NOT FOR PUBLICATION

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case No.: 11-O-13025-RAH**
	)	
ROBERT SCOTT SHTOFMAN,	)	**DECISION**
	)	
Member No. 135577,	)	
	)	
	)	

Introduction[1]

In this disciplinary matter, respondent Robert Scott Shtofman is charged with and found culpable, by clear and convincing evidence, of three counts of professional misconduct in one client matter.

The State Bar's Office of the Chief Trial Counsel (State Bar) was represented by Deputy Trial Counsel William Todd. Respondent was represented by attorneys Susan and Arthur Margolis.

For the reasons set forth below, respondent is privately reproved.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 29, 2011. Respondent filed a response on February 24, 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.

On May 9, 2012, the parties entered into a joint stipulation as to undisputed facts. Thereafter, on May 14, 2012, the parties entered into an amended joint stipulation as to undisputed facts, which the court approves. A three-day hearing was held on May 14, 15, and 16, 2012.

On May 17, 2012, the parties entered into a joint stipulation as to portions of State Bar exhibits 7-13, which the court approves.

On May 29, 2012, the court vacated the previous submission date, and issued an order admitting portions of exhibits 7 through 13, which were identified in the parties' May 17, 2012 joint stipulation. The court also ordered that the matter be submitted for decision, effective as of May 29, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on September 20, 1988, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-13025 – The Ivoko Matter

Facts

On November 10, 2008, Bernice Chinyere Ivoko (Ivoko), represented by Gregory A. Pavia and Poonam K. Walia, filed a civil complaint in the Superior Court of California, County of Riverside, titled *Bernice Chinyere Ivoko v. Jecinta Azonobi*, case No. RIC512676 (*Ivoko v. Azonobi*). On November 30, 2010, a substitution of attorney was filed, substituting respondent in place of Ivoko's prior attorneys of record.

Respondent's place of residence is in Encino, California. Because respondent was not financially able to pay for the lodging costs without assistance from Ivoko, prior to the commencement of trial, he had made an agreement with Ivoko whereby she would pay for the costs of respondent's lodging in Riverside.

On January 27, 2011, *Ivoko v. Azonobi* was assigned for trial. The judge in this underlying matter was Judge John Molloy. The court asked the parties to prepare three sets of jury instructions and a joint exhibit list for the trial, which was set to commence on January 31, 2011.

Except on the one occasion when Judge Molloy recommended that respondent stay at a local hotel, respondent did not receive any funds from Ivoko for lodging. By the time trial began, the retainer had been exhausted and respondent had received a total of only about $2,000 in attorney fees. As set forth, *ante*, respondent could not afford to pay for the lodging costs on his own. Therefore, respondent made a four-hour roundtrip commute every day between his home in Encino and the Superior Court in Riverside.

On February 2, 2011, respondent appeared late for the trial, because he had misplaced his glasses in the courthouse restroom. On that day, respondent did not present the three sets of jury instructions or the joint exhibit list. The court set a hearing on an Order to Show Cause (OSC) as to why respondent should not be sanctioned for failure to comply with its order to provide jury instructions. Respondent received notice of the OSC hearing, which was scheduled for February 4, 2011, at 1:30 p.m.

On February 4, 2011, the court conducted the hearing on the OSC. Judge Molloy warned respondent that he would sanction respondent, if he felt it necessary to prevent counsel from wasting the jurors' time.

On February 4, 2011, respondent and defense counsel reached an agreement on a list of anticipated jury instructions and an exhibit list. The court ordered respondent to prepare the jury instructions and a properly Bates-stamped Volume Six of the plaintiff's exhibits, which were due on February 7, 2011.[2] Respondent received notice of the order.

[2] In fact, respondent had already completed the jury instructions, but had forgotten them at home.

