FILED FEBRUARY 3, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **11-O-18966-RAH (12-O-14873)**
DARRYL WAYNE GENIS,	)	**DECISION**
Member No. 93806,	)	
A Member of the State Bar.	)	

Introduction[1]

In this contested disciplinary matter, respondent Darryl Wayne Genis is charged with four counts of misconduct in two client matters, including: (1) making a false and malicious State Bar complaint; (2) committing an act of moral turpitude; and (3) failing to obey court orders.

Although charged with four counts of misconduct, the court finds that respondent has committed misconduct in only two of those counts, and dismisses the other two with prejudice. The found misconduct involves respondent's willful failure to comply with court orders in two different matters. Even though two counts have been dismissed, the recommended discipline in this matter was significantly aggravated by respondent's lack of remorse for the found misconduct. As such, it is recommended that respondent be suspended for two years, stayed, with two years' probation, and 90 days' actual suspension.

[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.

Significant Procedural History

The Notice of Disciplinary Charges (NDC) was filed in this matter on July 9, 2013. Respondent filed a response on August 16, 2013. An amended NDC was filed on October 22, 2013, and the previous August response was deemed the response to the amended NDC.

On October 29, 2013, the parties entered into a stipulation as to facts. Trial was held on October 29 and 30 and November 4, 2013. Deputy Trial Counsel William Todd and R. Kevin Bucher represented the Office of the Chief Trial Counsel of the State Bar (State Bar), and Attorney David A. Clare represented respondent. The matter was submitted for decision on November 6, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the October 2013 stipulation, respondent's response to the amended NDC, and the evidence presented at trial.

Background

Respondent practices primarily in Santa Barbara, Ventura, and San Luis Obispo Counties. His practice is limited to criminal law defense, handling driving under the influence (DUI) cases. By all accounts, respondent is a successful lawyer in this area of law. He has a very aggressive style of practice, which has resulted in disputes with prosecutors and judges in the counties in which he handles cases.[2]

[2] The Santa Barbara County District Attorney's Office filed a 25-page complaint regarding respondent's behavior. In so doing, the senior deputy district attorney responsible for the complaint reported alleged misbehavior by respondent in other cases in San Luis Obispo and Santa Barbara Counties, as well as cases in Ventura and Del Norte Counties. This court is only considering the allegations contained in the amended NDC and has disregarded the information regarding the other incidents.

Case No. 11-O-18966 – The Marking-Epps Matter

Facts

Background

In early 2010, respondent represented the defendant in a criminal matter, *People v. Marking-Epps*, Santa Barbara County Superior Court, case number 1313307. Attorney A. Brooke Gerard (Gerard) was the assigned deputy district attorney in this criminal matter. Respondent and Gerard did not get along with each other. Respondent had complained to Gerard's supervisor, Stephen Foley (Foley), about Gerard's courtroom behavior in this and other cases. Dissatisfied with Foley's response, respondent advised Foley that he intended to file a complaint against Gerard with the State Bar of California. Foley suggested that respondent wait to do so until he could investigate the matter; but apparently respondent had already instructed his secretary to send the complaint off to the State Bar.

The Marking-Epps Case

On February 10, 2010, attorney Charles S. Biely (Biely) wrote respondent a letter, informing him that Marking-Epps had retained him to continue with the case instead of respondent. Respondent received this letter before February 18, 2010.

On February 18, 2010, respondent appeared at a scheduled preliminary hearing in this criminal matter before Judge Edward Bullard. Attending the hearing were respondent, Gerard, and Biely.[3] At the hearing, Biely introduced himself to the court as the new attorney in the case, and requested a continuance of the preliminary hearing to allow him to prepare. Gerard stated that she had given Biely additional discovery based on his representation that he was the new

[3] Biely was known to all the parties, having formerly been an attorney in the Santa Barbara County District Attorney's Office.

attorney in the matter.[4] She did not give that discovery to respondent. Respondent briefly questioned whether he understood correctly that the discovery had been given to Biely, given that respondent was still the attorney of record.[5] Thereafter, the court accepted the substitution of attorney, relieved respondent, and concluded the hearing.

