

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-O-14606-LMA
)	
RICHARD ANTHONY LIMA,)	
)	DECISION & ORDER OF INVOLUNTARY
Member No. 184783,)	INACTIVE ENROLLMENT (Bus. & Prof.
)	Code, § 6007, subd. (c)(4).)
<u>A Member of the State Bar.</u>)	

Introduction

In this contested, original disciplinary proceeding, respondent **RICHARD ANTHONY LIMA** is charged with violating his duty, under Business and Professions Code section 6068, subdivision (k),¹ to comply with the conditions of the five-year disciplinary probation that the Supreme Court imposed on him in its November 24, 2010 order in *In re Richard Anthony Lima on Discipline*, case number S186380 (State Bar Court case number 08-O-11604, 09-O-10021, and 10-O-02760 (consolidated)) (*Lima I*). As stated below, this court finds, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (k) by willfully failing to comply with three of the conditions of that probation.

In view of the serious misconduct found in the present proceeding, the nature and extent of respondent’s prior record of discipline (i.e., *Lima I*), and the lack of any significant mitigation in the present proceeding, the court concludes that the appropriate discipline recommendation for respondent’s violations of section 6068, subdivision (k), as set forth below, is disbarment.

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

Because the court recommends that respondent be disbarred, it must also order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding. (§ 6007, subd. (c)(4).)

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Bruce H. Robinson. Respondent appeared in propria persona.

Significant Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on August 31, 2011. Thereafter, respondent filed a response to the NDC on October 3, 2011. And, on October 11, 2011, the parties filed a partial stipulation as to facts.

A one-day trial was held on December 14, 2011. And, following closing arguments on December 14, the court took the case under submission for decision.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on December 9, 1996, and has been a member of the State Bar of California since that time.

Probation Violations

In the Supreme Court's November 24, 2010 order, the Supreme Court placed respondent on five years' stayed suspension and five years' probation with conditions, including a three-year suspension continuing until respondent made restitution totaling more than \$36,000 in ten client matters and made restitution in three additional client matters in amounts to be determined by fee arbitration and until respondent established his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The Supreme Court imposed that discipline in accordance with a

stipulation as to facts, conclusions of law, and disposition that respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed in *Lima I* on August 10, 2010. Accordingly, respondent knew and agreed to each of the conditions that the Supreme Court attached to his disciplinary probation in *Lima I*.

The Supreme Court's November 24, 2010 order in *Lima I* became effective on December 24, 2010, (Cal. Rules of Court, rule 9.18(a)) and has remained in effect since that time. Likewise, respondent's five-year disciplinary probation under the Supreme Court's November 24, 2010 order began on December 24, 2010, and respondent has continuously been on probation under that order since that time.

Notice of the Supreme Court's November 24, 2010 order was properly served on respondent. (Cal. Rules of Court, rule 9.18(b).) And respondent admits having actually received that notice.

In the NDC, the State Bar charges that respondent willfully failed to comply with three conditions of the five-year probation imposed on him in *Lima I* and that he thereby willfully violated his duty, under section 6068, subdivision (k), to comply with all conditions attached to any disciplinary probation imposed on him. To establish that respondent willfully failed to comply with his probation conditions in *Lima I*, the State Bar need not prove that respondent deliberately failed to comply with the conditions or that he otherwise acted in "bad faith" in not complying; rather, the State Bar need only prove that respondent had a general purpose or willingness to commit the acts or permit the omissions that establish a failure to comply. (*In the Matter of Potack* (Review Dept. 1991)1 Cal. State Bar Ct. Rptr 525, 536.)

Probation-Deputy-Meeting Condition

Respondent's probation-deputy-meeting probation condition provides as follows:

Within thirty (30) days from 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. . . .

Respondent willfully violated this condition of probation because he did not contact the Office of Probation to schedule the required meeting until February 11, 2011, which was 19 days past the 30-day deadline, which was January 23, 2011.

Arbitration-of-Fee-Claims Condition

Respondent's Arbitration-of-Fee-Claims Condition provides as follows:

Respondent stipulates and agrees that within **30 days** of the effective date of this stipulation, he will offer to arbitrate his claim for attorney's fees on the following matters: [(1)] Cheatham (case number 09-O-11402, but no arbitration as to the filing fee amount of \$299, plus ten percent interest from December 18, 2008, which respondent will repay to client or to the CSF [if] CSF pays any or all of the amount owing); [and (2)] Ann Mahon (09-O-10021). Respondent further stipulates and agrees to abide by the terms and conditions of any such arbitration and to report to the Office of Probation ("OP") with proof that he has 1) written and mailed, by certified mail, the offers to arbitrate; 2) any former client response regarding the offers to arbitrate; 3) each client may choose whether the arbitration will be binding or non-binding; 4) respondent will abide by the client's choice regarding whether the arbitration will be binding or non-binding; 5) respondent will report to OP when any such arbitration(s) is/are scheduled and the results thereof; 6) respondent waives any objection to any payment that may be made pursuant to any arbitration decision pursuant to this condition by the Client Security Fund ("CSF"); and 7) to repay to the CSF any amounts paid out on his behalf related to any such arbitration, including interest and fees assessed by CSF.

