STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of **JON JAY EARDLEY,** **Member No. 132577,** A Member of the State Bar.	Case Nos.: **08-O-10075-DFM (08-O-10879; 09-O-18276)** **DECISION**

INTRODUCTION

In this default disciplinary matter, Respondent **Jon Jay Eardley** is charged with four counts of professional misconduct in three matters, including willful violations of Business and Professions Code section 6106[1] (moral turpitude - misrepresentations) [two counts], section 6104 (appearing for a party without authority), and (3) section 6106 (moral turpitude-not sufficient funds checks). The court finds culpability and recommends discipline as set forth below.

SIGNIFICANT 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 October 14, 2010. On December 1, 2010, Respondent filed a response to the NDC.

On November 22, 2010, the parties attended an initial status conference at which the matter was set for trial to begin on March 8, 2011, and to continue from day-to- day until completed.

[1] Unless otherwise indicated, all statutory references are to the Business and Professions Code.

On February 22, 2011, the parties attended a voluntary settlement conference. However, on March 8, 2011, Respondent failed to appear for trial and the court entered his default pursuant to former rule 201 of the Rules of Procedure of the State Bar.[2]

On May 23, 2011, Respondent filed a motion to set aside his default; the State Bar opposed the motion.

On June 10, 2011, the court abated the case, including Respondent's motion to set aside default, pending disposition of another matter regarding Respondent. Thereafter, the other matter was dismissed. On March 25, 2013, a status conference was held and the parties agreed that the instant case should be unabated. On April 12, 2013, the court filed order unabating the case, denying Respondent's motion for relief from default and submitting the matter for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted upon entry of Respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1987, and has been a member of the State Bar of California at all times since that date.

Case No. 08-O-10075

On or about September 26, 2007, Respondent, through his attorney, John Torjessen, filed an application for Stays of Non-Judicial Foreclosure Actions along with Respondent's

[2] Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Because this matte was filed before the new rules were adopted, the court applies the former Rules of Procedure in this matter based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.) Therefore, unless otherwise stated, all references to the Rules of Procedure in this decision are to the former Rules of Procedure, which were in effect prior to January 1, 2011.

declaration in the Los Angeles County Superior Court in the ex parte matter entitled *Thelma Spirtos and Jon Eardley v. Downey Savings and Loan Association, Inc, et.al*, case number BC368163. At that time, the court granted a stay of the foreclosure action until October 29, 2007.

On or about October 26, 2007, Respondent filed an ex parte application for Stays of Non-Judicial Foreclosure Actions along with his declaration in the matter entitled *Michelle Eardley v. Downey Savings and Loan Association, Inc, et.al*, case number BC379528, also filed in the Los Angeles County Superior Court. In that application, Respondent stated that he had not previously applied to any judicial officer for relief. Additionally, in his declaration attached to the application, Respondent stated that he had given notice to the opposing party. The ex parte application was signed by Respondent for attorney John Torjessen. When Respondent signed his declaration, he knew, or should have known that he had filed a prior application with the court and that he had not given legal notice to the opposing side.

Count 1 - Section 6106 [Moral Turpitude - Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

By misrepresenting to the court that he had never presented a prior application and that he had given legal notice to the opposing side when Respondent knew, or was grossly negligent in not knowing, that his statements to the court were not true, Respondent committed an act involving moral turpitude, dishonesty and corruption in willful violation of section 6106.

Case No. 08-O-10879 (Spears)

On February 1, 2008, the Los Angeles County Superior Court issued a temporary conservatorship over Britney Spears (Spears). The court appointed James Spears and Andrew Wallet to act as co-conservators. Spears was represented by counsel.

On February 4, 2008, the same court issued an order stating that Spears was incapacitated. On February 6, 2008, the court ordered that the co-conservators had exclusive authority in relation to Spears' care, as well as decisions regarding her legal representation. The court continued the conservatorship until February 14, 2008.

On or about February 14, 2008, Respondent filed a notice of removal to federal court of the Spears conservatorship action. In the notice, Respondent stated that he was the attorney for Spears. Respondent, however, was not then the attorney for Spears and never had been. Respondent knew, was grossly negligent in not knowing, that he had not obtained consent to represent Spears. Spears incurred fees to defend against Respondent's action.

Count 2 – Section 6104 [Appearing for Party without Authority]

Section 6104 states, "Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension."

Respondent's actions in appearing as counsel for Spears without any authority to do so, constituted a willful violation by him of section 6104.

Count 3 - Section 6106 [Moral Turpitude - Misrepresentation]

By falsely representing in the above removal papers that he was the attorney for Spears, when he knew, or was grossly negligent in not knowing, that this representation was not true, Respondent committed an act involving moral turpitude, dishonesty and corruption in willful violation of section 6106.[3]

Case No. 09-O-18276

From August 10, 2009 through October 7, 2009, Respondent repeatedly issued checks drawn upon his client trust account at Bank of America against insufficient funds. When

[3] Because the finding of culpability under section 6106 is based on the same conduct underlying Respondent's violation of section 6104, this court gives no additional weight to the section 6106 violation. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 400.)

Respondent issued these checks against insufficient funds, he knew or was grossly negligent in not knowing, that he did not have sufficient funds in the client trust account to pay the checks.