Respondent filed a complaint with the State Bar. In that complaint, respondent asserted that, by giving the discovery to Biely before Biely had formally become the attorney of record in the matter, Gerard violated the Penal Code's discovery rules, set forth at Penal Code section 1054 et seq. Specifically, respondent contended that her actions violated Penal Code section 1054.2, and therefore, constituted a misdemeanor.[6]

Penal Code section 1054.2 prohibits the disclosure of certain information regarding the victims or witnesses to the defendant or the defendant's family, or anyone else, and requires an

///

///

[4] In fact, she did not give the discovery to Biely personally. She, or someone at her direction, left the discovery in an envelope at the receptionist desk at the district attorney's office. This package was picked up by Biely prior to the hearing on February 18, 2010.

[5] It is unclear whether it was a proper practice for Gerard or her office to arrange for a new attorney to receive discovery without a court order substituting the new attorney into the case. Clearly, respondent felt it was improper. In reviewing the facts and law, it appears that the better practice would have been to first obtain the court's permission or order of substitution before disclosing discovery in the case to a third-party attorney.

[6] This section is part of the discovery rules enacted by Proposition 115 in 1990, which govern the reciprocal obligations of the prosecutor and defense counsel with regard to all discovery. Penal Code section 1054.1 describes the duties of the prosecuting attorney to disclose to the defendant or his or her attorney certain material in the prosecutor's possession. Penal Code section 1054.3 describes the obligations of the defendant or his or her attorney to similarly disclose certain other information.

attorney providing this information to inform the recipient of these prohibitions.[7]

Respondent believed, and still believes, that Gerard's act of providing the discovery to Biely before he had become attorney of record violated Penal Code section 1054.2. This was an honestly held belief by respondent. If respondent was correct in his belief, her actions would have potentially resulted in the commission of a misdemeanor by Gerard. Accordingly, he filed a complaint based on her actions. In his complaint, he quoted Penal Code section 1054.2 and described the facts which supported his conclusion that Gerard had violated the section.[8]

Later, in an unrelated case, *People v. Damer*, Santa Barbara County Superior Court, case No. 1345169, respondent again referred to Gerard in derogatory terms, stating that she was "acting in ignorance and breaking the law, all in the name of her official duties as a Deputy

---

[7] Penal Code section 1054.2 provides as follows:

Disclosure of address or telephone number of victim or witness; prohibition; exception.

(a) (1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.

(b) If the defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

[8] For purposes of this decision, this court need not determine whether respondent's interpretation of this section was correct, since respondent credibly testified that he held an honest, good faith belief that it applied to Gerard's actions of providing the discovery to Biely.

District Attorney." Respondent also claimed that "[o]n February 23, 2010, [Gerard] admitted to committing a misdemeanor violation of Penal Code Section 1054.2 by giving police reports and other sensitive confidential information to someone other than a person authorized by that code section."

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.

The State Bar alleges that respondent's complaint to the State Bar that Gerard wrongfully provided discovery in a criminal matter represented a false and malicious State Bar complaint in willful violation of Business and Professions Code section 6043.5, and thereby failed to comply with the laws of the State of California in willful violation of section 6068, subdivision (a). In support of this allegation, the State Bar states that this action by respondent was false, in that (1) the release was not by Gerard, but by a member of the Santa Barbara County District Attorney's Office other than Gerard (i.e., the receptionist); and (2) Biely had become the attorney for the defendant before his receipt of the discovery.

The court views the facts differently from the State Bar on all accounts in this matter. First, respondent held a good faith belief that the proper interpretation of Penal Code section 1054.2 was that it precluded Gerard from "prematurely" providing the discovery to Biely. Even if eventually found to be incorrect, this interpretation was not unreasonable.[9] When faced with

[9] Penal Code section 1054.2 could be read to apply to Gerard, since it uses the term "anyone" to describe those proscribed from committing the stated conduct. However, the section could also be interpreted by considering that it is surrounded by section 1054.1 (involving the rules governing prosecutors) and section 1054.3 (involving the rules governing defense counsel.) Under this interpretation, section 1054.2 simply states the rules imposed on those *receiving* the information with respect to subsequent disclosure.

the complaint, it was the State Bar's job to determine if it was valid.[10]

