

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No. 10-O-07402-RAH |
| |) | |
| DANNY ROBERT TAYLOR, |) | DECISION |
| |) | |
| Member No. 91924, |) | |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Introduction

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent DANNY ROBERT TAYLOR¹ with failing to comply with the conditions of his disciplinary probation. The State Bar was represented by Deputy Trial Counsel Kimberly G. Anderson. Respondent was represented by Attorney David Clare.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. For the reasons set forth below, the court recommends discipline including a minimum period of actual suspension of two years.

¹ Respondent was admitted to the practice of law in California on June 3, 1980, and has been a member of the State Bar of California at all times since that date.

Significant Procedural History

The State Bar filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 10-O-07402 on December 1, 2010. That same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Former Rules of Procedure of the State Bar of California (Former Rules of Procedure).² Respondent filed a response to the NDC on December 27, 2010.

On February 24, 2011, the State Bar filed a motion to amend the NDC. On March 17, 2011, the motion was granted and the State Bar filed a First Amended NDC. Respondent filed a response to the First Amended NDC on April 25, 2011.

The State Bar and respondent filed their pre-trial statements on April 28, 2011 and May 11, 2011, respectively. The parties entered into a stipulation as to facts and admission of documents on May 20, 2011. Trial was held on the remaining issues, and the matter was submitted for decision on May 26, 2011.

Findings of Fact and Conclusions of Law³

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

A. Culpability Findings

Facts

² Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Based on the court's determination that injustice would otherwise result, the court applied the Former Rules of Procedure in this proceeding.

³ 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.

On December 2, 2009, the California Supreme Court filed an order in case no. S176780 (State Bar Court case nos. 02-O-13978; 02-O-14009; 02-O-14176 (02-O-14294; 02-O-15414); 02-O-14409; 03-O-01817; 03-O-02331 (Cons.)), suspending respondent from the practice of law for two years, execution of suspension stayed, and placing respondent on probation for three years subject to the conditions of probation, including a condition that respondent be actually suspended from the practice of law for the first five months of the period of probation with credit given for the period of inactive enrollment. Respondent was ordered to comply with the following relevant conditions of probation:

Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

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;

Respondent 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, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

Respondent must pay restitution to the following individuals in the amount set forth below, plus ten percent (10%) interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation: (1) James D. Quinn in the amount of \$1,400.00 plus 10 percent interest per year from December 27, 2001; (2) Tsovik Sepedzhyan in the amount of \$3,135.00 plus 10 percent interest per year from July 22, 2002; and (3) Tran Dinh in the amount of \$500.00 plus 10 percent interest per year from April 30, 2003.⁴

⁴ Respondent was to pay restitution at an initial rate of \$100 a month, commencing on September 15, 2009. Thereafter, respondent's restitution payment would increase by \$25 every

Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;

Respondent was required to contact the State Bar's Office of Probation and schedule a meeting with respondent's assigned probation deputy within thirty (30) days of the effective date of discipline, which would have required respondent to do so by January 31, 2010. Respondent, though, did not receive the Supreme Court order in case no. S176780 in a timely manner because it was originally sent to his former employer, who then forwarded the letter to an old address. Promptly upon receiving the order, respondent called the Office of Probation on February 11, 2010, and scheduled the meeting.

Respondent failed to pay restitution at a rate of \$100 per month between September 2009 and February 2010; \$125 per month between March 2010 and August 2010; and \$150 per month between September 2010 and January 2011. Respondent thought that the excess restitution payments he had made to his client Tran Dinh between October 2007 and September 2008, would satisfy restitution to the other clients. However, after inquiring into the matter, he was told that those payments were not satisfactory. He told the Office of Probation that he would file a motion to modify the terms of probation, however, he never did so. Respondent has also failed to submit proof of these restitution payments to the Office of Probation with his corresponding quarterly report. On March 22, 2010, respondent's probation deputy reminded him to submit an original declaration from Tran Dinh regarding the restitution payment, but it was never received by the Office of Probation.

six months. Respondent was to provide satisfactory proof of restitution to the Office of Probation with each quarterly report.

On January 25, 2010, the Office of Probation sent respondent a letter with quarterly reporting instructions. Respondent, however, failed to timely file his April 10, 2010 quarterly report with the Office of Probation. Respondent did send an email copy of the quarterly report on April 12, 2010, but no original was ever delivered to the Office of Probation as promised during an April 12, 2010 telephone conversation between respondent and his probation deputy.

Respondent also failed to timely file his July 2010, October 2010, and January 2011 quarterly reports with the Office of Probation. These quarterly reports were filed together on January 26, 2011.

In addition, respondent did not timely attend State Bar Ethics School and submit proof of passage of the test at the end of Ethics School, by January 1, 2011. He did do so on February 3, 2011.

