FILED MARCH 13, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **09-O-14830-RAH**
	)	**(10-O-06395)**
DOUGLAS JAMES CRAWFORD,	)	
	)	
Member No. 202274,	)	**DECISION**
	)	
A Member of the State Bar.	)	

Introduction[1]

In this disciplinary matter, respondent Douglas James Crawford is charged with three counts of professional misconduct in two client matters. The court finds, by clear and convincing evidence, that respondent is culpable of one of the charged acts of misconduct.

For the reasons set forth below, the court recommends discipline consisting of one year's stayed suspension and two years' probation on conditions, including 90 days' actual suspension, among other things.

Significant Procedural History

On August 31, 2012, the State Bar's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) and properly served it on respondent. He filed a response on September 25, 2012.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

The parties entered into a joint stipulation of facts and admission of documents on December 12, 2012.

Deputy Trial Counsel Eli Morgenstern appeared for the State Bar. Respondent represented himself.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on July 12, 1999, and has been a member of the State Bar of California at all times since that date.

Case No. 09-O-14830 – The Lewis, Brisbois, Bisgaard & Smith Matter

Facts

On February 13, 2009, respondent filed a civil lawsuit on behalf of Robert Rolla in the San Diego County Superior Court entitled *Robert Rolla v. Cary Cheldin, et al.* Defendants Eric Thomas, Kearney Mesa Towing, Inc., Cary Cheldin and Crusader Insurance were represented by the firm of Lewis, Brisbois, Bisgaard & Smith (LBBS) in this matter.

On July 13, 2009, respondent filed another civil lawsuit on behalf of Robert Rolla in the San Diego County Superior Court entitled *Robert Rolla v. James Speidel, et al.* Defendants Speidel, Eric Thomas, and KMT, were represented by LBBS in this matter.

On September 21, 2010, respondent sent an e-mail to LBBS attorneys Brian Rawers and Garth Ward, with a copy to LBBS attorneys Ernest Slome and Tim VandenHeuvel (the LBBS attorneys). That e-mail stated the following:

> "Hello Lewis Brisbois Attorneys,
>
> "As a result of Mr. Speidel's and Kearny Mesa Towing's continued refusal to pay Mr. Rolla anything for his wrecked truck and camper, including even the undisputed amount owed, Mr. Rolla is prepared to file Form 211 with the Internal Revenue Service (IRS) to recoup some money indirectly from Mr. Speidel and KMT.
> Through various sources, it is readily apparent that Mr. Speidel has been intentionally under-reporting his income to the IRS for several years. I've requested Mr. Rolla to hold off on sending Form 211 until Mr. Speidel has had a reasonable opportunity to avoid the impact of a IRS audit, to which Mr. Rolla has agreed.
>
> "Mr. Speidel has until September 23, 2010 to start mature, reasonable settlement negotiations with Mr. Rolla, after which time Form 211 with attachments will be mailed

to the IRS setting forth the facts of Mr. Speidel's & KMT's underreporting of income. I will also encourage Mr. Rolla to forward a copy of this correspondence and request for settlement negotiations to Mr. Speidel and Crusader Insurance/Cary Cheldin directly to ensure Mr. Speidel and Mr. Cheldin are fully informed of the repercussions of their failure to initiate or participate in resolving this "Small Claims matter that should have been resolved without the use of attorneys" (LBBS script).

"I would encourage you, LBBS attorneys, to ask Mr. Speidel if an IRS audit would be of any consequence. If the answer is yes, then I would ask Mr. Cheldin what the consequences of a "bad faith" action would have against UNICO America and his relationship with California Department of Insurance.

"If I do not hear back from you, which is typical, I will assume that you have received this correspondence and have no interest in negotiating further.

"Best regards,
Douglas J. Crawford
Attorney for Robert Rolla"

Conclusions

Count One - (Rule 5-100(A) [Threatening Criminal, Administrative, or Disciplinary Charges])

Rule 5-100(A) of the Rules of Professional Conduct provides that an attorney must not threaten to present administrative, criminal, or disciplinary charges to obtain an advantage in a civil dispute.

By sending the September 10, 2010 e-mail to the LBBS attorneys, threatening to have his client trigger an audit with the Internal Revenue Service against LBBS's clients, Speidel, and/or KMT, unless Speidel "started mature settlement negotiations with Mr. Rolla," respondent willfully threatened to present criminal and/or administrative charges in order to obtain an advantage in a civil matter in willful violation of rule 5-100(A).

