

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **11-O-15956-RAP** (11-O-15957; 11-O-18375;
) 11-O-19648; 12-O-10620); **12-O-16793-RAP**
MARK D. WALSH,) (12-O-16884;12-O-16885) (**Consolidated.**)
)
Member No. 206059,) **DECISION AND ORDER**
)
A Member of the State Bar.)

Introduction¹

In this consolidated disciplinary proceedings, the court finds that respondent **MARK D. WALSH** repeatedly failed to obey court orders in willful violation of section 6103² in seven collection lawsuits in which he represented the plaintiff creditors. For the reasons set forth *post*, the court recommends that respondent be placed on one year's stayed suspension and three years' probation on conditions, including a thirty-day suspension.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) is represented by Deputy Trial Counsel Erin McKeown Joyce. Respondent is represented by Attorney Samuel C. Bellicini.

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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.

² Section 6103 provides that an attorney's willful "disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

Relevant Procedural History

Case Number 11-O-15956-RAP

Case number 11-O-15956-RAP (which includes correlated case numbers 11-O-15957; 11-O-18375; 11-O-19648; and 12-O-10620) involves a stipulation regarding facts, conclusions of law, and disposition that respondent and the State Bar entered into and which was approved by the State Bar Court in an order filed on April 10, 2012 (April 10, 2012, stipulation).³ On May 23, 2012, the record in case number 11-O-15956 (including the April 10, 2012, stipulation) was filed in the Supreme Court under Supreme Court case number S202901.

On August 27, 2012, the Supreme Court filed an order (No. ADMIN. 2012-8-22-3) returning case number S202901 (State Bar Court case number 11-O-15956) to the State Bar Court “for further consideration of the recommended discipline in light of the applicable attorney discipline standards. [Citations.]”

Thereafter, in October 2012, the parties filed, in the State Bar Court, a stipulation to modify the April 10, 2012, stipulation so that it accurately sets forth the misconduct underlying the private reproof that the State Bar Court imposed on respondent in August 2008 in State Bar Court case number 08-O-10670 (*Walsh I*). In accordance with the parties’ October 2012 stipulation, this court filed an order on October 19, 2012, modifying the April 10, 2012, stipulation so that it correctly reflects that respondent’s private reproof in *Walsh I* was based on respondent’s violation of section 6068, subdivision (o)(3) (failure to report judicial sanctions).⁴

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³ There is no notice of disciplinary charges (NDC) in case number 11-O-15956 because the April 10, 2012, stipulation was the initial pleading filed in the proceeding.

⁴ Section 6068, subdivision (o)(3) requires an attorney to report, to the State Bar, “[t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).”

On February 21, 2013, on respondent's motion, the court filed an order relieving respondent of the legal conclusions to which he stipulated in the April 10, 2012, stipulation.

And, on March 5, 2013, on the State Bar's motion, the court included in each of the five correlated cases in case number 11-O-15956-RAP, a charge that respondent intentionally, recklessly, or repeatedly failed to competently perform legal services in willful violation of rule 3-110(A). The State Bar, however, failed to establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to competently perform legal services in willful violation of rule 3-110(A).

Moreover, the rule 3-110(A) violations are duplicative of the section 6103 violations because the State Bar relies on the identical misconduct to establish both the rule 3-110(A) violations and the section 6103 violations.⁵ Without question, such duplicative violations serve little, if any, purpose. "The appropriate resolution of this matter does not depend upon how many rules of professional conduct or statutes proscribe the same misconduct." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 992; *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 879.) In sum, the charged rule 3-110(A) violations in the five correlated case numbers are DISMISSED WITH PREJUDICE. (*Ibid.*)

Case Number 12-O-16793-RAP

The State Bar filed the notice of disciplinary charges (NDC) in case number 12-O-16793-RAP (which includes correlated case numbers 12-O-16884 and 12-O-16885) on December 7, 2012. On December 11, 2012, on the stipulation of the parties, the court consolidated case number 11-O-15956-RAP with case number 12-O-16793-RAP for all purposes.

⁵ Furthermore, the section 6103 violations, which the court finds *post*, will presumably support a greater level of discipline than the rule 3-110(A) violations.

Respondent filed his response to the NDC in case number 12-O-16793-RAP on January 4, 2013.

On February 25, 2013, the parties filed a partial stipulation as to facts with respect to misconduct charged in the NDC in case number 12-O-16793-RAP.⁶ On March 5, 2013, the parties filed a stipulation under which the court may take judicial notice of the documents identified by the parties as State Bar exhibits 63 through 99, and 105 and as respondent's exhibits B through H, L through W, and Y. The court accepted the parties' March 5, 2013, stipulation at the trial in this consolidated proceeding, which was held on March 12 through March 15, 2013. At the conclusion of the trial on March 15, 2013, the court took the consolidated matter under submission for decision.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 7, 2000, and has been a member of the State Bar of California since that time.

In late 2002, respondent started a statewide debt-collection practice under the firm name of Legal Recovery Law Offices, Inc. (Legal Recovery). Legal Recovery has since become a large debt-collection firm, filing thousands of lawsuits for its clients, which are primarily, if not exclusively, national-credit-card providers and banks. Respondent (and Legal Recovery) presently employ four staff attorneys and twenty-one legal clerks.

