

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 11-O-15818 -- RAH
)	
JOSEPH GIOVANAZZI,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 42827,)	ENROLLMENT
)	
A Member of the State Bar.)	

Introduction¹

After having been previously disbarred and reinstated to the practice of law, respondent Joseph Giovanazzi attempted to file a motion for a criminal defendant client while he knew he was on administrative suspension for failure to pay his State Bar membership fees. The motion referred to respondent as a “lawyer” and as the lawyer for the client in that case. His suspended status was immediately discovered by the judge in the case, who reported his unauthorized practice of law to the State Bar. This proceeding ensued.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 9, 1969, and has been a member of the State Bar of California at all times since that date. He was disbarred effective December 15, 1990 and reinstated to the practice of law effective November 18, 2003. (Respectively, Supreme Court order nos. S016706 (State Bar Court case no. 87-O-18049) and

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.

S120127 (State Bar Court case no. 00-R-13514.) Thereafter, he has been a member of the State Bar of California at all times.

Facts

On March 9, 2011, the Office of Membership Billing Services of the State Bar of California (Membership Billing) properly mailed to respondent at his official membership records address and respondent received a Final Delinquent Notice informing him that his continued failure to pay his State Bar membership fees will result in his suspension from the practice of law effective July 1, 2011.

On June 3, 2011, Membership Billing properly mailed to respondent at his official membership records address a Notice of Entry of Order of Suspension for Nonpayment of Fees. This notice stated that respondent's name had been placed on a list of members that were delinquent in their payment of membership fees, and that the delinquent list had been transmitted to the California Supreme Court. The notice further stated that on May 26, 2011, the California Supreme Court entered an order of suspension for those members on the delinquent list, which would become effective July 1, 2011. Respondent received this notice.

Respondent did not pay the membership fees before July 1, 2011, and he was suspended, effective that date. He remained suspended through August 10, 2011. During this period of time, respondent knew he was not eligible to practice law in California.

The Deck Matter.

Respondent represented James Francis Deck in a criminal matter. (*People v. James Francis Deck*, Riverside County Superior Court, case number SWF029892.) Respondent tried this case, and on April 29, 2011, Mr. Deck was found guilty of some of the charges, but the jury hung on the most serious of the charges, attempted murder of a police officer. The court

declared a mistrial and set the case for a further hearing for report and sentencing and for a jury trial on the remaining issues on August 5, 2011.

After this trial, respondent became very ill with congestive heart failure. He was hospitalized five times after the trial and as a result of his condition, he suffered from arrhythmia and cardiomyopathy. As a result of the decreased blood flow to the brain, he experienced confusion, poor memory, decreased mental status and extreme fatigue.

On August 5, 2011, while he knew he was suspended, respondent attended the scheduled court hearing on the Deck case. He entered the courtroom in Division S204, approached the clerk and presented the clerk with a motion to vacate trial in the Deck matter's August 5, 2011 hearing on the grounds of his serious health condition.² While the motion was given to the clerk, it apparently was not filed. The motion did not mention respondent's suspension by the State Bar.³ Further, respondent at no time advised the court of his suspended status.

When the judge presiding in the case, Judge Timothy F. Freer, took the bench, he called a side bar conference off the record. At this side bar conference, the judge raised the issue of respondent's suspended status. Respondent appeared to be surprised at learning that he was suspended. According to the credible testimony of Marcus Garrett, the deputy district attorney who was assigned to the case and who was present at the side bar conference, respondent acted "shocked" that he was suspended, blamed his secretary for not paying the bill, and said he needed to call his office to see if the fees had been paid. The court relieved respondent from representing Mr. Deck and appointed a public defender. Thereafter, respondent left the courtroom.

² The motion listed respondent's title as "Lawyer" and referred to respondent as "Lawyer for Defendant JAMES FRANCIS DECK"

³ Respondent testified in this matter and noted in his trial brief that he was aware of his suspended status but only brought the motion to court on the chance that the court would allow him to file it despite his suspended status.

During the hearing that followed, one of the appointed public defenders advised the court that respondent had attempted to file the motion. The court was unaware of this fact at that time. At this point, the court clerk raised some papers and waived them in the direction of the judge. Mr. Garrett directed the judge's attention to the clerk, who then gave the papers to the judge. The judge reviewed the papers and acknowledged that, in fact, respondent had attempted to file the motion. At that point, the court directed the clerk to notify the State Bar that respondent had attempted to represent himself as an attorney eligible to practice law.

Conclusions

Count One - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California.

By appearing in court representing defendant Deck at the hearing and trial on August 5, 2011, respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar, in willful violation of section 6068, subdivision (a), based upon a violation of sections 6125 and 6126(a).

Counts Two and Three - (§ 6106 [Moral Turpitude -- Knowingly Engaging in the Unauthorized Practice of Law and Misrepresentation])

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

Respondent attempted to file a motion as the attorney of record on Defendant Deck's behalf knowing that he was suspended from the practice of law and misrepresented to Judge Freer that he was entitled to practice law knowing that he was not. Accordingly, respondent committed an act or acts of moral turpitude, dishonest, or corruption.

