FILED MAY 9, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: **12-O-12694 - PEM; 12-H-14194; 12-O-15239 Cons.**
	)	
KEVIN MOORE O'CASEY,	)	**DECISION**
	)	
Member No. 159858,	)	
	)	
A Member of the State Bar.	)	

Introduction[1]

In this disciplinary proceeding respondent Kevin Moore O'Casey was charged with and stipulated to: (1) failing to inform a client of significant developments in a matter in which he agreed to provide legal services and failing to respond promptly to reasonable status inquiries of a client; (2) failing to cooperate and participate in disciplinary investigations; and (3) failing to comply with conditions attached to a public reproval.

As set forth below, the court finds, by clear and convincing evidence, that respondent is culpable all charges. Based on the nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, this court recommends, among other things, that respondent be suspended for a minimum of two years.

Significant Procedural History

[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.

The State Bar of California, Office of the Chief Trial Counsel (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent on July 17, 2012. On July 27, 2012, the State Bar filed an Amended NDC. Respondent filed a response to the Amended NDC on September 24, 2012.

The State Bar, respondent, and his attorney of record executed a Stipulation as to Undisputed Facts and Conclusions of Law (Stipulation),[2] regarding the above-captioned matter on February 7, 2013. On that same date the Stipulation was filed with the court.[3]

A one-day hearing was held on February 7, 2013. The State Bar was represented by Senior Trial Counsel Erica L. M. Dennings. Respondent was represented by Attorney Paul S. Hokokian. Both parties filed closing briefs in this matter. Thereafter, on February 8, 2013, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on October 2, 1992, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-12694 – The McArn Matter

Facts

On November 9, 2010, Danial Danialian Salvage, dba Statewide Auto Sales (Statewide) filed a complaint against Ashton and Kathy McArn (the McArns) and other defendants for

[2] The court notes that the member number listed for respondent in the caption, which appears on page one of the Stipulation is incorrect. Respondent's member number is 159858 and is not the number set forth in the parties' Stipulation.

[3] On page two of the Stipulation, in paragraph number "1," the parties stipulated that "[a]ll investigations or proceedings listed by case number in the caption of this stipulation are deemed consolidated. This stipulation as to facts and conclusions of law applies to case numbers 12-O-12694, 12-H-14194 and 12-O-15239." As it is the wish of both parties to consolidate the afore-listed cases and as it also serves the interests of justice while conserving judicial resources, the court, pursuant to rule 5.58, **APPROVES** the Stipulation and **ORDERS** the consolidation of case numbers 12-O-12694, 12-H-14194, and 12-O-15239.

breach of contract in a matter entitled *Danial Danialian Salvage, dba Statewide Auto Sales v. Antonio Stocker; Cherlyn Stocker;*[4] *Ashton McArn; and Kathy McArn, et al.*, Los Angeles County Superior Court, case No. ECO54451 (the *Statewide* action).

Prior to August 2011, Statewide served written discovery on the McArns.

On August 2, 2011, the McArns employed respondent to defend them in the Statewide action. The McArns agree to pay respondent an initial $3,000, plus filing fees with hourly charges credited against the $3,000. Respondent was aware of the pending discovery requests.

On August 9, 2011, respondent sent Statewide's counsel a letter indicating that he was representing the McArns and requesting an extension of time to reply to discovery. The McArns had spoken with respondent about the discovery responses and had provided him with information to respond to the discovery responses. Respondent, however, never provided the discovery responses to Statewide's counsel.

On September 26, 2011, Statewide filed a motion to compel responses to discovery and for imposition of sanctions. Respondent received the motion; but, he did not file an opposition.

On October 28, 2011, the court granted Statewide's motion to compel discovery responses and awarded $1,920 in sanctions against the McArns and respondent for failure to provide responses to discovery. Respondent received the court's order. However, when respondent met in early November 2011 with the McArns to discuss discovery issues and the status of the case, he did not inform them that the court had imposed sanctions in the amount of $1,920 due to his failure to provide discovery responses.