Conclusions of Law

Count One – (§ 6068, subd. (k) [Failure to Comply with Probation Conditions])

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By failing to make the monthly \$100 restitution payments from September 2009 to February 2010; by failing to make the monthly \$125 restitution payments from March 2010 to August 2010; by failing to make the monthly \$150 restitution payments from September 2010 to January 2011; by failing to submit proof to the Office of Probation of monthly restitution payments with his corresponding quarterly reports; by filing his April 10, 2010 quarterly report two days late; by failing to timely file his July 2010, October 2010, and January 2011 quarterly reports; and by failing to timely attend Ethics School, respondent willfully failed to comply with the Supreme Court's order in case no. S176780 and all conditions attached to his disciplinary probation.

B. Aggravation⁵

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

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

Respondent has been disciplined on three previous occasions.

On July 12, 2000, the State Bar Court of California filed an order in State Bar Court case no. 99-C-11462 imposing a public reproof, following respondent's conviction for violating Penal Code section 242 (battery), a misdemeanor, and Los Angeles Municipal Code section 41.24(a) (trespass).

On October 3, 2001, the Supreme Court filed an order in case no. S099264 (State Bar Court case nos. 99-O-12424, et al.), suspending respondent from the practice of law for one year, stayed, with a three-year period of probation, including a 30-day actual suspension. In this proceeding, respondent was found culpable of nine counts of misconduct in four separate matters. In mitigation, respondent suffered from severe emotional and economic hardship, he did not harm any clients, and he cooperated with the victims of his misconduct and the State Bar during disciplinary investigation and proceedings. In aggravation, respondent had a prior record of discipline, his misconduct was surrounded by or followed by bad faith or dishonesty, and his misconduct evidenced multiple acts of wrongdoing.

On December 2, 2009, the Supreme Court filed an order in case no. S176780 (State Bar Court case no. 02-O-13978, et al.), suspending respondent from the practice of law in California for two years, stayed, with a three-year period of probation, including a five-month actual

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

suspension. In this proceeding, respondent was found culpable on multiple counts of misconduct in seven matters, including failing to perform legal services with competence, failing to cooperate in disciplinary investigations, issuing checks against insufficient funds, misappropriating \$3,135 in settlement funds, failing to comply with the terms and conditions of his disciplinary probation, improperly withdrawing from employment, failing to maintain client funds in trust, failing to promptly pay out client funds, and engaging in the unauthorized practice of law. In mitigation, respondent successfully completed the ADP and LAP, which qualified as clear and convincing evidence that respondent no longer suffered from the substance abuse issue which led to the conduct. In aggravation, respondent had a prior record of discipline and his misconduct evidenced multiple acts of wrongdoing.

C. Mitigation

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

Lack of Harm (Std. 1.2(e)(iii))

None of respondent's present transgressions significantly harmed a client, the public, or the administration of justice.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv))

Respondent demonstrated, by clear and convincing evidence, that his physical and emotional ailments, as well as his severe financial difficulties, were directly responsible for the bulk of the present misconduct. (See std. 1.2(e)(iv).) Respondent was in an automobile accident on November 25, 2009, in which he totaled his car and experienced soft tissue injuries. Between December 4, 2009 and April 22, 2010, respondent sought medical treatment for his injuries,

which included constant pain in his neck, lower back, and legs. He was prescribed pain, sleep, and stress medications including Ambien, Risperdal, Soma, Sertraline, and Tramadol.

Due to some of the medications, respondent experienced adverse effects, including hallucinations, changes in mood, headaches, dizziness, fatigue, and mental confusion. His doctor referred him to an acupuncturist for alternate treatments. The acupuncturist noted in a February 24, 2010 progress report that after 12 treatments between December 2009 and February 2010, respondent's mental confusion had subsided.

After the accident, respondent did not return to full-time activity at either of the two offices of the Institute for Multicultural Counseling and Education Services (IMCES), where he had been employed full-time since October 2008. Though he continued to work occasionally, he received his last paycheck in December 2009.

Due to the nature of his injuries, respondent was placed on temporary total disability from January 2010 to December 2010. The disability payments he received were used to repay loans and to pay for car rentals after the automobile accident.

Respondent was terminated from his job at IMCES on March 4, 2010. In 2010, respondent's total income was \$2,000, and thus far in 2011, it has been less than \$1,000. To pay for living expenses, respondent has borrowed money from various people, including his mother-in-law.

From December 2009 to July 2010, respondent's wife's two teenage children moved in with them. Soon thereafter, respondent became involved with their child custody battle, which created additional stress and anxiety.

Respondent also sought psychological counseling for his work-related stress. On February 15, 2010, an employee's claim for workers' compensation benefits was filed on behalf

of Mr. Taylor, indicating that he sustained sleep disorder, and continuous exposure to stress and harassment on a continuing trauma basis from October 3, 2008 through February 12, 2010.

On June 13, 2010, respondent suffered a slip and fall accident outside a welfare office. The fall re-aggravated some of his physical injuries, and objective tests by his acupuncturist showed that respondent suffered a great deal of pain along with limited mobility.

On November 24, 2010, respondent's roommate claimed respondent had committed a battery. Respondent was arrested for misdemeanor battery. Respondent was in such financial distress at the time that he couldn't pay to bail himself out, so he remained incarcerated for four days until the case was rejected for filing.

Because of his dire financial situation, respondent was unable to pay the rent and was therefore evicted from two different residences. Respondent has been living in motels since the last eviction and has no other personal property of any value. He has resorted to using public transportation. Respondent also receives welfare payments and food stamps.