Second, the State Bar's position that respondent's complaint was false because the discovery was not given by Gerard, but rather a receptionist, is completely without merit. Gerard herself stated as follows in the February 18 hearing before Judge Bullard: "*I had provided* additional discovery, and because Mr. Biely indicated he was the new attorney on the case, *I provided the discovery to Mr. Biely* and not to Mr. Genis…" (Respondent's Exhibit A, page 2, lines 21-25; emphasis added.) Aside from the obvious import of this language that *she* was, in fact, the one that provided the discovery, it is also clear that this is all respondent knew about the transfer of the discovery. That is, his statement that Gerard provided the discovery (which the State Bar says is false because the receptionist did it) formed the honest basis of his knowledge at the time of the State Bar complaint.

Finally, it is also clear that Biely had *not* "replaced respondent as counsel for defendant" at the time of the discovery transfer, as alleged in count one. At the hearing, which was *after* the transfer of discovery, Biely asked the court "Have you accepted my substitution?" and the court responded: "Yes you are. [sic] Mr. Genis is relieved, and you are the attorney of record." Later, the court reiterated this order. (Respondent's Exhibit A, page 3, lines 5-7, and page 4, lines 1-2.)

The State Bar has failed to prove by clear and convincing evidence the allegations of Count One, and therefore, it is dismissed with prejudice.

---

[10] This may be analogous to a situation where an attorney/complaining witness contends that a respondent misappropriated funds from him or her, but the State Bar determines that it was either a lesser violation or no violation at all.

Count Two - (§ 6106 [Moral Turpitude])

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

The State Bar also contends that respondent committed an act of moral turpitude by referencing Gerard's alleged commission of a misdemeanor by violating Penal Code section 1054.2 in *People v. Damer* when he knew or was grossly negligent in not knowing that Gerard never made the claimed admission and that the accusation against Gerard was false.

As noted above, respondent held a good faith belief that Gerard's conduct violated Penal Code section 1054.2. Respondent referred to this "violation" in an Objection and Motion to Strike to District Attorney's Statement of Fact As It Violates Penal Code section 1204.5 in the *Damer* case. The State Bar has provided the court with only a three-page motion, devoid of any context as to why the recitation of Gerard's prior actions result in an act of moral turpitude. While at first glance, the reference to Gerard may appear to be the result of respondent's boorish behavior, the court is unable to discern by clear and convincing evidence whether the reference to Gerard was relevant, necessary, or appropriate, given the facts of the underlying *People v. Damer* case.[11]

The State Bar has failed to prove by clear and convincing evidence the allegations of Count Two, and it is dismissed with prejudice.

[11] It should be noted, however, that respondent did not simply accuse Gerard of being a criminal. Rather, he explained why he felt she had committed a misdemeanor by describing, with some specificity, the acts complained of and the section allegedly violated. This allowed the reader to evaluate the truth or falsity of the claim on his or her own. (Cf. *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438-1440; involving derogatory statements made regarding a judge found to be protected where they were statements of opinion based on a stated set of true facts.)

Case No. 12-O-14873 – The Whitus and Moreno Matters

Facts

The Whitus Matter

Respondent represented the defendant in *People v. Whitus*, in San Luis Obispo County Superior Court, case No. M0447682A. Trial was originally set in this case for October 12, 2010. On October 12, 2010, respondent appeared before the Hon. Jac Crawford, the judge presiding, for trial and requested a continuance of the trial. The court granted the request, continuing the trial until February 7, 2011, with a trial readiness conference set for February 3, 2011. On February 3, 2011, respondent appeared, and the trial was again continued to April 18, 2011, with a trial readiness conference set for April 7, 2011.

On April 7, 2011, respondent sent an appearance attorney, Midori Feldman, to appear on his behalf. When Ms. Feldman was asked whether respondent intended to make any pretrial motions on behalf of the defendant, she responded that she did not know. The court ordered respondent to personally appear at a continued trial readiness conference on April 14, 2011 (Respondent's Exhibit J, page 2.)[12] Respondent was timely made aware of the court's order. Respondent again failed to appear because he had scheduled a continuing legal education seminar in New Orleans, Louisiana. Instead, he sent Ms. Feldman again. She was not prepared to go forward with the matter, and was unable to respond satisfactorily to the judge's questions regarding the status of trial readiness. The court again ordered respondent to appear, this time