Respondent, however, failed to appear and present the jury instructions and Volume Six on February 7, 2011, as ordered. He had the jury instructions on his computer; but, his computer was not functioning. Although he had completed the jury instructions, his WordPerfect program had crashed and he was unable to access the document. After he informed the court of the computer program malfunction, Judge Molloy ordered respondent to present the jury instructions by 8:30 a.m. on February 9, 2011. Respondent was able to get the computer repaired on the evening of February 8, 2011.

On February 8, 2011, Volume Six of the exhibits was presented; but, the exhibits had not been properly Bates-stamped due to a clerical error. The court set an OSC hearing re sanctions for February 18, 2011, involving sanctions in the amount of $500 for respondent's failure to present the jury instructions, as well as for additional sanctions, also in the amount of $500, for respondent's failure to present Volume Six of the plaintiff's exhibits to the court. Respondent provided the revised Volume Six later that same day. Respondent received notice of the hearing on the OSCs.

On February 9, 2011, respondent appeared for trial, but failed to present a complete list of jury instructions. The court ordered respondent to present the jury instructions by 8:30 a.m. on February 10, 2011. The court further warned respondent that if he failed to present the instructions, such failure would result in sanctions in excess of $1,000 on February 18, 2011. The court would then report the sanctions to the State Bar pursuant to Code of Civil Procedure section 177.5. Respondent received notice of the order.

On February 10, 2011, respondent, who had been ordered to appear at 8:30 a.m., arrived at 9:40 a.m. He had not called to inform the court that he was going to be late. The trial, however, was not scheduled to begin until 10:00 a.m.; therefore, his late arrival did not delay the proceeding. On that day, respondent presented the jury instructions.

The court set another OSC hearing as to why sanctions in the amount of $1,200 should not be imposed based on respondent's failure to comply with the court's order to provide the jury instructions by 8:30 a.m. The OSC hearing was set for February 18, 2011, in part, to allow the court to evaluate the effect of the court's admonition and to allow respondent to present whatever information he believed was appropriate for the court to consider. Respondent received notice of the OSC.

In his testimony in this proceeding, Judge Molloy noted that on February 18, 2011, he noticed from respondent's demeanor that respondent was sleep deprived. Respondent had been working on the case through the evenings, usually only getting a few hours of sleep each night.

On February 16, 2011, respondent, who was ordered to appear at 9:30 a.m., arrived at 10:45 a.m. The trial was set to commence at 10:00 a.m. Respondent explained that he had left his home at 8:00 a.m. that morning, but had run into rain, an accident, and traffic on his way to court. The court warned respondent that it would set another OSC hearing re sanctions of $500 if respondent was late again; and if respondent continued to be late, the sanctions would be increased by $250 for each additional infraction. The jury was seated at 10:55 a.m. and trial commenced that day.

On February 17, 2011, respondent appeared 13 minutes late for trial because the freeway had been shut down due to an accident, which occurred while he was on his way to the court from home. He called to advise the court of the accident. The court was presiding over a number of other matters on its morning calendar when respondent arrived, so he did not delay the trial. The court set an OSC hearing as to why respondent should not be sanctioned in the amount of $500 for appearing late. On February 17, 2011, respondent submitted a declaration in response to the OSC. On February 18, 2011, the hearing on the OSC re sanctions was continued to February 25, 2011.

On February 22, 2011, respondent was ordered to appear at 9:30 a.m., but arrived at 9:45 a.m. The jurors, however, were not ordered to appear until 10 a.m.; so again, respondent did not delay the trial. The court set an OSC hearing as to why respondent should not be sanctioned in the amount of $750 for appearing late. Respondent received notice of the OSC hearing.

On February 23, 2011, respondent appeared 30 minutes late for the trial. However, Judge Molloy was presiding over other matters, and the trial was not calendared to begin until 10:00 a.m., so respondent again caused no delay. The court set another OSC hearing as to why respondent should not be sanctioned in the amount of $1,000 for appearing late. Respondent received notice of the OSC hearing.