Beginning in about June 2011, respondent unintentionally began missing multiple scheduled court hearings and conferences. According to respondent, the problem resulted from a combination of factors, including that the United States Postal Service was not delivering all of

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⁶ Respondent failed to sign this stipulation as expressly required by Rules of Procedure of the State Bar, rule 5.53. Nonetheless, the court accepts the stipulation in the interest of justice because it is signed by Attorney Bellicini.

respondent's mail, technical difficulties with respondent's computerized case management and calendaring system, and errors made by respondent and his legal and clerical staffs.

Once respondent realized that there was a serious problem, respondent undertook an extensive review of and made major changes in his office procedures and methods of practicing law to correct the problem. For example, respondent significantly increased the training and supervision of his legal and clerical staffs, and respondent stopped the routine employment of contract appearance attorneys to make court appearance in his and his firm's court cases. It clearly appears that respondent's changes have corrected the problem.

Case Number 11-O-15956 — The *Carrasco* Action

Facts

In 2011, Respondent filed a collection action for Capital One Bank in the Solano County Superior Court that was styled *Capital One Bank v. Carrasco* (*Carrasco* action). Thereafter, in the *Carrasco* action, the superior court issued an order to show cause (OSC); set that OSC for a hearing on May 23, 2011; and ordered respondent to appear at the May 23, 2011, OSC hearing.

The superior court clerk served respondent with notice of the May 23, 2011, OSC hearing. Respondent, however, failed to attend the May 23, 2011, OSC hearing because he failed to put the hearing on his calendar. Respondent's office procedures did not properly calendar his court appearances or process his incoming mail.

When respondent failed to appear at the May 23, 2011, OSC hearing, the superior court sanctioned respondent \$350, which was to be paid within 15 days, and ordered respondent to personally appear at a second OSC hearing, which the superior court set for July 18, 2011.

The superior court clerk served respondent with notice of the superior court's May 23, 2011, sanctions order. Due to the problems with respondent's office procedures, he again failed to put the July 18, 2011, OSC hearing on his calendar and failed to appear at that hearing.

Accordingly, at the July 18, 2011, OSC hearing, the superior court again sanctioned respondent \$350, which was to be paid in 15 days, and ordered respondent to personally appear at a third OSC hearing, which the court set for August 15, 2011.

The superior court clerk served respondent with notice of the superior court's July 18, 2011, sanctions order. Due to the problems with respondent's office procedures, he again failed to put the August 15, 2011, OSC hearing on his calendar and failed to appear at that hearing. When respondent failed to appear at the August 15, 2011, OSC hearing, the superior court again sanctioned respondent \$350, which was to be paid within 15 days and which brought the total amount of sanctions imposed on respondent in the *Carrasco* action to \$1,050 (\$350 plus \$350 plus \$350).

Respondent did not timely pay the sanctions totaling \$1,050. Respondent paid the sanctions only after the State Bar contacted him.

Conclusions of Law

Section 6103 [Failure to Obey Court Order]

The court rejects respondent's claim that he lacked knowledge of the superior court's orders to appear at the multiple OSC hearings and to pay sanctions in the *Carrasco* action.

Moreover, even if respondent did not have actual knowledge of each of the superior court's orders directing him to personally appear at the OSC hearings and to pay sanctions in the *Carrasco* action, respondent's lack of knowledge would not be a defense to the section 6103 violations nor would any such lack of knowledge preclude the Supreme Court from disciplining respondent for his failure to appear at each of the OSC hearings or to timely pay the sanctions. Respondent was properly given adequate notice of each of the hearings and the sanctions by the superior court. Moreover, any such lack of knowledge would have been, without question, the result of respondent's admittedly inadequate office procedures that failed to put either the hearing

dates or the dates by which the sanctions were to be paid on his calendar. Respondent cannot negligently avoid receiving actual notice of the OSC hearings and the sanctions by maintaining inadequate office procedures and then claim that he had no duty, under section 6103, to appear at the OSC hearings or to timely pay the sanctions. (Cf. *Simmons Creek Coal Co. v. Doran* (1892) 142 U.S. 417, 437 [one “ ‘has no right to shut his eyes or his ears to the inlet of information, and then say he is . . . without notice’ ”]; *Baca v. State Bar* (1990) 52 Cal.3d 294, 302 [An attorney “cannot defeat service by refusing to accept delivery of his mail.”].)

The record clearly establishes that, in the *Carrasco* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to appear at the OSC hearings on May 23, 2011; July 18, 2011; and August 15, 2011; and (2) by failing to timely pay the sanctions totaling \$1,050.

Case Number 11-O-15957 -- The *Boss* Action

Facts

In 2010, Respondent filed a collection action for Capital One Bank in the Tulare County Superior Court that was styled *Capital One Bank v. Boss* (*Boss* action). Thereafter, in the *Boss* action, the superior court issued an OSC and set that OSC for a hearing on May 17, 2011.