[12] Respondent's argument that Judge Crawford's statement in his minute order that "Atty Genis to be present on 4-14" was not an order is without merit. The fact that the word "order" is not repeated by Judge Crawford does not make this requirement of personal appearance anything less than an order. Other statements contained in the form minute order similarly do not use the term "order" but are obviously orders: "Motions to be filed by 4-14-11"; "Defendant remanded to custody…"; "Released on own recognizance…"; "Submit to chemical testing…" "[E]very direction of a court or judge is an order, whether it be merely made in writing or entered in the minutes." (*Von Schmidt v. Widber* (1893) 99 Cal. 511, 514.)

for a hearing the next day. Feldman received this order and conveyed it to respondent. On April 15, 2011, respondent again failed to appear, and sent appearance attorney George O'Neill on his behalf, who settled the matter. On June 21, 2011, the court sanctioned respondent $750 for his failures to attend readiness conferences on April 7, 14, and 15, 2011. Respondent appealed this sanction to the Appellate Division of the Superior Court, which upheld the order.

Conclusion

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

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

It is well-settled that to be found culpable of willfully violating section 6103, the State Bar need not prove that respondent violated court orders in bad faith. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.) Willfulness is established by proof that the attorney acted, or omitted to act, purposely. (*In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.)

An attorney willfully fails to appear when he is aware of the court's order requiring his appearance and has the ability to appear, but knowingly and intentionally does not appear. (See *In re Aguilar* (2004) 34 Cal.4th 386, 389-392.) Here, respondent was aware of the court's order requiring his presence in the readiness conferences but did not attend. Therefore, by failing to appear at the court hearings on April 14, 2011, and April 15, 2011, respondent willfully disobeyed or violated an order of the court in willful violation of section 6103.

The Moreno Matter

Respondent represented the defendant in *People v. Moreno*, Santa Barbara County Superior Court, case No. 1398576. The integrity, honesty, and competence of two law enforcement officers involved in this case had been called into question by the local press. Those officers were Officers Kasi Buetel and Aaron Tudor. In order to assure a fair trial for all concerned, the Hon. Brian E. Hill, the judge presiding, ordered respondent and the deputy district attorney "not to inquire, discuss, question, or raise in any form whatsoever any bad acts that may be used that are arguably or at least…in theory or under the evidence code could be used for impeachment purposes without prior approval from the court."[13] This order was initially made outside the presence of the jury during jury selection and then repeated on June 7 and again on June 8, 2012. Respondent never asked Judge Hill for clarification of this order prior to commencement of the *Moreno* testimony.

On June 11, 2012, during cross-examination of Officer Buetel, without prior approval of the court and in front of the jury, respondent asked the following question: "When you fill out your paperwork, the question I want to ask you is, have you ever within the last three years given sworn testimony either oral or written that was not both true and correct?" The court sustained an objection made by the deputy district attorney.

On June 13, 2012, the court queried respondent regarding his question to Officer Buetel about a prior act of perjury. Respondent denied that he violated the court's order, arguing that Officer Buetel was free to answer "No I haven't," at which point, respondent would have approached the court and asked for approval to proceed to impeach her. Respondent further argued that if she agreed that she had committed perjury, then he would argue that fact to the jury. The court admonished respondent.

[13] Quotations in the Moreno matter are based on State Bar's Exhibit 13.

On June 14, 2012, respondent was again specifically admonished as follows: "With respect to Officer Aaron Tudor as with Officer Buetel and all witnesses … you are not to inquire, discuss, question, or raise in any form any other bad acts, alleged bad acts, alleged acts of perjury … without first having this discussed and reviewed outside the presence of the jury."

Approximately 90 minutes after this admonition, respondent asked Officer Tudor in front of the jury, "Do you remember pulling over, investigating, and arresting a local contractor by the name of Jed Hirsh?" Out of the presence of the jury, the court again admonished respondent. Respondent stated that this prior arrest was appropriately raised because it reflected an "error in judgment" by the officer, and "not something he did maliciously." Respondent argued that this did not reflect a bad act by the officer, only an unwarranted or bad arrest.

