

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-O-11132-RAH
)	(12-O-11133); 12-O-11834
)	12-O-12827; 12-O-13366
CRAIG THOMAS WORMLEY,)	12-O-14607; 12-O-15517 (Cons.)
)	
Member No. 182137,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	
)	

Introduction¹

In this disciplinary matter, William Todd appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Craig Thomas Wormley was represented by counsel, James R. DiFrank.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and be ordered to make restitution as specified below.

Significant Procedural History

The court granted the State Bar’s motion at trial to dismiss counts one, two and four of case no. 12-O-11834 and counts one through four of case no. 12-O-14607 in the interest of justice.

Findings of Fact and Conclusions of Law

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.

Respondent was admitted to the practice of law in California on June 5, 1996 and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-11132– Probation Violation I

Facts

On June 6, 2011, the California Supreme Court filed order no. S191709 imposing discipline on respondent. That same day, the Clerk of the Supreme Court served respondent with a copy of this order, and respondent received it. This order became effective on July 6, 2011.

Order no. S191709 placed respondent on a five-year probation subject to certain conditions, including the following:

- a. To comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
- b. To submit written quarterly reports to the Office of Probation each January 10, April 10, July 10, and October 10 of each year or part thereof during which the probation is in effect. These reports are to certify under penalty of perjury whether respondent has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all other terms of probation during the preceding calendar quarter or part thereof covered by the report;
- c. To make monthly restitution payments of \$500.00 to any of the payees listed in the Financial Conditions section of the stipulation by the first day of every month throughout the period of probation;
- d. To provide proof of monthly restitution payments to the Office of Probation by January 10, April 10, July 10, and October 10 for the duration of respondent’s probation;
- e. To advise the Office of Probation of any changes in respondent’s contact information within 10 days of any change;
- f. To answer “fully, promptly and truthfully” any inquiries of the Office of Probation.

On July 12, 2011, Probation Deputy Eddie Esqueda sent respondent a letter reminding him of his obligations in the probation, including the above conditions. Respondent received this letter. Despite this reminder, respondent failed to provide proof of restitution payments to the

Office of Probation for payments made during the months of August 2011 through December 2011.

respondent also failed to report a change in his official membership address and failed to respond to inquiries made by the Office of Probation.

Conclusions

Count One - (§ 6068, subd. (k) [Failure to Comply with Probation Conditions]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation.

By his failure to strictly comply with the aforementioned requirements of his probation, respondent willfully violated section 6068, subdivision (k).

Case No. 12-O-11133 – Probation Violation II²

Facts

On January 19, 2011, the California Supreme Court filed order no. S188231 imposing discipline on respondent. That same day, the Clerk of the Supreme Court served respondent with a copy of this order, and respondent received it. This order became effective on February 18, 2011.

Order no. S188231 also placed respondent on a five-year probation subject to similar conditions as order no. S191709, including the following:

- a. To comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
- b. To submit written quarterly reports to the Office of Probation each January 10, April 10, July 10, and October 10 of each year or part thereof during which the probation is in effect. These reports are to certify under

² Respondent has been charged with violations in two probation cases. These cases are consecutively numbered as 12-O-11132 and 12-O-11133. While they are separate alleged violations, they share some facts in common. The probation deputy, Ivy Chung, testified as to respondent's failure to provide quarterly reports. Except for the October 10, 2011 report discussed below, this violation was not charged in the Notice of Disciplinary Charges and the court has not considered this uncharged misconduct.

penalty of perjury whether respondent has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all other terms of probation during the preceding calendar quarter or part thereof covered by the report;

- c. To make monthly restitution payments of \$500.00 to any of the payees listed in the Financial Conditions section of the stipulation by the first day of every month throughout the period of probation;
- d. To provide proof of monthly restitution payments to the Office of Probation by January 10, April 10, July 10, and October 10 for the duration of respondent's probation;
- e. To advise the Office of Probation of any changes in respondent's contact information within 10 days of any change.

On March 22, 2011, probation deputy Cindy Jalotta mailed a letter to respondent at his membership records address reminding him of the conditions of his probation. Respondent received this letter. Despite this reminder, respondent failed to provide the Office of Probation with his October 10, 2011 quarterly report. Respondent also failed to provide satisfactory proof to the Office of Probation that he had made restitution payments during the months of May through December 2011.³ Further, respondent was late in making his April 1, 2011 payment to the payee. Respondent also failed to timely advise the Office of Probation of a change in his membership records information.