Case No. 10-O-06395 – The Jantz Matter

Facts

In December 2008, Didier F. Jantz, representing himself, filed a limited civil action in the San Diego County Superior Court entitled *Didier F. Jantz v. Tony Klaus, et al.*[2] In this lawsuit, respondent subsequently served a notice of deposition and deposition subpoena on Jantz's counsel, Bond, which noticed Jantz's deposition for June 26, 2009. He never personally served the notice of deposition and the deposition subpoena on Jantz. However, it appears that Jantz and his attorney were, nevertheless, prepared to attend the deposition but had problems with the location (an automotive garage) and the date and time. They wrote to respondent and stated their objections.

On July 6, 2009, apparently without responding to the objections as to location, date and time, respondent filed a limited civil action on behalf of Anthony Kraus in the San Diego County Superior Court entitled *Anthony F. Kraus v. Didier F. Jantz, et al*. In this matter, Kraus sought damages from Jantz due to Jantz's failure to appear at the deposition in the *Jantz v. Kraus* lawsuit. Bond represented defendant Jantz in the *Kraus v. Jantz* lawsuit. This action was brought under Code Civ. Proc. §1992, providing for a forfeiture of $500 for a witness' disobedience to a subpoena.

On July 14, 2009, Bond filed a demurrer and motion to strike the complaint in the *Kraus v. Jantz* lawsuit. On October 9, 2009, he filed a motion for sanctions against plaintiff Kraus and respondent in the *Kraus v. Jantz* lawsuit, under Code of Civil Procedure section 128.7, on grounds that that lawsuit was frivolous. Respondent filed opposition to each motion.

On October 30, 2009, the court held a hearing on defendant Jantz's demurrer and motions to strike and for sanctions but continued it until November 13, 2009, when the court took each motion under submission. On November 16, 2009, the court issued its minute orders sustaining the demurrer without leave to amend and addressing the motion for sanctions against respondent. A January 13, 2010, order awarded sanctions in the amount of $4,650 solely against respondent. The order did not set forth a time frame for payment of the sanctions.

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[2] This was a misspelling of the defendant's last name. A first amended complaint correcting this error was subsequently filed by attorney Cary Richard Bond on Jantz's behalf, entitled *Didier F. Jantz v. Anthony F. Kraus, et al.*

Respondent, on behalf of plaintiff Kraus, appealed to the Appellate Division of the San Diego County Superior Court, which, on November 28, 2011, affirmed the judgment of dismissal and upheld the trial court's order sustaining the demurrer without leave to amend. The Appellate Division also dismissed plaintiff Kraus' appeal of the order imposing sanctions against respondent.[3]

On September 18, 2012, respondent paid $4,650 in sanctions to Bond as ordered by the court in the *Kraus v. Jantz* lawsuit. In October 2012, respondent paid Bond $1,243.33 in interest on the sanctions. Respondent noted in these proceedings that the sanctions were a money judgment that could be collected at any time but that Bond made no effort to collect the judgment. He further noted that he paid the sanctions and interest after the commencement of the disciplinary charges not because of the pendency of the charges but because the proceedings reminded him of his obligation to pay the sanctions.

Conclusions

Count Two - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

The State Bar contends that bringing the action under Code Civ. Proc. §1992 was inappropriate, since personal service of the deposition subpoena was not properly made upon the plaintiff in the *Jantz v. Kraus* lawsuit. However, the stipulated facts in this action state that respondent "served a Notice of Deposition and deposition subpoena on Plaintiff Jantz's counsel…" It is true that in current discovery practice, a notice of deposition listing requested documents is typically served on counsel for a party, and a subpoena duces tecum, personally served on a witness, is used for non-party witnesses. However, the two documents considered together as served on the attorney should have provided sufficient notice to the represented party

[3] During the instant proceedings, respondent noted that, in proceeding as he did in the Jantz matter, he was trying to be novel or different and using "all the tools in his belt." There was not an exclusive means of resolving these matters. He felt that motions to compel discovery were burdensome.

as to the date, time, and location of the deposition, and the documents he was required bring. Further, while the procedure contemplated by Code Civ. Proc. §1992 may have been primarily drafted for non-party witnesses, it appears it may be properly enforceable against represented parties by service only on their counsel. (*Church v. Payne* (1939) 35 Cal.App.(2d)(Supp.) 752.)

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense. Under these circumstances, the State Bar has not proven by clear and convincing evidence that respondent counseled or maintained the Code Civ. Proc. §1992 proceeding for an illegal or unjust cause.[4] As such, count two is dismissed with prejudice.

Count Three - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

There is not clear and convincing evidence that respondent violated §6103 by not paying or not timely paying the sanctions because the order awarding them did not set forth a time frame for payment.

[4] The court does question respondent's use of this procedure, when more effective and efficient procedures for compelling attendance and production of documents were available through the discovery rules. The resulting flurry of motions and appeals in the San Diego County Superior Court consumed enormous court resources. While the use of Code Civ. Proc. §1992 was perhaps legally available to him, his actions in refusing to discuss the opposing party's suggested alternative dates and location, and instead, preemptively filing the Code Civ. Proc. §1992 proceeding, reduce civil litigation to a game, unduly occupy our judicial system, and reflect a disregard for this important societal institution.