Due to the overwhelming series of events, including his automobile accident, termination from work, accommodation of his wife's teenage children, and the evictions, respondent was unable to meet the probation conditions in a timely fashion. Respondent's medication has recently been changed and he testified that he feels much better. He is more focused and has a positive outlook for the future.

Candor and Cooperation with the State Bar (Std. 1.2(e)(v))

Respondent exhibited candor and cooperation to the State Bar during disciplinary investigation and proceedings. In that regard, respondent entered into a stipulation as to undisputed facts. Because of this stipulation, the length of time necessary for trial was dramatically reduced.

Good Character (Std. 1.2(e)(vi))

One character witness commented favorably on respondent's good character. (Std. 1.2(e)(vi).) The attorney has known respondent both professionally and personally for 35 years and was generally familiar with his disciplinary record. Without question, good character testimonials from attorneys and judges are given great weight because such individuals “ 'possess a [keen] sense of responsibility for the integrity of the legal profession.' ” (*In re Menna* (1995) 11 Cal.4th 975, 988, quoting *Warbasse v. The State Bar* (1933) 219 Cal. 566, 571.) However, one witness does not constitute a wide range of references, and as such, the court affords only nominal weight to the attorney's testimony. (See *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438).

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii))

Respondent recognized and acknowledged the wrongfulness of his conduct. (Std. 1.2(e)(vii).) Respondent plans to pay restitution within two to four weeks with the payments received from his worker's compensation case.

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.)

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.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6(b), 1.7(b), and 2.6 apply in this matter.

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.

Due to respondent's prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

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.)

The State Bar urges that respondent be disbarred. Respondent argues that due to the compelling mitigating circumstances, he should receive no more than a one-year period of actual suspension.

Historically, the California Supreme Court and the Review Department of the State Bar Court have not followed standard 1.7(b) in a rigid fashion. (See *Conroy v. State Bar* (1991) 53 Cal.3d 495; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.) It has generally been held that standard 1.7(b) is to be applied with due regard to the nature and extent of the attorney's prior record. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

Although the present case marks respondent's fourth discipline, the court finds that the nature and extent of the present misconduct do not warrant a recommendation of disbarment. Considering that the present case involves a single count of failing to comply with probation conditions during a period of time when respondent was experiencing significant personal issues, and that he did eventually comply with all of his probation conditions, except for the restitution payments, the court finds a recommendation of disbarment to be excessive and unnecessary. That being said, respondent's prior record of discipline remains a significant aggravating factor.

A disciplinary recommendation must be consistent with the discipline in similar proceedings. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In *In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138, Broderick's misconduct in the probationary proceeding and in concurrent original disciplinary proceedings was significantly related to the prior misconduct for which he had been disciplined insofar as his present and prior wrongdoing involved the disobedience of court orders. Broderick violated the restitution and reporting requirements of his probation. In aggravation, he had a record of prior discipline and committed multiple acts of wrongdoing, as well as an uncharged violation of the therapy requirement of his

probation. In mitigation, he made good faith attempts to pay some restitution and obtain therapy and was candid and cooperative with the State Bar after the filing of his answer to the amended notice to show cause. He also established extenuating personal circumstances. The Review Department recommended, among other things, that Broderick be suspended for a period of one-year.

Respondent's misconduct is more serious than the misconduct found in *Broderick*. Respondent did not satisfy any of his probation conditions in a timely manner. Respondent has three prior records of discipline and at this point, he should be aware of his need for strict compliance with his reporting and payment obligations. Unlike Broderick, respondent did not make a good faith attempt to pay the monthly restitution payments. And, in spite of respondent's continued financial difficulties, he failed to seek a modification of his restitution obligations.

Accordingly, the court recommends, among other things, that respondent be suspended for a minimum of two years.

Recommendations

The court recommends that respondent **Danny Robert Taylor** be suspended from the practice of law for five years, that execution of the suspension be stayed, and that he be placed on probation for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to James D. Quinn in the amount of \$1,400.00 plus 10% interest per annum from December 27, 2001 (or to the Client Security Fund to the extent of any payment from the fund to James D. Quinn, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;⁶

⁶ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

- ii. He makes restitution to Tsovik Sepedzhyan in the amount of \$3,135.00 plus 10% interest per annum from July 22, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Tsovik Sepedzhyan, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation; and
 - iii. Respondent must provide 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).)
2. Respondent must also comply with the following additional conditions of probation:
- i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.
- In addition to all the 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 probationary period;
- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
 - iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his 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;

3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for five years will be satisfied and that suspension will be terminated.

It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as he completed Ethics School on February 3, 2011.

A. Multistate Professional Responsibility Examination

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 and provide proof of passage to the Office of Probation during the period of his actual suspension. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

B. California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the California Rules of Court, rule 9.20 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 matter.⁷

C. 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. Respondent must also reimburse the

⁷ Respondent is required to file a rule 9.20 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* (1998) 44 Cal.3d 337, 341.)

Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

Dated: August _____, 2011

RICHARD A. HONN
Judge of the State Bar Court