Conclusions

Count Two - (§ 6068, subd. (k) [Failure to Comply with Probation Conditions])

By his failure to strictly comply with the aforementioned terms of his probation, respondent willfully violated section 6068, subdivision (k).

³ For some of these months, respondent committed only technical violations. He credibly testified that he had gone through fee arbitration with respect to the restitution payments owed Emma Valdez in the underlying case to case no. 12-O-11132 (Probation Violation I), and was ordered in the fee arbitration to pay her \$1,000.00 per month. In complying with this order, he "doubled up" on the payments to Emma Valdez, based on his obligation to pay \$500.00 from each of the probation violation matters, for a total of \$1,000.00 to her. As a result, he failed to comply with the requirement in Probation Violation II. Despite his failure to separately pay \$500.00 as alleged in Probation Violation II, he reported that he *was* in compliance on his quarterly reports, because, in his mind, he was making the extra required \$500.00 payment, albeit on another case.

Case No. 12-O-11834 -The Oliver Matter

Facts

On January 14, 2011, Christopher Oliver retained respondent by entering into a retainer agreement in which respondent assumed the responsibility of the “prosecution of all claims regarding the quiet title and fraudulent conveyance action regarding Oliver’s property.” On January 25, 2011, respondent substituted in as counsel for Oliver in Los Angeles County Superior Court case no. BC408579, *Christopher Oliver v. Maureen Diaz, et al.* (“the Diaz matter”).

On December 16, 2011, a case management conference was held in the Diaz matter. Respondent did not appear, and the case management conference was continued to January 13, 2012.

On March 28, 2012, Oliver filed a substitution of attorney in Diaz I with the words “No Response/Unable to Locate” written on respondent’s signature line. After March 28, 2012, respondent made no further appearances in the Diaz matter and did not file a substitution of attorney and did not obtain court permission to withdraw.

On March 28, 2012, a State Bar investigator sent a letter to respondent’s counsel requesting a written response to Oliver’s allegations of misconduct. Respondent received this letter, but neither respondent nor his counsel responded. On April 30, 2012, the State Bar investigator sent a second letter to respondent’s counsel, enclosing the first. No response was received. Respondent received this letter, but neither respondent nor his counsel responded.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Count Two - (§ 6068, subd. (m) [Failure to Communicate])

Count Four - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

At trial, this count was ordered dismissed in the interest of justice.

Count Three – (Rule 3-700(A)(1) [Failure to obtain court permission to withdraw])

Rule 3-700(A)(1) states that an attorney shall not withdraw from employment in a proceeding before a tribunal without its permission if permission for termination of employment is required by the rules of that tribunal.

By failing to secure the court's permission to withdraw from the Diaz matter, respondent withdrew from employment in a proceeding before a tribunal without its permission, willfully violating rule 3-700(A)(1)

Count Five - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

By failing to respond in writing to either of the State Bar investigator's letters, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent.

Case No. 12-O-12827 – The Mejia Matter

Facts

On January 11, 2012, Francisco Mejia met with Robinson in person regarding representation in a loan modification matter. Mejia gave Robinson a check for \$5,000.00, with

\$5,000.00 more to be paid two weeks later. A copy of the signed retainer agreement was not immediately given to Mejia.

During that meeting, Mejia told Robinson that he needed to respond immediately to a pending unlawful detainer action. Robinson said that documents would be filed the following day. On January 12, 13, and 14, 2012, Mejia called respondent's office with questions about his case and also asked for a copy of his retainer agreement, but neither respondent nor Robinson responded. Mejia did get in contact with "Ricardo," but was dissatisfied with his conversation, because he was rude to Mejia.

On January 20, 2012, Mejia retained new counsel because he feared his case was not being handled as he had been told. On that same date, his new counsel sent respondent a letter advising respondent that Mejia had terminated respondent's services. The letter was sent via the United States Postal Service and email to respondent's membership records email addresses, and via fax. It requested release of Mejia's client file to new counsel, a refund of unearned fees and an accounting of costs. Respondent received this letter on January 20, 2012 via fax, but did not respond.