The superior court clerk served respondent with notice of the May 17, 2011, OSC hearing. Due to problems with respondent’s office procedures, respondent failed to put the hearing on his calendar and failed to attend the hearing on May 17, 2011.

When respondent failed to appear at the May 17, 2011, OSC hearing, the superior court sanctioned respondent \$250, which was to be paid within 15 days, and ordered respondent to appear at a second OSC hearing, which the superior court set for June 8, 2011. The superior court clerk served respondent with notice of the May 17, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the second OSC hearing on his calendar and failed to attend the hearing on June 8, 2011. When respondent failed to appear at the June 8, 2011, OSC hearing, the superior court sanctioned respondent \$500, which was to be paid forthwith, and ordered respondent to appear at a third OSC hearing, which the superior court set for July 22, 2011. The superior court clerk served respondent with notice of the June 8, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the third OSC hearing on his calendar and failed to attend the hearing on July 22, 2011. When respondent failed to appear at the July 22, 2011, OSC hearing, the superior court sanctioned respondent \$1,100, which was to be paid forthwith. The superior court clerk served respondent with notice of the July 22, 2011, sanctions order.

Respondent did not timely pay the sanctions totaling \$1,850 (\$250 plus \$500 plus \$1,100) that were imposed on him in the *Boss* action. Respondent paid the \$1,850 in sanctions only after he was contacted by the State Bar.

Conclusions of Law

Section 6103 [Failure to Obey Court Order]

The court rejects respondent's claim that he lacked knowledge of the superior court's orders in the *Boss* action. Moreover, for the reasons stated *ante*, even if respondent did not have actual knowledge of each of the superior court's orders directing him to personally appear at the OSC hearings and to pay sanctions in the *Boss* action, respondent's lack of knowledge would not be a defense to the section 6103 violations nor would it preclude the Supreme Court from disciplining respondent for his failures to appear at the OSC hearings or to timely pay the sanctions as ordered.

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The record clearly establishes that, in the *Boss* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to appear at the OSC hearings on May 17, 2011; June 8, 2011; and July 22, 2011; and (2) by failing to timely pay the sanctions totaling \$1,850.

Case Number 11-0-18375 – The *Dill* Action

Facts

In 2011, Respondent filed a collection action for Equable Ascent Financial in the Plumas County Superior Court that was styled *Equable Ascent Financial v. Dill* (*Dill* action). Respondent did not appear at a case management conference in the *Dill* action on August 8, 2011. Accordingly, the superior court issued an OSC and set that OSC for a hearing on October 12, 2011.

The superior court clerk served respondent with notice of the October 12, 2011, OSC hearing. Due to the problems with respondent's office procedures, respondent failed to put that hearing on his calendar and failed to attend the hearing on October 12, 2011.

When respondent failed to appear at the October 12, 2011, OSC hearing, the superior court sanctioned respondent \$1,000, which was to be paid forthwith. Even though the superior court clerk served respondent with notice of the October 12, 2011, sanctions order, respondent did not pay the sanctions forthwith. Respondent paid the sanctions only after he was contacted by the State Bar.

Conclusions of Law

Section 6103 [Failure to Obey Court Order]

This court rejects respondent's claim that he lacked knowledge of the superior court's orders in the *Dill* action. Moreover, for the reasons stated *ante*, even if respondent did not have

actual knowledge of each of the superior court's orders in the *Dill* action, that lack of knowledge would not be a defense to the section 6103 violations nor would it preclude the Supreme Court from disciplining respondent for those violations.

The record clearly establishes that, in the *Dill* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to appear at the October 12, 2011, OSC hearing and (2) by failing to pay the \$1,000 in sanctions forthwith.

Case Number 11-0-19648 – The *Magnusson* Action

Facts

In 2011, Respondent filed a collection action for Capital One Bank in the Monterey County Superior Court that was styled *Capital One Bank v. Magnusson* (*Magnusson* action). Thereafter, in the *Magnusson* action, the superior court issued an OSC and set that OSC for a hearing on April 19, 2011. The superior court clerk served respondent with notice of the April 19, 2011, OSC hearing.

Due to problems with respondent's office procedures, respondent failed to put the OSC hearing on his calendar and failed to attend the hearing on April 19, 2011. When respondent failed to appear at the April 19, 2011, OSC hearing, the superior court sanctioned respondent \$75, which was to be paid before May 19, 2011, and ordered respondent to appear at a second OSC hearing, which the superior court set for August 17, 2011. The superior court clerk served respondent with notice of the April 19, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the second OSC hearing on his calendar and failed to attend the hearing on August 17, 2011. When respondent failed to appear at the second OSC hearing, the superior court sanctioned respondent \$250, which was to be paid within 15 days, and ordered respondent to appear at a third OSC

hearing, which the superior court set for November 15, 2011. The superior court clerk served respondent with notice of the August 17, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the third OSC hearing on his calendar and failed to attend the hearing on November 15, 2011. When respondent failed to appear at the third OSC hearing, the superior court sanctioned respondent \$300, which was to be paid within 15 days. The superior court clerk served respondent with notice of the November 15, 2011, sanctions order.