Count 4 – Section 6106 [Moral Turpitude – NSF Checks]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. "Writing checks when one knows or should know that there are not sufficient funds to cover them manifests a disregard of ethics and fundamental honesty, at least if such conduct occurs repeatedly." (*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11, citing *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1088; see also *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 58; *Bambic v. State Bar* (1985) 40 Cal.3d 314, 324; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 315.) This is true even though no client funds were involved. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54.)

Respondent's conduct, in repeatedly writing NSF checks on his client trust account, was a willful violation of section 6106. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr 93, 100.)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[4] The court finds the following with respect to alleged aggravating factors.

Multiple Acts

Respondent is culpable of multiple acts of misconduct. This is an aggravating factor. (Std. 1.2(b)(ii).)

[4] All further references to standard(s) or std. are to this source.

Lack of Participation in Disciplinary Proceeding

On November 22, 2010, Respondent attended an initial status conference, at which this disciplinary matter was set for March 8, 2011. On November 23, 2010, the court issued a written Order re Trial Date, Pretrial Conference, Trial Preparation Requirements, which set forth the trial date. The order was properly served on Respondent. Respondent's failure to appear at the disciplinary trial is a serious aggravating circumstance, demonstrating Respondent's a lack of understanding regarding the seriousness of the disciplinary charges and his duty to cooperate and participate in disciplinary proceedings. (Std. 1.2(b)(vi).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

No Prior Record

Respondent failed to appear for the trial in this disciplinary matter. The record in this matter, however, reveals that he had been admitted to the practice of law for almost 20 years with no prior record before his misconduct started in 2007. The Supreme Court has considered the absence of a prior record of discipline in mitigation even when the misconduct was serious. Thus, Respondent's practice of law for almost 20 years with no prior record of discipline is a significant mitigating factor. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.)

DISCUSSION

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

103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

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 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).)

Standards 2.3 and 2.10 apply in this matter. The more severe sanction is found at standard 2.3, which recommends actual suspension or disbarment for an act of moral turpitude, dishonesty toward a court, client, or another person depending upon the extent of harm and the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law. This standard is mirrored by the language of section 6104, which provides that a violation of its proscription is grounds for either suspension or disbarment.

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 binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.)

In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors.

(*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Here, in addition to considering the applicable standards in this matter, the State Bar cites to *Levin v. State Bar* (1989) 47 Cal.3d 1140, and urges that imposing an actual suspension of six months would be appropriate discipline in the instant matter. The court, after having considered the applicable standards, agrees.

In *Levin*, the Supreme Court found that attorney Levin failed to employ means consistent with the truth and willfully attempted to deceive opposing counsel and the court by false statements of fact and also willfully communicated with a party whom he knew to be represented by counsel. In a second mater, the attorney was found culpable of failing to settle a personal injury matter without the consent of the client, failing to notify the client of the receipt of settlement funds in his possession, and failing to provide a proper accounting despite requests from the client. The Supreme Court was most troubled by the attorney's acts of deceit and dishonesty, finding it to be the worst of his misconduct.

Despite the extensive mitigation of the attorney in *Levin*, including being a member of the bar for 18 years prior to the commencement of his misconduct, being prejudiced by a three-year delay in the disciplinary proceedings, cooperating with the State Bar by entering a stipulation, and having no complaints filed against him since the State Bar investigation began, the Supreme Court noted, "each case must be decided on its own merits based on a balanced consideration of all relevant factors [citations]." *Levin v. State Bar*, *supra*, 47 Cal.3d 1140, 1150. The Supreme Court concluded that a review of all the aggravating and mitigating circumstances led the Court to conclude that a six-month suspension from the practice of law was appropriate given the attorney's "various acts of deceit and carelessness evidencing a consistent disregard for the truth."

Like *Levin*, the present matter involves an attorney who engaged in various acts of deceit. Respondent made misrepresentations to the court in the non-judicial foreclosure action (e.g., stating to the superior court that he had not previously filed for judicial relief and that he had given notice of the October 26, 2007 ex parte application to the opposing side, when he knew or was grossly negligent in not knowing, that his statements were untrue. Respondent also stated in the notice of removal of the Spears conservatorship action, which he filed in federal court, that he was the attorney for Britney Spears, when he knew or was grossly negligent for not knowing that his statements were untrue. The court finds Respondent's repeated misrepresentations to be serious and not outweighed by his 20-years of practice without prior misconduct.

And while Respondent's misconduct is not as extensive as that of the attorney in *Levin*, unlike Levin, who was cooperative and participated in his disciplinary matter, Respondent defaulted at trial. Failing to appear and participate in the hearing shows that Respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

RECOMMENDED DISCIPLINE

Actual Suspension

It is recommended that Respondent **Jon Jay Eardley**, State Bar Number 132577, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be suspended from the practice of law for a minimum of six months and until:

1. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and

2. If the period of actual suspension reaches or exceeds two years, Respondent has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also, rule 205(b).)

Probation

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

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of Respondent's suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that Respondent 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 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.[5]

[5] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date that the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any

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: July 8, 2013

DONALD F. MILES
Judge of the State Bar Court

pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. 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 July 8, 2013, I deposited a true copy of the following document(s):

DECISION

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

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

JON J. EARDLEY
6113 CAPOBELLA
ALISO VIEJO, CA 92656

JON JAY EARDLEY
38 SANTO DOMINGO RD.
RANCHO MIRAGE, CA 92270

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MIA ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 8, 2013.

T Cleaver

Tammy Cleaver
Case Administrator
State Bar Court