On January 24, 2012, respondent filed a summons and complaint in Santa Barbara Superior Court under case no. 1384735, *Francisco Mejia v. Capital One North America, et al.* The complaint was signed and dated "January 18, 2012," even though it was not filed until January 24, 2012. The evidence at trial was unclear as to whether respondent sent the complaint to the court for filing before or after he received the January 20, 2012 fax.

On March 27, 2012, Mejia's new counsel sent a second letter, reiterating the demand that he return the file and provide an accounting. Respondent received this letter, but did not respond.

Conclusions

Count Six - (§ 6104 [Appearing Without Authority])

Section 6104 states, “Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension.”

There was not clear and convincing evidence that respondent caused the complaint to be filed with knowledge that his services had been terminated. He sent the complaint to the court on January 18, 2012; he was informed that he was terminated on January 20, 2013; and the court eventually filed the complaint on January 24, 2013. As such, the State Bar has failed to make the required proof of a violation as alleged in Count Six, and it is dismissed with prejudice.

Count Seven - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney’s possession and render appropriate accounts to the client regarding such property.

There was not clear and convincing evidence that respondent failed to maintain records of client property. However, there was sufficient evidence that respondent failed to properly account upon demand. Respondent received both the January 20, 2012 and the March 27, 2012 letters from Mejia’s new attorney. Both requested an accounting of the funds respondent received from Mejia. Respondent ignored both. Accordingly, respondent failed to render appropriate accounts upon the request of his client, willfully violating rule 4-100(B)(3).

Count Eight - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client’s request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits,

deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

Both the January 20, 2012 and the March 27, 2012 letters from Mejia's new attorney requested a return of Mejia's file. Respondent received these letters but failed to return the file. As such, respondent willfully violated rule 3-700(D)(1).

Count Nine - (Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Upon his termination, respondent was obligated to account for and return any unearned fees. He failed to do so, in willful violation of rule 3-700(D)(2).

Case No. 12-O-13366 – The Wynn/Dellinger Matter

Facts

Leland Dellinger was convicted of first-degree murder in 1979, involving the death of his step-daughter. He has been incarcerated at Avenal State Prison, and later, at Folsom State Prison for 35 years, on a 15-year-to-life sentence. He is currently very ill, with melanoma, diabetes, and high blood pressure. He is now 63 years old. He still remains incarcerated.

In April 2011, his sister, Rebecca Wynn, began communicating with respondent's law offices regarding Dellinger's criminal conviction. Wynn retained respondent on May 21, 2011, after several text messages.

Respondent did not obtain Dellinger's informed written consent before accepting compensation from someone other than Dellinger. Wynn issued a check in the amount of \$7,500.00 payable to respondent and wrote "Writ of Habeas Corpus" on the check's memo line.

In June 2011, respondent visited Dellinger in prison. On June 30, 2011, Wynn issued a

check in the amount of \$500.00 payable to respondent and wrote “Writ of Habeas Corpus” on the check’s memo line.

On September 6, 2011, respondent’s firm issued Wynn a receipt showing total payments of \$13,000.00 on Dellinger’s matter.

On September 8, 2011, Wynn issued a check in the amount of \$5,000.00 payable to respondent and wrote “Writ for Leland Dellinger” on the check’s memo line.

Wynn’s final communication from respondent was received in November 2011.

On December 10, 2011, Wynn issued another payment of \$2,000.00 to respondent and wrote “Writ of Habeas Corpus — Doctor’s Portion — Leland Dellinger” on the check’s memo line.

By December 15, 2011, Wynn had paid respondent \$13,000.00 in attorney fees and an additional \$2,000.00 in expert witness fees. These funds came from tax credits Wynn received after adopting several children, because she had no other source of funds from which to pay respondent.

Respondent did not promptly handle the writ for which he was retained. On March 6, 2012, Wynn sent respondent an email, demanding that he give her a status report of his work on the case. On April 11, 2012, respondent replied to Wynn’s email by briefly informing her of his *intended* strategy. An hour later, on April 11, 2012, Wynn advised respondent via email that he was terminated.

On June 18, 2012, Dellinger wrote a letter to respondent, confirming that respondent was terminated as his attorney, requesting an itemized accounting on the \$15,000.00 paid to respondent for attorney fees and expert witness fees, requesting a refund of any unearned fees held by respondent, and requesting release of Dellinger’s client file to Wynn. On June 28, 2012,

Dellinger received the certified mail, return receipt acknowledgement card showing respondent's receipt of the June 18, 2012 letter at respondent's Beverly Hills office.