On February 25, 2011, respondent and defense counsel appeared for trial. The court discovered that the jury instructions presented by respondent needed to be changed because of the evidence produced at trial. The court reassigned the preparation of the jury instructions to defense counsel.

On February 28, 2011, respondent appeared four minutes late for the trial because he had misplaced his car keys. The court set an OSC re sanctions pursuant to Code of Civil Procedure section 128.5. The court later determined that section 128.5 was inappropriate and the court vacated that sanctions hearing.

On March 2, 2011, respondent appeared for trial. After the jury was excused, the court and counsel met to finalize the jury instructions. Respondent objected to several instructions that he had previously found unobjectionable and the court ordered respondent to prepare three instructions and present them to the court no later than 9:15 a.m. on March 3, 2011.

On March 3, 2011, respondent appeared at approximately 10:05 a.m. for the morning set of closing arguments. Respondent presented the court with two of the instructions ordered by the

court, but the third instruction was the wrong instruction. The court set an OSC hearing re sanctions of $1,250 for appearing late. Respondent received notice of the OSC hearing.

On March 4, 2011, respondent appeared for the hearing on the OSCs re sanctions. After stating the basis for each of the OSCs, the court permitted respondent to explain his position. The court found that respondent had done nothing to correct his conduct since February 10, 2011, when respondent was warned that one of the reasons for setting the hearing in the future was to evaluate the effect of the court's admonition. The court ordered respondent to pay: (a) $500 to the court within 30 days of the written order with respect to the February 8, 2011 OSC based on his failure to present jury instructions and (b) $1,250 to the court within 30 days of the written order with respect to the March 3, 2011 OSC based on his late appearance in court on that date.

On March 23, 2011, the court filed and served its "Order Re Sanctions," which stated in part, that respondent was ordered to pay sanctions of $500 and $1,250 to the court within 30 days of receipt of the order. Respondent received the order, but did not pay the sanctions to the court within 30 days, file any pleading to request relief from the order within 30 days, or report the imposition of the sanctions to the State Bar within 30 days. Respondent received notice of the order.

Respondent was not financially stable during the trial. He was dealing with the debt from a large, prior trucking case, in which he won on liability for his client, but the money spent on experts for the four separate trials had exhausted the jury award. In addition, the underlying matter was the first case in respondent's career in which respondent was hired on an hourly basis. Ivoko paid respondent a $10,000 retainer, which was entirely depleted by court costs. Respondent received an additional $7,000 during the trial, which was solely used for additional

court costs, and only $2,000 in hourly fees. Respondent sent his client a bill for about $86,000 for all earned fees.

Despite the commute and the caseload, respondent maintained his strong work ethic and won $1,007,000 for his client, which included $400,000 in punitive damages, and exclusive control of the business at issue in the underlying matter. As of September 20, 2011, respondent had not been paid any of his fees. As such, he did not have the funds to pay any portion of the sanctions to the court. Throughout trial Judge Molloy was not aware of respondent's financial circumstances and, therefore, found his consistent failure to follow court orders to be inexcusable.

On September 20, 2011, a State Bar investigator mailed a letter to respondent at his official member records address requesting that respondent respond in writing to a complaint by the court concerning respondent's disobedience of court orders during the trial. The letter requested a written response by September 30, 2011. Respondent received the letter.

On October 5, 2011, respondent faxed and mailed a letter to the investigator that stated that respondent was paying the sanctions that day and filing a motion for reconsideration. The letter further stated that respondent had not reported the sanctions to the State Bar because he had intended on immediately filing a motion for reconsideration that he hoped would be successful, but he "became side-tracked."

On October 5, 2011, respondent filed a motion pursuant to Code of Civil Procedure sections 473(b) and 1008 to set aside and/or modify the order, dated March 22, 2011, imposing sanctions of $1,250, and paid the sanctions of $500 and $1,250. On November 10, 2011, the court heard and denied the motion.

