification or atonement.

¹⁰ It would be inappropriate to consider what the discipline would have been, if the charged misconduct in the instant matter, which occurred in 2000, were considered with the charged misconduct in respondent's third disciplinary matter, which occurred in 2005. Such an

Additionally, the court does not view respondent's dealings with GE as a simple business transaction. It is settled that an attorney-client relationship is of the very highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Clearly, respondent breached his fiduciary duty to his client, GE, and abused his trust as GE's attorney. When respondent asked to borrow money from his client, respondent represented that he would pay back the loan in two weeks. Yet, even after GE and respondent entered into a stipulated judgment, approximately six years after the loan was made, respondent did not pay the money judgment as agreed. Moreover, respondent shows no insight into his wrongdoing, arguing that there is no evidence that GE was harmed.

Disbarment is not reserved just for attorneys with prior disciplinary records or a pattern of misconduct. A significant factor is a respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing. (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.)

It is clear that respondent has not learned from his past misconduct or discipline. Respondent was admitted as a member of the California Bar in 1973; his misconduct began in 1979 and although sporadic, it has spanned almost 30 years. While respondent's misconduct may not evidence a "common thread," it evidences a habitual course of failing to comply with professional responsibilities. Moreover, the acts of misconduct have become significantly more egregious with time.

analysis is appropriate only when the charged misconduct in the current disciplinary matter occurred in the same time period as the misconduct in the prior matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) As the misconduct in the instant matter did not occur contemporaneously with the misconduct in Supreme Court case No. S173413 (State Bar Court case No. 05-O-03874) a *Sklar* analysis would be inappropriate in the instant matter.

Respondent has three prior records of discipline. His prior and current conduct are characterized by a blatant disregard of professional responsibilities, including, among other things, dishonesty toward the court and clients and an inability to appreciate the fiduciary nature of his relationship with clients. (See discussion of respondent's prior record of discipline as set forth, *ante*.)

In view of the substance and nature of respondent's disciplinary history, as well as the facts and circumstances of the current misconduct, including the aggravating factors, the lack of mitigation, and respondent's serious lack of insight into his wrongdoing, the court recommends disbarment as necessary to best serve the goals of attorney discipline in this case.

VI. RECOMMENDATIONS

A. Discipline

Accordingly, the court hereby recommends that respondent **Roger Carl Christianson** be disbarred from the practice of law in California, and that his name be stricken from the roll of attorneys in this State.

B. California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.¹¹

C. Costs

It is further 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.

¹¹ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive status pursuant to section 6007, subdivision (c)(4). The inactive enrollment will be effective three days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November 19, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court