Respondent never provided Dellinger an accounting, and never filed the writ on Dellinger's behalf.⁴

On May 18, 2012, a State Bar investigator sent a letter to respondent's counsel, Paul Virgo, requesting a written response to Dellinger's allegations of misconduct. Respondent received this letter, but neither respondent nor his counsel responded. On June 4, 2012, the State Bar investigator sent a second letter to respondent's counsel, enclosing the first. Respondent received this letter, but neither respondent nor his counsel responded.

Conclusions

Count Ten - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent was retained in April 2011 to prepare the writ of habeas corpus. Although respondent visited Dellinger in June 2011, he did little else before he was terminated, about one year after he was retained. As such, respondent failed to perform legal services with competence, in violation of rule 3-110(A).

Count Eleven - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

There was no clear and convincing evidence that respondent failed to maintain records of client property. However, there was sufficient evidence that respondent failed to properly account upon demand. On June 18, 2012, Dellinger sent respondent a letter, which respondent

⁴ Respondent prepared a draft of the writ and attempted to give a copy of it to Dellinger after Dellinger had terminated him. Dellinger refused to accept it in prison.

received, demanding an itemized accounting of his fees. Respondent failed to provide such an accounting, in willful violation of rule 4-100(B)(3).

Count Twelve - (Rule 3-310(F) [Accepting Fees from a Non-Client])

Rule 3-310(F) provides that an attorney must not accept fees from a non-client, unless certain conditions are met. Respondent did not comply with rule 3-310(F), in that he did not obtain Dellinger's informed written consent to receive payment from someone other than Dellinger.

Count Thirteen - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Both Wynn and Dellinger requested respondent contact them, first regarding the status of the case, and then regarding the file and an accounting. Respondent did not comply with either of these requests in a timely manner. As such, he willfully violated section 6068, subdivision (m).

Count Fourteen - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Wynn and Dellinger asked respondent on at least two occasions to return the client file. He did not timely respond to these requests. In so failing to return the file, he violated rule 3-700(D)(1).

Count Fifteen - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Wynn and Dellinger asked respondent on at least two occasions to return unearned fees. He did not timely respond to these requests or return the unearned fees. Accordingly, he violated rule 3-700(D)(1).

Count Sixteen - (§ 6068, subd. (i) [Failure to Cooperate])

Respondent failed to cooperate with the State Bar in its investigation of this matter by not responding to the investigator's letters. As such, respondent willfully violated section 6068, subdivision (i).

Case No. 12-O-14607 – The Cadenasso Matter

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Count Two - (§ 6068, subd. (m) [Failure to Communicate])

Count Three - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Count Four - (Rule 3-310(F) [Accepting Fees from a Non-Client])

At trial, these counts were ordered dismissed in the interest of justice.

Case No. 12-O-15517 – The Unauthorized Practice of Law Matter

Facts

On November 9, 2011, Member Billing Services of the State Bar of California (“Member Billing”) gave notice to respondent by mail of his possible suspension from practice if he did not pay outstanding fees, penalties and costs by July 2, 2012. On March 7, 2012, Member Billing sent respondent a Final Delinquent Notice by mail advising him that he would be suspended effective July 3, 2012 if payment of current and past due fees, penalties and costs were not received by the State Bar by 5 p.m. on July 2, 2012.

On May 24, 2012, the Supreme Court of California issued order Supreme Court order no. S202665, “In the Matter of the Suspension of Attorneys for Nonpayment of Fees Under the State

Bar Act.” The order included a list of names to which the order applied, a list that included respondent’s name. That Supreme Court order states the following, in pertinent part:

“IT IS ORDERED that each person hereinafter named is suspended from membership in the State Bar of California and from the rights and privileges of an attorney to practice law as of July 3, 2012...”

On that same date, a “Notice of Entry of Order for Suspension and Nonpayment of Fees re July 3, 2012” was filed. On June 4, 2012, Member Billing served respondent by mail at his membership records address with a “Notice of Entry of Order and Certificate of Mailing” of the May 24, 2012 Supreme Court order.

Further, on June 8, 2012, a State Bar investigator sent respondent’s attorney an email, reminding him that respondent’s suspension was scheduled in July 2012.