On June 19, 2012, Judge Hill set an Order to Show Cause scheduled for June 25, 2012. On June 26, 2012, the court filed its ruling on the OSC. The court found that "[t]he repeated violation of the Court's order --- in the face of a continuous stream of admonitions --- is in this Court's view --- undeniably unethical. Nothing in Mr. Genis' lengthy response to the Court on June 25, 2012 can be remotely considered good cause, good faith, or justification." The court further found that respondent was repeatedly admonished and that he understood the admonition and its scope. The court found the violation of the court's order to be "purposeful, deliberate, and calculated," done in bad faith, and for one reason: to cause prejudice.

The court's order in the *Moreno* case was measured action to ensure the orderly administration of justice and to provide a fair trial to both sides. It is clearly within the trial court's discretion to conduct trials in a manner that fosters these goals and avoids unnecessary delays. The court imposed a sanction of $2,000.

Conclusion

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

By failing to obey the court's order regarding prior bad acts of witnesses in the *Moreno* case, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act with or in the course of respondent's profession which he ought, in good faith, to do or forebear, in willful violation of section 6103.

Aggravation[14]

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent's failures to obey court orders in the Whitus and Moreno matters involve multiple acts of misconduct and are considered an aggravating factor.

Misconduct Surrounded by Bad Faith (Std. 1.5(d).)

As found by Judge Hill in the Moreno matter, respondent engaged in bad faith misconduct when he disregarded the court's orders. Judge Hill determined that respondent's claim not to have understood the Court's order was unbelievable and disingenuous and that respondent's questions were not asked in good faith, or with good cause or any justification. This is a serious aggravating factor.

Harm to Administration of Justice (Std. 1.5(f).)

Respondent harmed the administration of justice. His failure to obey court orders required the courts to repeatedly admonish him in the Moreno matter and to delay the conduct of the trial in the Whitus matter, wasting valuable judicial time and resources.

[14] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, effective January 1, 2014.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of the consequences of his failures to appear ready in the *Whitus* case or his disregard of the court's admonitions in the *Moreno* case.

In the *Whitus* matter, he blamed Ms. Feldman, who appeared on his behalf, for not following his instructions regarding advising the judge that he did not intend to file any additional briefs.[15]

Moreover, the appellate panel that upheld the *Whitus* sanction noted the conduct of respondent, the Appellant, as he appeared at the May 3, 2012 appellate hearing. Respondent's oral advocacy caused the appellate panel grave concern. The court pointedly described respondent's inappropriate behavior in its Decision on Appeal, filed August 1, 2012. The court wrote:

> "Consisting of repeated tirades and impertinence, and with a tone wholly condescending and accusatory, Appellant's conduct is a serious and significant departure from acceptable appellate practice, or for that matter, practice in any court of law. If left unaddressed, this sort of advocacy demeans the profession, lowers public respect, and conveys the impression that it is acceptable and effective."

Citing respondent's multiple insulting and disparaging comments made during the course of the appellate hearing, the appellate panel found that respondent's oral argument was a "parade

[15] What *is* telling and reflective of respondent's inappropriate approach to the aggressive practice of law, is that he also told her to inform the judge that if he did not grant a continuance, respondent would report him to the Commission on Judicial Performance (CJP). In fact, she reported back to respondent that even though she told the judge of the possible referral to the CJP, the judge still ordered respondent to be physically present in court the following day.

of insults and affronts," including an accusation that the appellate panel had not recently read the briefs, as well as further references to the sanctioning judge by his first name. Respondent demanded that each appellate judge disclose for the record whether he had discussed the case with the trial court, saying:

> "But it's common knowledge in the legal community, and you would be insulting me if you suggested otherwise, for us to believe that you judges don't talk like women in a sewing circle about us lawyers. You do. I know you do."

The appellate panel noted that the tone of respondent's comments was "confrontational, accusatory and disdainful" and constituted a "'cynical practice' that is a 'serious and significant [departure] from the standard of practice.' (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 293.)"

Similar to his conduct before the appellate panel in *Whitus*, respondent's arrogance came to the forefront again before the State Bar Court. Instead of acknowledging the error of his ways in his violation of the court's order in *Moreno*, respondent dismissed the court's orders by attributing them to the fact that there was "a history" between the judge and respondent. Respondent testified that Judge Hill is "biased" and "a nice man, but not the best judge."