Conclusions

Count One – (§ 6068, subd. (b) [Attorney's Duty to Maintain Respect Due to Courts and Judicial Officers])

Section 6068, subdivision (b), provides that attorneys have a duty to maintain respect due to the courts of justice and judicial officers.

By (a) appearing late and failing to present the jury instructions and joint exhibit list on February 2, 2011; (b) failing to appear on February 7, 2011; (c) appearing one hour and ten minutes late on February 10, 2011; (d) appearing one hour and 15 minutes late on February 16, 2011; (e) appearing 13 minutes late on February 17, 2011; (f) appearing 15 minutes late on February 22, 2011; (g) appearing 30 minutes late on February 23, 2011; (h) appearing four minutes late on February 28, 2011; and (i) appearing 50 minutes late for closing arguments on March 3, 2011, respondent failed to maintain the respect due to the courts of justice and judicial officers, in willful violation of section 6068, subdivision (b).

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

Section 6103 provides, in 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.

By (a) failing to appear and present the jury instructions and a properly Bates-stamped Volume Six of the plaintiff's exhibits on February 7, 2011; (b) failing to present the jury instructions on February 8, 2011; (c) failing to present the complete list of jury instructions on February 9, 2011; and (d) failing to pay sanctions of $500 and $1,250 to the court or request relief from the order to pay sanctions within 30 days, respondent willfully violated court orders requiring him to do acts in the course of his profession, which he ought to have done in good faith, and, thereby, willfully violated section 6103.

Count Three - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3), requires an attorney to report, in writing, to the State Bar the imposition of judicial sanctions within 30 days of the time the attorney has knowledge of the imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than $1,000.

By failing to report to the State Bar, in writing, within 30 days of the time he had knowledge of the March 23, 2011 sanctions, respondent willfully failed to report the imposition of judicial sanctions against him in willful violation of section 6068, subdivision (o)(3).

Aggravation[3]

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) Respondent was found culpable of multiple acts of misconduct in one client matter.

Mitigation

Respondent bears the burden of providing mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

No Prior Record (Std. 1.2(e)(i).)

Respondent's lack of a prior record of discipline in approximately 23 years of practice of law at the time his misconduct commenced in 2011, is a substantial factor in mitigation. (Std. 1.2(e)(i).)

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

At the time of the misconduct, respondent suffered serious stress as a result of his financial circumstances. Although no expert testimony was offered, the court finds the testimony of respondent credible on this issue. (Cf. *In the Matter of Torres* (Review Dept. 2000)

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

4 Cal. State Bar Ct. Rptr. 128, 153-154.) Respondent did not have enough savings to pay the costs and expenses of a prior trucking case and was behind on his mortgage and various other payments. For these reasons, he could not afford to pay for his own lodging closer to the courthouse during the trial in *Ivoko v. Azonobi*.

Respondent's, whose usual practice it was to handle a case with co-counsel, had expected to have co-counsel throughout the *Ivoko v. Azonobi* trial. However, one potential co-counsel was fired by Ivoko and then another dropped out due to medical issues. As a result, during the trial in *Ivoko v. Azonobi*, respondent was commuting four hours each day and averaging about four hours of sleep per night. This sleep deprivation sometimes caused him to become preoccupied and disoriented, resulting in the aforementioned instances of misplaced glasses and car keys.

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

Respondent presented evidence of his good character through the testimony of several character witnesses. (Std. 1.2(e)(vi). According to all the character witness, respondent was honest, always acted with integrity and diligence, and cared about his clients. Respondent had revealed to these witnesses the full extent of the charges pending against him. Accordingly, their testimony is entitled to considerable weight in mitigation.