(Original bolding.)

Respondent violated this condition of probation because he did not make the required offer to arbitrate to either the Cheatham client matter (State Bar Court case number 09-O-11402) or the Mahon client matter (State Bar Court case number 09-O-10021) before the expiration of the 30-day deadline, which was January 23, 2011. Respondent did not transmit the required offers until June 30, 2011, which was more than five months past the deadline.

Restitution Condition

Respondent's restitution condition provides as follows:

Within 30 days from the effective date of discipline in this matter, respondent must begin to make restitution payments to those former clients listed below, in **the order listed below**, or to the Client Security Fund ("CSF") if it has paid, in the principal amount as set forth in the chart below plus interest at the rate of 10% per annum as indicated in the chart below in monthly installments of \$200 until paid in full and furnish satisfactory evidence of such restitution to the Office of Probation. Respondent shall include, in each quarterly report required herein, satisfactory evidence of all restitution payments made by him or her during that reporting period. [If CSF has made payment(s), respondent agrees to make interest payments to the former clients in the order listed below, completely paying interest to one former client before making payment to the next former client as listed.]

Respondent agrees and acknowledges that he must include a cover letter with any payment(s) made to the former clients indicating the number of people he must repay pursuant to this Stipulation (at least 10; possibly more after arbitration) and that most of the former clients are likely to get no more than one payment per year given the amount of each monthly payment and the number of people to be repaid and that no stipulated discipline may constitute a requirement binding upon CSF that compels CSF to in fact pay on any given application. A copy of each letter accompanying payment must also be supplied to the Office of Probation along with evidence of any and all such payments.

CASE NAME/NO.	AMOUNT OF REFUND	10% INTEREST FROM
ROMO / 08-O-14362	\$5,565 + Interest	10/13/07 for \$5,000; 7/8/08 for \$565 (date of sanctions order)
SANCHEZ / 09-O-12467	\$4,400 + Interest	4/01/06
BAKER / 08-O-11604	\$1,000 + Interest	12/28/07
SINGLETON / 09-O-11002	\$1300 + Interest	9/26/08
CHEATHAM / 09-O-11402	\$299 + Interest; Arbitrate remainder (\$1201)	12/18/08 on \$299 interest on \$1201 to be determined by arbitrator
THUN / 09-O-15881	\$3,000 + Interest	8/21/09
COLBY / 09-O-18038	\$1,000 + Interest	10/11/09
LOPEZ / 09-O-17483	\$16,000 + Interest (Principal amount of \$16,000 paid at signing of stipulation)	4/4/08
SIMON / 10-O-02760	\$1500 + interest	7/16/08
WORKS / 10-O-05972	\$2,500 + Interest	12/15/2007

CASE NAME/NO.	AMOUNT OF REFUND	10% INTEREST FROM
GAUDINIER / 09-O-11943	\$ 0 (Although respondent failed to perform, he did previously disgorge fees and paid client's filing fees pursuant to court order)	N/A
LOSURDO / 09-O-10954	\$ 0 (Although respondent initially failed to perform and to properly hold advanced costs in trust, he did ultimately pay the filing fees and file the petition.)	N/A
MAHON / 09-O-10021	Arbitrate \$17,912	As determined by arbitrator

(Original underlining and bolding.)

Respondent complied with his restitution condition, *ante*, by paying \$16,000 to his former client Lopez at the time he signed the stipulation. However, respondent thereafter willfully violated his restitution condition as charged in the NDC by not making any of the nine \$200-minimum-monthly-restitution payments, in whole or in part, from December 2010 through August 2011, when the NDC was filed. Moreover, respondent failed to carry his burden of proving that he lacked the ability to make the required \$200-minimum-monthly-restitution payments. Nor did respondent otherwise establish that he made *nominal* restitution payments in accordance with his ability to pay.

Furthermore, even if respondent lacked the ability to make the \$200-minimum-monthly-restitution payments as he claims, it would not be a defense or an impediment to discipline because, as respondent admits, he never sought relief from his restitution condition based on his inability to pay from the State Bar Court (Rules Proc. of State Bar, rules 5.300(A), 5.304(B)(2)) or from the Supreme Court. Moreover, even if respondent lacked the ability to make the \$200-minimum payments, he will not be disciplined merely for not making the minimum payments. Instead, he will be disciplined for not making the payments *without first attempting to be*

relieved from the obligation to pay in whole or in part based on an inability to pay. (In the Matter of Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

Respondent did not, however, violate his restitution condition by failing to include, in his first two probation reports, proof that he had made all of the required \$200-minimum-monthly-restitution payments during the reporting periods covered by those two reports.² Again, except for the \$16,000 payment that respondent made to Lopez when he signed the stipulation with the State Bar in *Lima I*, respondent has not made any restitution payments. Without question, respondent was not, and is not, required to provide proof of making payments that he never made. The State Bar's contention to the contrary is meritless.