Respondent failed to pay accumulated fees, penalties and costs by the July 2, 2012 deadline. On July 3, 2012, respondent was suspended from the practice of law in California pursuant to the May 24, 2012 Supreme Court order, and remained suspended until September 19, 2012.

Respondent’s counsel, Paul Virgo, repeatedly checked the State Bar’s website on respondent’s behalf to see if respondent was still listed as active. His status remained “active” on the website for a few days past the July 3, 2012 suspension date set by the Supreme Court. Therefore, respondent felt that he was still an active member of the State Bar.⁵ Further, in support of his motion for admission to the State Bar of Michigan pro hac vice, respondent also received from the State Bar of California a certificate of good standing on July 11, 2012, which inaccurately reflected that he was an active member as of that date.

⁵ On July 22, 2012, respondent’s counsel noted that respondent’s status on the website changed, and he was listed as “suspended.” Mr. Virgo then notified respondent of this change.

On July 18, 2012, respondent appeared as counsel for the defendant in Los Angeles County Superior Court case no. BA381388. Respondent did not advise the court of his suspension, nor did he withdraw from the client's representation.

On August 10, 2012, a State Bar investigator sent a letter dated August 10, 2012 to respondent's counsel regarding the allegations that respondent had practiced law while suspended. The investigator's letter requested a written response by August 24, 2012, and was not returned to the State Bar. On September 13, 2012, a State Bar investigator sent a second letter to respondent's counsel dated September 13, 2012 regarding the allegations that respondent had practiced law while suspended. The investigator's letter requested a written response by September 27, 2012, and was not returned to the State Bar. The State Bar did not receive a response from respondent's counsel to either letter.⁶

Conclusions

Count Five - (§ 6125 [Unauthorized Practice of Law])

Section 6125 provides that only active members of the State Bar may lawfully practice law in California. By practicing law while suspended, respondent willfully violated section 6125.

Count Six - (§ 6106 [Moral Turpitude - Misrepresentation])

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

Respondent relied on his attorney's advice that he was active beyond the July 3, 2012 suspension date set by the Supreme Court. Further, this advice was corroborated by the inaccurate certificate of good standing he received from the State Bar in connection with his pro

⁶ The State Bar did not offer any exhibits reflecting these letters. However, the very credible testimony of the State Bar investigator indicated that these letters were, in fact, sent on the dates, and contained the deadlines, indicated.

hac vice admission application to the State Bar of Michigan. Respondent's reliance on these secondary sources was misplaced in the face of an unambiguous Supreme Court order. But respondent was, at most, negligent, and not guilty of moral turpitude in misrepresenting to the court his status as "active." As such, the State Bar has failed to prove that he acted with moral turpitude, and Count Six is dismissed with prejudice.

Count Seven - (§ 6068, subd. (i) [Failure to Cooperate])

Respondent failed to cooperate with the State Bar in its investigation of this matter. As such, respondent willfully violated section 6068, subdivision (i).

Aggravation⁷

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

Respondent has two prior records of serious misconduct.

In Supreme Court order no. S188231(State Bar Court nos. 04-0-10012; 04-O-10131 (04-0-10972; 04-0-10987; 04-O-11058; 04-O-11116; 04-O-11207; 04-O-11351); 04-0-10945 (04-O-11363;04-O-12398; 04-0-13321); 04-O-11114 (04-O-11394; 04-0-13506; 04-O-14096); 04-0-12794 (04-0-13656; 04-0-13981; 04-0-14370; 04-0-14634) (Cons.)), filed January 19, 2011, respondent stipulated in these 21 original disciplinary matters to the following ethical violations which occurred between March 2002 and June 2005: Rule 1-400(D)(2) (false/misleading advertisement) (one count); rule 4-100(B)(4) (not paying or delivering funds in attorney's possession which client entitled to receive) (one count); rule 3-700(D)(1) (not promptly releasing client papers/property upon termination of employment (one count); rule 4-100(B)(3) (not rendering or promptly rendering appropriate accounts) (four counts); rule 3-700(D)(2) (not refunding or promptly refunding) unearned fees) (10 counts); and rule 3-110(A) (not competently performing legal services) (14 counts). Aggravating factors were:

⁷ All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(1) significant harm to clients, the public or the administration of justice (std. 1.2(b)(iv)); (2) indifference toward atonement for or rectification of the consequences of misconduct (std. 1.2(b)(v)); and (3) multiple acts or pattern of misconduct (std. 1.2(b)(ii)). Although the parties did not stipulate to any mitigating circumstance, respondent's successful completion of the Alternative Discipline Program was considered a mitigating circumstance. (Std. 1.2(e)(iv).) Discipline was imposed consisting of four years' stayed suspension and five years' probation on conditions including 15 months' actual suspension with credit for inactive enrollment from September 15, 2007 to September 14, 2009.