Moreover, included among the witnesses testifying on his behalf were attorneys. It is well-established that good character testimonials from attorneys 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, citing *Warbasse v. The State Bar* (1933) 219 Cal. 566, 571.) Attorney Ludwik Krzemuski described respondent as an "outstanding obsessive compulsive workaholic," who was devoted to his clients. Attorney Jose Perez testified that he has had the opportunity to observe respondent in court and always has found respondent

to be on time and respectful to the court, opposing counsel, and his clients. Attorney Charles Odiase testified that he has worked with many attorneys in the past and has never seen anyone as hard working as respondent. Accordingly, this court gives weight to the testimony of these attorneys, who all described respondent as an honest individual, who acts with integrity.

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

Respondent has expressed recognition for his wrongdoing. He testified that if he were to do another case, he would avoid the commute issue by making arrangements to lodge closer to the courthouse; he would make sure he got paid by his client in a timely fashion; and he would either obtain co-counsel or make a motion to be relieved if the workload was too strenuous to provide effective counsel. Respondent also testified that he now prepares all court documents months in advance to avoid untimely filings.

Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of 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 2.4(b) and 2.6 apply in this matter. The more severe sanction is found at standard 2.6 which recommends suspension or disbarment for violations of sections 6068 and 6103, among others, depending on the gravity of the offense or 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.) As the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable in one client matter of violating sections 6103 and 6068, subdivisions (b) and (o)(3). In mitigation, the court considered good character and financial difficulties, as well as approximately 23 years of blemish-free practice, which is a significant mitigating factor. In aggravation, the court considered respondent's multiple acts of misconduct.

The State Bar recommends one year suspension, stayed, with two years' probation. The court, however, does not agree that actual suspension is necessary and finds that private reproval is sufficient to protect the public in this instance.

The court finds *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 to be instructive. In *Respondent X*, discipline was imposed consisting of a private reproval. Respondent was found culpable of violating his statutory duty to obey court orders and breaching his fiduciary duty. The court found no factors in aggravation. In mitigation, respondent had no prior discipline in 18 years, he was under great pressure, and he held sincere beliefs that he was acting in support of sound public policy.

The instant case presents less misconduct and greater mitigation. Respondent never acted in bad faith. When he was retained, he was not financially able to pay for lodging in Riverside for himself. Therefore, as set forth, *ante*, respondent and Ivoko had made an agreement whereby

she was to pay for respondent's lodging in Riverside. Based on his agreement with Ivoko, respondent reasonably expected financial assistance and compensation from his client, which he did not receive. He expected assistance on the case from co-counsel, which he also did not receive. Despite the commute and the caseload, respondent performed with diligence, maintained his strong work ethic, and won an extensive award for his client, which included punitive damages and exclusive control of the business which was at issue.

Albeit respondent failed to maintain the respect due to the courts of justice and judicial officers by appearing late to trial on numerous occasions, it was, in part, a series of unfortunate events, including a freeway shut down, bad weather, misplaced items, a clerical error, and a computer malfunction that caused respondent's delays. The disrespect occasioned by these delays was also borne out of respondent's desire to produce the best work product he could in representing his client. Although he never attempted to withdraw from the case, respondent did attempt to make his commute more efficient – but to no avail, as he continued to be late.

Having considered the parties' contentions, the facts, and relevant law, the court has determined that a private reproval is the appropriate level of discipline to protect the public and preserve public confidence in the profession.

Disposition

It is ordered that respondent Robert Scott Shtofman, State Bar Number 135577, is privately reproved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, the private reproval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the private reproval imposed in this matter. Failure to comply with any condition(s) attached to the private reproval may

constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct.

Respondent is ordered to comply with the following conditions attached to his private reproval for one year following the effective date of the private reproval:

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

2. 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;

3. During the reproval 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 reproval 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 reproval 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 the reproval 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 reproval period and no later than the last day of the reproval period;

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

5. 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.)

Dated: August 15, 2012

RICHARD A. HONN
Judge of the State Bar Court

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 August 17, 2012, 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:

ARTHUR LEWIS MARGOLIS ESQ
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

William S. Todd, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 17, 2012.

Julieta E. Gonzales
Case Administrator
State Bar Court