Respondent did not timely pay the sanctions totaling \$625 (\$75 plus \$250 plus \$300) that were imposed on him in the *Magnusson* action. Respondent paid the \$625 in sanctions only after he was contacted by the State Bar.

Conclusions of Law

Section 6103 [Failure to Obey Court Order]

The court rejects respondent's claim that he lacked knowledge of the superior court's orders in the *Magnusson* action. Moreover, for the reasons stated *ante*, even if respondent did not have actual knowledge of each of the superior court's orders in the *Magnusson* action, that lack of knowledge would not be a defense to the section 6103 violations nor would it preclude the Supreme Court from disciplining respondent for those violations.

The record clearly establishes that, in the *Magnusson* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to appear at the OSC hearings on April 19, 2011; August 17, 2011; and November 15, 2011; and (2) by failing to timely pay the sanctions totaling \$625.

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Case Number 12-0-15956 – The *Jacobsen* Action

Facts

In 2009, Respondent filed a collection action for Capital One Bank in the Solano County Superior Court that was styled *Capital One Bank v. Jacobsen* (*Jacobsen* action). Thereafter, on December 16, 2010, the superior court issued an OSC for respondent's failure to diligently prosecute the *Jacobsen* action and set that OSC for a hearing on February 9, 2011. The superior court clerk served respondent with notice of the February 9, 2011, OSC hearing.

Due to problems with respondent's office procedures, respondent failed to put the OSC hearing on his calendar and failed to attend that hearing on February 9, 2011. When respondent failed to appear at the February 9, 2011, OSC hearing, the superior court sanctioned respondent \$150, which was to be paid before March 11, 2011, and ordered respondent to appear at a second OSC hearing, which the superior court set for March 24, 2011. The superior court clerk served respondent with notice of the February 9, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the second OSC hearing on his calendar and failed to attend that hearing on March 24, 2011. When respondent failed to appear at the March 24, 2011, OSC hearing, the superior court sanctioned respondent \$300, which was to be paid before April 25, 2011, and ordered respondent to appear at a third OSC hearing, which the superior court set for December 13, 2011. The superior court clerk served respondent with notice of the March 24, 2011, sanctions order.

Due to problems with respondent's office procedures, respondent failed to put the December 13, 2011, hearing on his calendar and failed to attend that hearing. When respondent failed to appear at the December 13, 2011, OSC hearing, the superior court sanctioned respondent \$1,001, which was to be paid within 30 days. The superior court clerk served respondent with notice of the December 13, 2011, sanctions order.

Respondent did not timely pay the sanctions totaling \$1,451 (\$150 plus \$300 plus \$1,001) that were imposed on him in the *Jacobsen* action. Respondent paid the \$1,451 in sanctions only after he was contacted by the State Bar.

Conclusions of Law

Section 6103 [Failure to Obey Court Order]

The court rejects respondent's claim that he lacked knowledge of the superior court's orders in the *Jacobsen* action. Moreover, for the reasons stated *ante*, even if respondent did not have actual knowledge of each of the superior court's orders in the *Jacobsen* action, that lack of knowledge would not be a defense to the section 6103 violations nor would it preclude the Supreme Court from disciplining respondent for those violations.

The record clearly establishes that, in the *Jacobsen* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to appear at the OSC hearings on February 9, 2011; March 24, 2011; and December 13, 2011; and (2) by failing to timely pay the sanctions totaling \$1,451.

Case Number 12-O-16793 -- The *Ferraro* Action

Facts

Respondent filed a collection action for Capital One Bank in the Los Angeles Superior Court that was styled *Capital One Bank (USA) N.A. v. Robert Ferraro, Inc. (Ferraro action)*.

On April 19, 2012, the superior court issued a minute order in the *Ferraro* action setting a mandatory settlement conference for July 31, 2012, and ordering the parties to lodge mandatory settlement conference statements by July 27, 2012. The superior court ordered that the parties were required to be present at the mandatory settlement conference.

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Respondent admits that he received proper notice of the superior court's April 19, 2012, minute order in the *Ferraro* action. Respondent, however, did not lodge a mandatory settlement conference statement or appear at the mandatory settlement conference on July 31, 2012. Instead, respondent arranged for Attorney Mary Beth Frankel, a contract-appearance attorney, to appear at the mandatory settlement conference. Respondent provided Attorney Frankel with email instructions and contact information for respondent's law office. Attorney Frankel was not the trial attorney in the action.

Furthermore, respondent failed to have a representative of Capital One Bank appear at the mandatory settlement conference.

When Attorney Frankel appeared for Capital One Bank on behalf of respondent at the mandatory settlement conference in the *Ferraro* action on the morning of July 31, 2012, the superior court continued the settlement conference until 2:00 p.m. that same day and ordered Attorney Frankel to call respondent and inform him that a lawyer representing the plaintiff and an authorized representative of the plaintiff with full settlement authority must be present by 2:00 p.m.

Attorney Frankel contacted respondent's law office and spoke with Attorney Judson Price. Attorney Price instructed Attorney Frankel to dismiss the *Ferraro* action if the defendant did not settle before settlement conference resumed at 2:00 p.m.