In Supreme Court order S191709 (State Bar Court nos. 04-0-11943 (04-0-15140; 05-0-00069; 05-0-00312; 05-O-01125; 05-O-01154; 05-0-02903; 05-0-03637); 05-0-04820 (05-0-04863); 06-O-12218 (06-O-12431); 06-0-13717 (06-0-14052); 07-0-10995 (07-O-11280; 07-O-11985; 07-0-12275; 08-O-11681); 07-0-14985 (08-0-14770; 09-0-18118; 10-0-08273)), filed June 6, 2011, discipline was imposed consisting of two years' stayed suspension and five years' probation on conditions, including restitution, among other things. The parties stipulated to the following the following ethical violations in 15 client matters, which violations occurred between 2002 and at least 2010: Rule 3-700(D)(2) (not refunding or promptly refunding) unearned fees) (12 counts); rule 3-110(A) (not competently performing legal services) (seven counts); rule 3-700(D)(1) (not promptly releasing client papers/property upon termination of employment (two counts); rule 1-300(A) (aiding in the unauthorized practice of law) (one count); rule 4-200(A) (unconscionable or illegal fees) (one count); section 6103 (noncompliance with a court order) (one count); and section 6068, subdivision (m) (not communicating) (three counts). No mitigating factors were found. Aggravating factors were one prior disciplinary matter and multiple acts of misconduct.

Because much of the misconduct in the two prior disciplinary records occurred concurrently, their aggravating effect should not be considered with the same force as two sequential priors under standard 1.7(b), which sets forth disbarment as the appropriate sanction. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

Respondent's prior misconduct extended to over 30 victims and required him to pay more than \$170,000 in restitution. This misconduct included repeated acts of not performing with competence, not refunding unearned fees, and not accounting for fees he received. These prior acts are strikingly similar to the proven misconduct in this matter. This is a very serious factor in aggravation despite the diminished aggravating effect of the two prior disciplinary matters pursuant to *Sklar*.

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

As described above, there are multiple matters present in this case, and they also reflect a pattern of receiving fees and not performing valuable services, then not repaying unearned fees on termination, and finally, not properly accounting to the client. This pattern is a very serious factor in aggravation.

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

The clients in this case suffered significant harm. In particular, Mr. Dellinger waited almost an entire year for a writ of habeas corpus, which never was filed.

Mitigation

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

Respondent's good character was attested to by several witnesses, representing a broad cross-section of the community. However, respondent seems to have told many of the witnesses that testified that his State Bar problems arose from a "management" problem with certain employees, not by his own misconduct. In fact, it appeared that some felt that respondent was

acting somewhat honorably by taking the blame for these errant employees. The evidence at trial was clearly contrary to this characterization. Accordingly, the court gives this testimony little mitigating weight.

Of the witnesses presented, perhaps the most credible was attorney John Stifter, who seemed to be well aware of the nature of the misconduct and its seriousness. Nevertheless, he felt strongly that respondent was a person of good character and values.

Discussion

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

Respondent suggests six to 16 months' actual suspension if culpability was found. The State Bar recommends disbarment. The court agrees.

In this matter, respondent has been found culpable in four client matters and two probation violation cases of violating sections 6068, subdivisions (i) (three counts), (k) (two counts) and (m) (one count) and 6125 (one count) and rules 3-110(A), 3-310(F), 3-700(A)(1), 4-100(B)(3) (one count each), 3-700(D)(1) and (2) (two counts each) between April 2011 and September 2012. The sole mitigating factor was good character evidence, some of which was discounted as discussed above. In aggravation, the court considered, pattern and multiple acts of misconduct, harm to clients, the public and the administration of justice and prior discipline.