Aggravation⁴

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

Effective January 12, 1981, the Supreme Court disciplined respondent in *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465. He received a three-year stayed suspension, three years' probation and 30 days' actual suspension for violating his oath and duties as an attorney and committing acts involving moral turpitude and dishonesty. Respondent stipulated to misleading a court by false pleading, misappropriating a client's funds and involving a client in business transactions adverse to the client's best interests in violation of former Rules of Professional Conduct, rules 7-105, 8-101 and 5-101.

Respondent's three convictions for driving under the influence, violation of laws regarding controlled substances and multiple failures to comply with the terms of court-ordered probation, among other things, led to the commencement of State Bar disciplinary proceedings. The Supreme Court disciplined respondent effective February 5, 1990, with the imposition of five years' stayed suspension, five years of probation and two years' actual suspension from the practice of law and until proof of rehabilitation, present fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). (BM5391, 5392, 5401 and 5586 (State Bar Court case nos. 87-C-15738, 87-C-15739, 87-15740 and 87-C-17636), filed January 4, 1990.). Aggravating factors included one prior disciplinary record and multiple acts of misconduct. Mitigating factors included candor; sobriety for 21 months; community service; and the misconduct was not related to the practice of law.

⁴ 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 court recommended respondent's disbarment in S016706 (State Bar Court case no. 87-O-18049), effective December 15, 1990, based on his violations of: (1) section 6106 (moral turpitude and dishonesty tendering three checks for filing fees to the San Diego County Superior and Municipal Courts which were drawn on a closed client trust account); (2) section 6068, subdivisions (i) (not cooperating in disciplinary investigation) and (m) (not communicating in two client matters); and (3) former Rules of Professional Conduct, rules 6-101(A)(2), 2-111(A)(2) and (3) (not performing, returning client files and property or unearned fees, respectively). Aggravating factors included two prior disciplinary records; multiple acts of misconduct; misconduct surrounded by dishonesty; indifference; not cooperating or participating in the disciplinary investigation; and uncharged misconduct (overdrawn client trust account). There were no mitigating factors.

The court notes that there is similar dishonest misconduct reflected in the prior discipline record and in the present case.

Respondent's prior disciplinary record leading to his disbarment is a very significant aggravating factor. (*In re Silverton* (2005) 36 Cal.4th 81.)

As previously noted, respondent was reinstated to the practice of law in 2003 on his second attempt to demonstrate his rehabilitation from the prior misconduct that led to his disbarment.

Mitigation

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

At the time of the misconduct, respondent suffered from a serious heart condition that could have interfered with his ability to accurately recognize his membership status. However, at trial and in his trial brief, respondent acknowledged that he was aware of his suspension at the time he appeared in court on August 5, 2011. Nevertheless, he attempted to

file the motion anyway. In light of these facts, the court finds that respondent is entitled to no mitigation as a result of his health condition.

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

Minimal mitigating weight is afforded the parties' stipulation as to facts and admission of documents, filed August 7, 2013.

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).) 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 1.7(a), 2.3 and 2.6 apply in this matter. The most severe sanction is prescribed by standard 1.7(a), which essentially recommends disbarment in disciplinary matters where there has been a prior disbarment "unless the prior disbarment was so remote in time and based on such a minor offense that a second disbarment would be manifestly unjust." (*In re Silverton*, *supra*, 36 Cal.4th 92.)

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*, *supra*, 36 Cal.4th 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.)

The State Bar recommends disbarment. The court agrees.

This case involves one client matter in which respondent appeared in court and attempted to file a motion in which he represented himself to be a lawyer when he knew that he was not entitled to practice law due to nonpayment of his State Bar membership fees. Respondent's prior disciplinary record, including three proceedings culminating in his disbarment, is a most egregious aggravating factor, particularly since he was given a second chance to practice law after being disbarred. The court considered the parties' stipulation as a minimal mitigating factor.

In *In re Silverton*, *supra*, 36 Cal.4th 81, the Supreme Court noted that "...when an attorney has previously been disbarred, disbarment is the appropriate sanction for subsequent professional misconduct unless the exception set forth in standard 1.7(a) is satisfied *or* the attorney can otherwise establish 'grave doubts as to the propriety' of disbarment in the particular case. (Citation omitted.)" (*Id.* at 92.) Moreover, "in this context, the burden should be on the attorney to demonstrate the existence of extraordinary circumstances justifying a lesser sanction." (*Id.*) Neither exception applies here as the prior disbarment is not remote in time and is not based on minor offenses nor are there extraordinary circumstances justifying a lesser sanction. Respondent has not met his burden.

Respondent has had ample opportunity to demonstrate his rehabilitation from his disbarment, yet he is again before this court for misconduct directly in the practice of law. Further suspension would, therefore, not serve any rehabilitative purpose. Accordingly, under

these circumstances and for the protection of the public, the court believes there is no alternative but to recommend his disbarment for a second time.

Recommendations

It is recommended that respondent Joseph Giovanazzi, State Bar Number 42827, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule

5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November _____, 2013

RICHARD A. HONN
Judge of the State Bar Court