When the settlement conference resumed at 2:00 p.m., respondent, who was Capital One Bank's attorney of record in the *Ferraro* action, did not appear. Nor did any authorized representative of Capital One Bank with knowledge of the case appear. Instead, Attorney Frankel again appeared for Capital One Bank on respondent's behalf. Because the action did not settle, Attorney Frankel made an oral motion to dismiss the case. Thereafter, on August 1, 2012, respondent filed a written request for dismissal of the *Ferraro* action.

Also, on August 1, 2012, the superior court issued an OSC ordering respondent to appear in court on August 24, 2012, to show cause why he should not be sanctioned \$1,500 for failing to comply with the superior court's April 19, 2012, minute order and California Rules of Court, rule 3.1380(b).⁷ That August 1, 2012, OSC aptly recited that the dismissal of the *Ferraro* action did not divest the superior court of its jurisdiction over respondent as the attorney of record for plaintiff Capital One Bank and that respondent's personal appearance was required at the August 24, 2012, OSC hearing.

Respondent admits that he received proper notice of the August 1, 2012, OSC in the *Ferraro* action, but he failed to file an opposition or other response to the OSC and failed to appear at the August 24, 2012, OSC hearing. When respondent failed to appear on August 24, 2012, the superior court sanctioned respondent \$1,500 under Code Civil Procedure section 177.5 for respondent's failures to comply with the superior court's April 19, 2012, minute order and to appear at the August 24, 2012, OSC hearing in the *Ferraro* action. Respondent was ordered to pay the \$1,500 in sanctions forthwith.

Conclusions of Law

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

The record clearly establishes that, in the *Ferraro* action, respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he ought in good faith do (1) by failing to file a mandatory settlement conference statement and by failing to appear at the July 31, 2012, mandatory settlement conference with a representative of Capital One Bank in accordance with the superior court's

⁷ California Rules of Court, rule 3.1380(b) provides: "Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the court for good cause. If any consent to settle is required for any reason, the party with that consensual authority must be personally present at the conference."

April 19, 2012, minute order and (2) by failing to appear at the August 24, 2102, OSC hearing in accordance with the August 1, 2012, OSC.

Case Number 12-O-16884 – *Miller* Action

Facts

Respondent filed a collection action for FIA Card Services in the San Joaquin County Superior Court that was styled *FIA Card Services, N.A., v. Miller* (*Miller* action). Respondent did not appear at an August 25, 2010, case management conference in the *Miller* action; instead, Attorney Paul Kozlow appeared for FIA Card Services in respondent's place.

On August 27, 2010, the superior court filed an OSC in which it ordered FIA Card Services to appear in court on October 4, 2010, and show why it should not be sanctioned for its failure to obtain defendant Miller's default and a default judgment. The superior court clerk served the August 27, 2010, OSC on respondent on August 30, 2010.

Respondent did not file, for FIA Card Services, an opposition or other response to the superior court's August 27, 2010, OSC. Nor did respondent appear at the October 4, 2010, OSC hearing. Nor did respondent have another attorney attend the OSC hearing in his place as FIA Card Services attorney of record in the *Miller* action.

When no one appeared for FIA Card Services at the October 4, 2010, OSC hearing, the superior court (1) ordered FIA Card Services to pay the superior court \$1,500 in sanctions by November 4, 2010, and (2) issued an OSC regarding the dismissal of the *Miller* action. The record in this State Bar Court disciplinary proceeding does not establish that the superior court served respondent with notice of its October 4, 2010, order imposing \$1,500 in sanctions on FIA Card Services.

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On June 15, 2012, respondent paid the \$1,500 sanctions that the superior court imposed on his client FIA Card Services. Respondent testified that he paid the sanctions as soon as he became aware of the superior court's October 4, 2010, sanction order.

Conclusions

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

In count two, the State Bar does not charge that respondent violated section 6103 by failing to file an opposition or other response to the August 27, 2010, OSC or by failing to appear at the October 4, 2010, OSC hearing. In count two, the State Bar charges that respondent willfully violated section 6103 only "By failing to timely comply with the [superior] court's October 10, 2010, sanctions order in the *Miller* matter." The State Bar failed to establish the only charged violation of section 6103.

There is no October 10, 2010, sanctions order in the *Miller* action. There is, however, an October 4, 2010, sanction order. But that October 4, 2010, sanction order does not impose any sanctions on respondent. As noted *ante*, the October 4, 2010, sanction order imposed \$1,500 in sanctions on plaintiff FIA Card Services, not respondent. In sum, the State Bar failed to establish, by clear and convincing evidence, that respondent failed to timely comply with an October 10, 2010, sanctions order or any other sanction order in the *Miller* action. Thus, count two is DISMISSED WITH PREJUDICE for want of proof.

Case Number 12-O-16885 – *Grayson* Action

Facts

On October 12, 2011, respondent filed a collection action for FIA Card Services in the Los Angeles Superior Court that was styled *FIA Card Services N.A., v. Grayson* (*Grayson* action). At the time respondent filed the complaint in the *Grayson* action, the superior court scheduled a case management conference for January 30, 2012.