Aggravation[5]

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Although respondent eventually paid the sanctions and accrued interest, Jantz was deprived of the use of the funds by respondent's delay. Moreover, respondent's forging ahead with the Code Civ. Proc. §1992 litigation without discussing alternative dates and locations for the Jantz deposition unduly burdened the other party and the court.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

Respondent still does not understand his wrongdoing in the LBBS matter and the questionable nature of his actions in the Jantz matter.

Mitigation

Prior Record of Discipline (Std. 1.2(e)(i).)

Respondent's blemish-free record in about 10 years of practicing law at the time the misconduct commenced is entitled to significant mitigating credit. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 (over 10 years of practice); *In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85, 89.)

Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent was candid and cooperative during these proceedings. However, this is afforded minimal mitigating weight because respondent stipulated only as to easily proven facts. Moreover, his actions were not spontaneous, since the stipulation occurred after these proceedings commenced.

Discussion

[5] All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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 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).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.6(a) and 2.10 apply in this matter. The most severe sanction is prescribed by standard 2.6 which suggests suspension or disbarment depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

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.)

This case involves threatening criminal or administrative charges and noncompliance with a court's sanctions order in two client matters. In aggravation, the court found harm and lack of remorse and insight. Mitigating factors include no prior disciplinary record, a significant factor, and cooperation, which was afforded minimal weight.

The State Bar recommends three years' stayed suspension and three years' probation on conditions including six months' actual suspension. Respondent, at trial, sought a private reproval.

The court found instructive *Crane v. State Bar* (1981) 30 Cal. 3d 117 and *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.

In *Malek-Yonan*, discipline was imposed consisting of five years' stayed suspension and five years' probation on conditions including 18 months' actual suspension. She was found culpable of prolonged and gross negligence over one and one-half years in managing her office and client trust account resulting in the theft of $1.7 million by non-attorney staff; and threatening to present criminal, administrative or disciplinary charges to gain an advantage in a civil dispute with a debt collector. Multiple acts and a pattern of misconduct as well as a lack of insight were found as aggravating factors. No prior discipline was found in mitigation. Some mitigating effect was afforded to good character evidence, pro bono work and the taking of remedial steps. The instant case has significantly less misconduct and mitigating factors and, therefore, merits less discipline. Moreover, the essence of *Malek-Yonan* was the prolonged and grossly negligent supervision of staff and the lax client trust accounting practices that resulted in a large theft.

In *Crane*, an attorney was disciplined for dishonesty, communicating with represented parties and threatening to present criminal, administrative or disciplinary charges to obtain an advantage in a civil action. In one matter, he attempted to deceive an escrow agent by crossing out, without authorization, certain printed language in a statement provided by the beneficiary under a first trust deed and sending it to the escrow company handling the sale without advising that he had made the unauthorized changes on the statement. In another matter, respondent wrote twice to parties he knew were represented by counsel and, in the final letter, made a

notation that copies were being sent to two government agencies whose "assistance" would be sought in arriving at a solution. The attorney had been in practice about six years at the time the misconduct commenced. No aggravating or mitigating factors are set forth. One years' stayed suspension and one year's probation was imposed as discipline. Although there is greater misconduct in *Crane* than in the instant case, the latter has significant aggravating and mitigating factors. Accordingly, greater discipline is merited in the present case.

Having considered the facts and law, the court recommends, among other things, actual suspension of 90 days. The court is very concerned about respondent's lack of remorse and insight into his behavior in litigation because it may be an indication of likely recidivism. The legal system is undermined by making threats and ignoring other parties' legitimate scheduling concerns or by bringing unnecessarily burdensome litigation to already overcrowded courts. It is particularly offensive when lawyers engage in these behaviors. Incivility and scorched-earth tactics jam the judicial system, are costly to parties in both time and treasure and tarnish the image of *all* lawyers, not just those who engage in them. The court hopes that respondent will consider these thoughts in his future practice and modify his behavior accordingly.

Recommendations

It is recommended that respondent **Douglas James Crawford**, State Bar Number 202274, 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 placed on probation[6] for a period of two years subject to the following conditions:

1. Respondent **Douglas James Crawford** is suspended from the practice of law for the first 90 days of probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct and all of the conditions of respondent's probation.

[6] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. 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 respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10 and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

7. Within one year after the effective date of the discipline herein, respondent 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 respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

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.

California Rules of Court, Rule 9.20

It is recommended that respondent each 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 and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

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: March _____, 2013

RICHARD A. HONN
Judge of the State Bar Court