Violations of Section 6068, Subdivision (k)

By willfully violating his probation-deputy-meeting, arbitration-of-fee-claims, and restitution probation conditions as set found *ante*, respondent willfully violated section 6068, subdivision (k).

Aggravating Circumstances³

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

Respondent has one *very serious* prior record of discipline: *Lima I*. As noted *ante*, in *Lima I*, the Supreme Court placed respondent on five years' stayed suspension and five years' probation with conditions including a three-year actual suspension that will continue until respondent pays total of more than \$36,000 in restitution in 11 separate client matters and he establishes his rehabilitation, fitness to practice, and learning and ability in the law in accordance with standard 1.4(c)(ii). The discipline in *Lima I* alone establishes that respondent's prior

² Respondent's first two probation reports were due April 10 and July 10, 2011, respectively.

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

misconduct was exceptionally egregious. In the stipulation that respondent and the State Bar entered into in *Lima I*, respondent admits to engaging in more than 45 counts of professional misconduct in 12 separate client matters. More specifically, in *Lima I*, respondent admitted that he failed to return the client's file in one of the matters; failed to comply with the client-trust-account rules in three of the matters; failed to account in two of the matters; failed to perform legal services competently in ten of the matters, failed to communicate in eight of the matters; and engaged in acts involving moral turpitude and dishonesty in eleven of the twelve client matters.

Respondent's acts of dishonesty in *Lima I* included deliberately signing and filing a false certificate of service in a superior court matter; deliberately lying to the State Bar to conceal his intentional misappropriation of \$16,000 in client funds in the Lopez matter; and deliberately lying to a client in order to fraudulently induce the client into paying him a \$1,000 advanced fee for which he performed no service and which he never returned to the client. Without question, respondent's numerous instances of deliberate misappropriation of client funds and the other acts of misconduct in *Lima I* show repeated dishonesty and a refusal or inability to adhere to the basic fiduciary duties of representing clients rarely seen in California attorney disciplinary proceedings.

Multiple Acts (Std. 1.2(b)(ii).)

Respondent's present misconduct evidences no less than 12 acts of misconduct.

Mitigating Circumstances

Emotional Difficulties (Std. 1.2(e)(iv).)

Respondent testified that he suffers from emotional difficulties as a result of his mother's death in April 2011 and the financial problems he began to have because of his loss of employment when he was placed on three years' actual suspension in *Lima I* and because his

recent divorce (i.e., he lost the support of his wife who is employed), which culminated in respondent filing for bankruptcy in September 2011, shortly after the State Bar filed the NDC against respondent in the present proceeding on August 31, 2011.

Discussion

Standard 2.6 provides that a violation of, inter alia, section 6068 “shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

Standard 1.3 provides that the primary purposes of disciplinary proceedings “are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

“The violation of a probation condition significantly related to the attorney’s prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney’s failure to undertake steps toward rehabilitation.” (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.) Respondent’s restitution condition is significantly, if not directly, related to the extensive and serious prior misconduct to which respondent stipulated in *Lima I*. What is more, respondent’s failure to comply with his restitution condition alone raises serious public-protection concerns and shows that, for whatever reason, respondent has not and is not undertaking the steps necessary to rehabilitate himself from the stipulated misconduct in *Lima I*.

Also, relevant is standard 1.7(a), which provides that, when an attorney has a prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.” Of course,

standard 1.7(a) should not be applied in a method that blindly treats all prior records of discipline as equally aggravating; instead, it should be applied “with due regard to the nature and extent of the respondent’s prior records. [Citation.]” (Cf. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) Again, respondent’s prior record of discipline is very serious in nature and extensive as to the amount of misconduct and deliberate dishonesty involved.

The court has examined the totality of respondent’s record and the present misconduct. Respondent’s “continued unwillingness or inability to comply with the conditions of probation imposed on him by a Supreme Court order ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney’s fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.) In sum, the court concludes that only disbarment will adequately fulfill the goals of attorney discipline in the present proceeding.⁴

Recommendations

Discipline

The court recommends that respondent RICHARD ANTHONY LIMA, State Bar number 184783, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that respondent RICHARD ANTHONY LIMA be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in

⁴ The court finds *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737 instructive on the issue of discipline. In *Luis*, the attorney was actually suspended for three years and until he complied with standard 1.4(c)(ii) since he failed to file two quarterly probation reports or to submit proof of his completion of ethics school. Even though the attorney in *Luis* had two prior records of discipline and failed to participate, respondent’s single prior record is extremely serious and greater aggravation.

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.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that RICHARD ANTHONY LIMA be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: February ____, 2012.

LUCY ARMENDARIZ
Judge of the State Bar Court