Respondent admits receiving proper notice of the January 30, 2012, case management conference.

On December 9, 2011, respondent filed the proof of service of the summons on the defendant, Grayson. Thereafter, the defendant did not file an answer. Thus, on January 25, 2012, respondent filed a request for the entry of the defendant's default. However, later that same day, the superior court clerk rejected respondent's request because respondent did not serve a copy of the request on the defendant at the address. The superior court clerk sent respondent notice of the rejection of his request for entry of default, and respondent received that notice.

Neither plaintiff FIA Card Services, defendant Grayson, nor their attorneys appeared at the January 30, 2012, case management conference in the *Grayson* action. Respondent testified credibly that he believed the case management conference would be taken off calendar when he filed the request for entry of default on January 25, 2012.

At the January 30, 2012, case management conference, the superior court (1) issued an OSC regarding sanctions for plaintiff FIA Card Services' failure to appear at the case management conference (January 30, 2012, OSC) and (2) set the January 30, 2012, OSC for a hearing on February 28, 2012. Respondent admits that he received proper notice of the February 28, 2012, OSC hearing.

At the February 28, 2012, OSC hearing, respondent sent Attorney Martin Abraham, a contract appearance attorney, to appear for FIA Card Services in respondent's place. At the hearing, the superior court discharged the January 30, 2012, OSC and issued a new OSC regarding sanctions and dismissal of the *Grayson* action because FIA Card Services failed to obtain the defendant's default (February 28, 2012, OSC). The superior court set the February 28, 2012, OSC for a hearing on March 20, 2012. The superior court also ordered respondent to file a

new request for entry of default by March 2, 2012. Respondent admits that he received proper notice of the March 20, 2012, OSC hearing.

When respondent received the February 28, 2012, OSC, respondent inspected his computer case tracking system concerning the *Grayson* action. According to respondent, his case tracking system showed that his office had filed a new request for entry of default in the *Grayson* action on March 16, 2012. But the superior court has no record of respondent filing a new request for entry of default in the *Grayson* action on March 16, 2012.

At the March 20, 2012, OSC hearing, respondent sent Attorney Nicholas Valmes, a contract appearance attorney, to appear for FIA Card Services in respondent's place. At that hearing, the superior court imposed sanctions of \$250 against respondent and FIA Card Services for failing to file a new request for entry of default by March 2, 2012. Attorney Valmes represented to the superior court that respondent filed a new request for entry of default on March 16, 2012, but that, at the time of the March 20, 2012, hearing, it had not yet been processed by the superior court clerk. Attorney Valmes received his instructions by email from Attorney Steven Levy, who operates a business that supplies appearance attorneys by request. Attorney Levy received the instructions from respondent's office. Attorney Valmes received no other instructions concerning his appearance from Levy or respondent.

Also, at the March 20, 2012, hearing, the superior court issued a new OSC re sanctions and dismissal for failing to obtain entry of default in a timely manner, which was scheduled for a hearing on May 4, 2012.

Respondent admits that he received proper notice of the May 4, 2012, OSC hearing in the *Grayson* action.

The defendant's default was not entered in the *Grayson* action before the May 4, 2012, OSC hearing.

At the May 4, 2012, OSC hearing, Attorney Karen Dawson, a contract appearance attorney, appeared for FIA Card Services in respondent's place. At that hearing, the superior court imposed sanctions of \$1,000 against FIA Card Services and respondent for failing to obtain the entry of the defendant's default since the March 20, 2012, OSC hearing. The \$1,000 sanctions were due no later than June 3, 2012.

On May 8, 2012, respondent's law office filed a request for dismissal of the *Grayson* action. Respondent also paid both the \$250 and the \$1,000 sanctions in the *Grayson* action.

Respondent was not in his law office for the May 4, 2012, OSC hearing in the *Grayson* action because of an extremely serious injury. Specifically, on March 23, 2012, while on a YMCA camping trip with his daughters, respondent suffered a catastrophic injury that nearly took his life and that now confines him to a wheelchair. Following his injury, respondent was incapacitated for a very substantial period of time. Notwithstanding respondent's very significant physical disabilities, respondent has finally been able to return to the practice of law fulltime.

Conclusions of Law

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

In count three, the State Bar charges respondent with willfully violating section 6103 in the *Grayson* action "By [1] failing to appear at the January 30, 2012 case management conference, [2] failing to comply with the February 28, 2012 order to obtain the [defendant's] default by March 2, 2012, [3] failing to comply with the March 20, 2012 order to obtain the [defendant's] default prior to May 4, 2012, and [4] failing to timely comply with the May 4, 2012 sanctions order in the *Grayson* matter."

The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to perform acts in the course of his profession which he

ought in good faith do only by failing to comply with the superior court's February 28, 2012, order to obtain the entry of the defendant's default by March 2, 2012.

The record fails to establish, by clear and convincing evidence, that respondent was required to appear at the January 30, 2012, case management conference under an order of the superior court or that respondent had notice of that order before January 30, 2012. Even though respondent stipulated that the superior court scheduled a case management conference for January 30, 2012, and that he received proper notice of that case management conference, respondent did not stipulate and the State Bar did not prove that the superior court had actually ordered respondent to appear at that conference or that respondent had notice of that order before January 30, 2012.