It is clear that respondent fails to appreciate or understand the significance of his misconduct. Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Mitigation

No Prior Record (Std. 1.6(a).)

Respondent had an unblemished record with the State Bar for 30 years prior to the misconduct found in this case. Respondent is entitled to substantial mitigation for this extensive discipline-free period.

Cooperation with the State Bar or State Bar Court (Std. 1.6(e).)

Respondent asks the court to consider the fact that respondent entered into a stipulation as evidence in mitigation. The stipulation filed on the first day of trial was seriously deficient. The facts describing the found misconduct were minimal and easily provable. Respondent is entitled to no mitigation for this stipulation.[16]

Good Character (Std. 1.6(f).)

Respondent is clearly dedicated to his clients and zealously defends their rights. He has often handled cases on a reduced fee, and agrees to take the cases as far as necessary to get a favorable result.

He is a member of several professional organizations, usually involved in his area of DUI defense, including the National College of DUI Defense Lawyers and California DUI Lawyers Association. As a member, he has voluntarily filed amicus briefs in cases of involving aspects of DUI defense. He has also co-authored books used as practice manuals for the California DUI Lawyers Association.

Respondent owns property in Hollister Ranch west of Santa Barbara, and he serves on its homeowners' association.

Respondent is entitled to mitigation for this good character evidence.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

[16] The court acknowledges that some additional facts were admitted in the Response to the amended NDC, but because they were so interspersed with argument, they did not assist the court in outlining the relevant agreed-upon facts.

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) 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.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In addition, standard 1.7(c) provides that if mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where

there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

In this case, standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) – (h).

The State Bar argues that respondent be suspended from the practice of law for two years, stayed, and placed on probation for two years, with an actual suspension of one year, based on the contention that respondent is culpable of all four alleged counts of misconduct. However, the court has dismissed two of those counts – engaging in acts of moral turpitude and violating the laws of California.

Respondent seeks dismissal of all counts and in the alternative, an admonition for culpability of counts three and four in light of his 30 years of practice without discipline and extensive pro bono services performed over his career.

In *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, an attorney who was found culpable of violating a court's confidentiality order regarding a settlement agreement was privately reproved. But unlike the instant case, the attorney did not lack insight into the nature of his wrongdoing. The attorney had practiced law for 18 years without discipline and held a sincere and principled belief that he acted in support of sound public policy by revealing the confidential information. No aggravating factors were found.

But here, the aggravating circumstances are substantial. Respondent's multiple acts of wrongdoing, bad faith, significant harm to the administration of justice, indifference toward rectification or atonement for the consequences of his misconduct, and contemptuous attitude

toward the appellate panel in the Whitus matter are compelling reasons to recommend a greater sanction than that of a reproval as in *In the Matter of Respondent X*. Respondent's lack of insight raises concerns as to whether his misconduct may recur and is particularly troubling to this court. Moreover, the harm to the administration of justice weighs heavily in assessing the appropriate level of discipline.

Respondent's "lengthy practice and professional achievements did not aid respondent in avoiding basic [ethical] violations." (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 765 [25 years of practice with no prior discipline].) In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

Accordingly, after balancing all relevant factors, including the underlying misconduct, the mitigating circumstances, and particularly, the significant aggravating factors, the court concludes that a period of 90 days' actual suspension would be appropriate to protect the public and to preserve public confidence in the profession under standard 2.8(a).

Recommendations

It is recommended that respondent Darryl Wayne Genis, State Bar Number 93806, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation[17] for a period of two years subject to the following conditions:

1. Respondent Darryl Wayne Genis is suspended from the practice of law for the first 90 days of probation.

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

[17] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

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

6. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. Respondent must obtain anger management counseling from a duly licensed psychiatrist, psychologist or clinical social worker, at respondent's own expense, a minimum of two times per month and must furnish satisfactory evidence of compliance to the Office of Probation with each quarterly report. Treatment should commence immediately and, in any event, no later than 30 days after the effective date of the Supreme Court's final disciplinary order in this proceeding. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final. If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the State Bar may file a motion for modification of this condition with the State Bar Court Hearing Department pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

8. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

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.

Dated: February _____, 2014

RICHARD A. HONN
Judge of the State Bar Court