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable

sanctions. (Std. 1.6(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 apply in this matter. Of these, the most severe sanction is prescribed by standard 2.2(b) which suggests at least three months' actual suspension regardless of mitigation for commingling entrusted and personal funds or property or committing other rule 4-100 violations not resulting in willful misappropriation.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

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.)

As noted above, the court does not give full aggravating force to respondent's two prior disciplinary records. The Review Department in *Sklar* recognized that the aggravating force of two acts of misconduct charged in different disciplinary proceedings is reduced if the underlying misconduct in each was contemporaneous. (*In the Matter of Sklar*, 2 Cal. State Bar Ct. Rptr. at 619.) This is so because "part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr.

631, 646.)” As such, in the typical case of a respondent facing a third sequential discipline, he or she has disregarded ethical duties *twice*, each time with full knowledge of the prior discipline.

While it is clear that both of respondent’s two prior disciplines occurred before the current misconduct, the aggravating effect of those priors should be reduced. This is so because respondent did not have an opportunity to conform his conduct to ethical norms in his second discipline because much of the misconduct in both matters was concurrent.

Further, despite the unequivocal language of standard 1.7(b), disbarment is not mandated by standard 1.7(b) even if compelling mitigating circumstances do not predominate (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781) because the ultimate disposition of the charges varies according to proof (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125) and because the standards can be tempered by “considerations peculiar to the offense and the offender” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222; see also *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

A disbarment recommendation under standard 1.7(b) made solely on the number of times a respondent has been disciplined would require the court to blindly treat all prior records of discipline as equally aggravating. It should be made only after the court has carefully examined the nature and extent of the respondent’s prior records of discipline and given due regard to the facts and circumstances of the present misconduct. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704; Accord, *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841-842.) The court, therefore, does not give full aggravating force to respondent’s two prior disciplinary records.

In examining the nature and extent of respondent’s prior records and considering the facts and circumstances of the present misconduct, however, the court notes respondent’s involvement

in a pattern of similar misconduct toward 40 clients extending from 2002 to September 2012. Due to the nature and extent of this misconduct, the court finds that respondent's disregard of his clients' interests was habitual and evidences a long-standing pattern of unethical behavior that cannot be tolerated. Respondent was afforded the benefit of and successfully completed the Alternative Discipline Program, yet similar misconduct continued and new misconduct emerged in the form of noncompliance with probation conditions. Respondent has engaged in a "serious pattern of misconduct involving recurring types of wrongdoing." (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711.) "[W]hen an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing ... the gravity of each successive violation increases. [Citation.]" (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 (dis. opn. of Obrien, J.).)

Cases involving a pattern of misconduct even when the attorney has no prior record of discipline, generally result in the attorney's disbarment. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 ["panoply" of misconduct affecting more than 20 clients over a 10-year period; disbarment]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not so imposed, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar*, 49 Cal. 3d 753 (1989) 49. Cal.3d 753 [Although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself, and his concurrent family problems]; *Silva-Vidor v. State*

Bar (1989) 49 Cal.3d 1071 [Ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, attorney was experiencing severe financial and emotional problems during period of misconduct, and attorney thereafter substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [Disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].) The instant case is devoid of any compelling mitigation which could justify a discipline recommendation short of disbarment.

Lesser discipline than disbarment is not warranted. The serious, habitual nature of the misconduct as well as the absence of compelling mitigating factors suggest that respondent is capable of future wrongdoing and raise grievous concerns about his ability or willingness to comply with his ethical responsibilities to the public, the administration of justice and to the legal profession. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

Recommendations

It is recommended that respondent **CRAIG THOMAS WORMLEY**, State Bar Number 182137, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

Craig Thomas Wormley must make restitution to the following payees:

- (1) Rebecca Wynn in the amount of \$7,500.00 plus 10 percent interest per year from May 21, 2011;

- (2) Rebecca Wynn in the amount of \$500.00 plus 10 percent interest per year from June 30, 2011;
- (3) Rebecca Wynn in the amount of \$5,000.00 plus 10 percent interest per year from September 8, 2011;
- (4) Rebecca Wynn in the amount of \$2,000.00 plus 10 percent interest per year from December 10, 2011; and
- (5) Francisco Mejia in the amount of \$5,000.00 plus 10 percent interest per year from January 11, 2012;

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

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

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August _____, 2013

RICHARD A. HONN
Judge of the State Bar Court