The record also fails to establish, by clear and convincing evidence, that respondent willfully violated section 6103 by failing to obtain the entry of the defendant's default before May 4, 2012, or by failing to timely pay the \$1,000 in sanctions imposed on him and FIA Card Services in the superior court's May 4, 2012, sanction order. As noted *ante*, respondent was almost killed in a camping accident on March 23, 2012, and was thereafter incapacitated for a very substantial period of time. That substantial period of incapacitation precludes a finding that respondent acted willfully, particularly when "applying the somewhat more specific level of willfulness required for violations of the State Bar Act, as opposed to violations of the Rules of Professional Conduct. [Citations.]" (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.)

In sum, the court finds that, in the *Grayson* action, respondent is culpable of willfully violating section 6103 only by failing to comply with the superior court's February 28, 2012, order to obtain the entry of the defendant's default by March 2, 2012. The other three alleged

violations of section 6103 in the *Grayson* action are DISMISSED WITH PREJUDICE for want of proof.

Aggravation⁸

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

Respondent has one prior record of discipline. As noted *ante*, respondent privately reprimanded in *Walsh I* for violating section 6068, subdivision (o)(3) (failure to report judicial sanctions). Specifically, respondent failed to report to the State Bar that, in December 2007, a bankruptcy court imposed sanctions and damages in the amount of \$7,570 on respondent and respondent's client, jointly and severally, for violating the automatic stay. Respondent paid the sanctions, but failed to report them to the State Bar.

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

Respondent's misconduct involves multiple violations of section 6103.

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

Respondent's misconduct clearly burdened the superior courts and caused the opposing parties to incur attorney's fees and expenses. However, the record lacks credible clear and convincing evidence of any *significant* harm to the superior court, the administration of justice, or the opposing parties.

Mitigation

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

As noted *ante*, respondent suffered an extremely serious injury on March 23, 2012, which resulted in respondent's incapacitation for a significant period of time. Moreover, the court concluded that respondent's incapacitation precluded a finding that respondent willfully violated

⁸ All references to standards (or Stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

section 6103 when he failed to obtain the defendant's default before May 4, 2012, or when respondent failed to pay the \$1,000 in sanctions by June 3, 2012. If respondent's incapacitation does not preclude those findings, then respondent's incapacitation would be a very significant mitigating circumstance under standard 12.(e)(iv).

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

Respondent has been very candid and cooperative in the State Bar's disciplinary investigations and this State Bar Court disciplinary proceeding. He entered into a stipulation as to facts, conclusions of law and disposition in case number 11-O-15956-RAP. In addition, he entered into a rather extensive partial stipulation of facts in case number 12-O-16793-RAP.1.

Respondent is entitled to significant mitigation for this candor and cooperation. (Std. 1.2(e)(v); *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 811.)

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

Respondent presented testimony from six character witnesses who were aware of respondent's alleged misconduct and who uniformly testified to as to respondent's exceptionally good character. These six witnesses were extremely credible.

Jeffrey Gross, a San Diego police officer, has know respondent for eight years. Gross is Godfather to one of respondent's triplets. Gross testified that respondent is a good father and family man; a genuine, honest, and good person.

Daniel Simas, a retired N.C.I.S. special agent and former supervising investigator for the San Diego District Attorney's Office, has know respondent for more than 13 years. Simas and respondent belong to the same Catholic Church. Simas recruited respondent to join the Knights of Columbus, a charitable religious organization, in which respondent is very active. Last year, respondent was co-chair of a large Knights of Columbus charity golf tournament.

Simas also testified that respondent is a loving father and devoted husband and that respondent is exceptionally trustworthy and honest.

Joseph Schwalbe, a company general manager, has known respondent for about four years. Schwalbe and respondent each take their daughters to a YMCA camping trip each year. Schwalbe testified that respondent is an amazing father and family man who loves God and his family. Schwalbe was on the March 2012 YMCA camping trip at which respondent was seriously injured. At the time, Schwalbe did not think respondent was going to live. Schwalbe describes respondent's attitude since the accident as positive and his character as very strong.

Attorney Ivan Lavinsky has known respondent for about 11 years. Attorney Lavinsky testified that respondent is hard working and a man of good character.

Attorney Eric Welch has known respondent for three years and testified that respondent is honest and candid and that, since respondent's accident in March 2012, respondent has been an example to others with respect to maintaining a positive attitude in the face of serious adversity.

Christopher Shaw, a company president, has known respondent for about 17 years. Shaw testified that respondent is a great guy who is committed to his religion and his family, and is a person you can trust.

The compelling testimony of respondent's character witnesses is effectively corroborated by respondent's involvement in numerous charitable, civic, and religious activities, including fundraising for charities, blood drives, can-food-collection drives, homeless shelters, and collecting old computers for distribution to students from low-income families. Respondent's activities are strong evidence of his exceptional good character. (*In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.)

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

Respondent recognizes that his misconduct adversely affected the court system and the opposing parties and is remorseful for his wrongdoing. Such recognition of wrongdoing is a mitigating factor. (*Toll v. State Bar* (1974) 12 Cal.3d 824, 832.) As are demonstrated repentance and established determination to avoid future transgressions. (*Ibid.*)

The court accepts respondent's testimony that his misconduct was not deliberately wrongful or venal. Furthermore, in response to his misconduct, respondent undertook an extensive revision of his office procedures and his computerized case management system and of his staff training and supervision to ensure that his misconduct is not repeated. Respondent is entitled to significant and meaningful mitigation credit for the extensive reforms he made to prevent a reoccurrence of the found misconduct. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 926, and cases there cited.)

Discussion

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.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The applicable standard for respondent's section 6103 violations is standard 2.6, which provides that the violation of any of the listed provisions of the Business and Professions, such as section 6103, "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." And standard 1.3 provides:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or

acknowledgment of a member's professional misconduct 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Unfortunately, the generalized language of standard 2.6 provides little guidance to the court in this proceeding. (*In re Morse* (1995) 11 Cal.4th 184, 206.) “The imposition of attorney discipline does not issue from a fixed formula but from a balanced consideration of all relevant factors, including aggravating and mitigating circumstances.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316.)

Also relevant is standard 1.7(a), which provides that, when an attorney has one 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.”

The State Bar contends that respondent’s misconduct warrants the “imposition of at least a one (1) year actual suspension.” The only case the State Bar cites to support its contention is *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430 in which the attorney was placed on five years’ stayed suspension, five years’ probation, and two years’ actual suspension that continued until the attorney made restitution and established his rehabilitation, fitness to practice, and learning in the law (std. 1.4(c)(ii)). *Katz*, however, is not instructive in the instant proceeding because *Katz* involved significantly greater misconduct than that involved here.

In *In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. 592 the attorney was found culpable of willfully violating section 6103 after he admitted to deliberately violating the

confidentiality provision of a superior court order enforcing a settlement agreement. The attorney in *Respondent X* was privately reprovved for the found misconduct.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 the attorney was found culpable of willfully violation section 6103 by not paying \$1,000 in court-ordered sanctions for bad faith tactics and actions. In addition, the attorney in *Respondent Y* was found culpable of willfully violating section 6068, subdivision (o)(3) by failing to report the sanctions to the State Bar. Like the attorney in *Respondent X*, the attorney in *Respondent Y* was privately reprovved for the found misconduct. But the attorney in *Respondent Y* was also required to pay the \$1,000 in sanctions with interest.

In both *Respondent X* and *Respondent Y*, the attorneys disobeyed but a single court order. And, in the instant proceeding, respondent disobeyed multiple court orders. Nonetheless, the present proceeding involves significant mitigation not present in either *Respondent X* or *Respondent Y*.

Even with the very significant mitigating circumstances found in this proceeding, the court concludes that a short period of actual suspension is appropriate for the found misconduct. On balance, the court concludes that the appropriate level of discipline for the found misconduct in the present proceeding is one year's stayed suspension and three years' probation with conditions, including a thirty-day (actual) suspension.

Recommendations

Discipline

The court recommends that respondent **MARK D. WALSH**, State Bar number 206059, be suspended from the practice of law in California for one year, that execution of the one-year suspension be stayed, and that he be placed on probation for three years subject to the following conditions:

1. Walsh is suspended from the practice of law in California for the first thirty days of probation.
2. Walsh is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.
3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Walsh must contact the State Bar's Office of Probation in Los Angeles 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, Walsh must meet with the probation deputy either in-person or by telephone. Thereafter, Walsh must promptly meet with the probation deputy as directed and upon request of the Office of Probation.
4. Walsh is to maintain, with the State Bar's Membership Records Office in San Francisco and Office of Probation in Los Angeles, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Walsh is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Walsh's home address and telephone number are not to be made available to the general public unless his home address is also his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Walsh must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
5. Walsh is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10, and October 10 of each year. Under penalty of perjury under the laws of the State of California, Walsh must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to the quarterly reports, Walsh is to submit a final report containing the same information during the last 20 days of his probation.

6. Subject to the assertion of any applicable privilege, Walsh is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.
7. Within one year after the effective date of the Supreme Court order in this proceeding, Walsh must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of his successful completion of that program to the State Bar's Office of Probation. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Walsh's Minimum Continuing Legal Education ("MCLE") requirements;

accordingly, he is ordered not to claim any MCLE credit for attending or completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)

8. This probation will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Walsh has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for one year will be satisfied and that suspension will terminate.

Professional Responsibility Examination

The court further recommends that MARK D. WALSH be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one year after the effective date of the Supreme Court order in this proceeding and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same time period. Failure to pass the MPRE within the specified time may result in actual suspension until passage without further hearing. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 5.161(A)(2), 5.162(A)&(E).)

Costs

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

Order

The court's April 10, 2012, order approving the parties' stipulation regarding facts, conclusions of law, and disposition in case number 11-O-15956 is VACATED.

Dated: June 5, 2013.

RICHARD A. PLATEL
Judge of the State Bar Court