On December 5, 2011, the McArns wrote a letter to respondent asking that he inform them regarding the status of their case. Although respondent received the letter, he did not

[4] Cherlyn Stocker is Kathy McArn's daughter-in-law. The McArns apparently purchased a 2004 BMW from the Stockers. However, Antonio and Cherlyn Stocker had never paid for the car.

respond. Thus, the McArns, as a result of respondent not responding to their letter or numerous phone calls, filed a complaint on December 19, 2011 with the State Bar regarding respondent's representation of them.

On February 24, 2012, the State Bar sent a letter regarding the McArns' complaint to respondent. Respondent received the letter shortly after it was sent.

In March 2012, after receiving notice of the McArns' complaint, respondent contacted the McArns for the first time since November 2011. Respondent testified that the *McArns* case had fallen through the cracks and that the letter from the State Bar caused him to locate the McArns' file.

Once respondent located the file, he discovered that sanctions had been ordered in the case and that the matter was set for a March trial in the Los Angeles County Superior Court. Respondent sent his paralegal to meet with the McArns for the purpose of gathering documents that were needed for trial. Respondent then agreed to represent the McArns in the upcoming civil trial in the *Statewide* action for no additional charge. He further agreed to represent the McArns for no extra charge in another matter involving a Department of Motor Vehicles (DMV) investigation into their purchase of the BMW. In a letter that respondent sent on or about March 14, 2012, to the McArns, he wrote that his agreement to represent them at no charge in the trial in the Statewide action and in the DMV administrative matter was "only fair under the circumstances." [5]

[5] Respondent sent a detailed accounting to the McArns for his representation regarding the Statewide matter. (Exh. B.) The total fees and disbursements for his representation of the McArns, including preparation for trial and the actual two-day trial totaled $14,108.05. There is no reason for the court to disbelieve the costs as set forth in respondent's accounting, as it included a two-day trial. Moreover, as respondent stated in his March 14, 2012 letter to the McArns, he did not charge them anything other than the original $3,000 retainer fee. Thus, he waived $11,108.05 of fees and costs, which the McArns would otherwise have been obligated to pay in the matter.

At trial respondent testified that he felt badly about having let the case slip through the cracks and, therefore, decided that he would do the trial in the *Statewide* action at no additional charge for the McArns and also represent them in the DMV administrative matter. This court finds respondent's testimony credible and his remorse to be sincere.[6] (See also, Exh. E.)

Respondent did not tell the McArns about the $1,920 sanctions in his March 2012 phone conversation with them or in his March 2012 letter, because he thought that since he paid the sanctions, he need not inform them.[7] Respondent spent a day with the McArns preparing for trial. On March 19 and 20, 2012, the matter went to trial and respondent won the case for the McArns. However, the court ruled against Antonio and Cherlyn Stocker as they failed to appear at trial.[8] The McArns had won the trial, in that the judgment stated that Statewide "shall take nothing by way of its complaint against defendants ASHTON McARN and KATHY McARN and . . . defendants ASHTON McARN and KATHY McARN shall have judgment against the plaintiff . . . on the complaint." (Exh. D.) Nonetheless, the McArns still could not registrar the BMW due to the fact that the defendants in the *Statewide* action had contacted the DMV and told the DMV that the Stockers had fraudulently purchased the car. Respondent also contacted the DMV after he was unable to negotiate a settlement with Statewide. Additionally, he sent the Superior Court decision to the DMV. The DMV thereafter opened a second investigation into the matter and determined that car belonged to Statewide. At that point the only legal action respondent could have taken against an administrative office decision would have been to file a writ or a suit for declaratory relief. Respondent did not believe that he had made an agreement to

[6] Kathy McArn testified at trial that she believed respondent felt badly about the way he had handled the case and that is why he did not make them pay any additional costs.

[7] Respondent paid the sanctions to opposing counsel on March 12, 2012.

[8] Respondent did not represent the Stockers.

file a writ in Superior Court once the DMV ruled against the McArns. This court agrees that after the DMV issued its ruling, respondent owed nothing more to the McArns.[9]

On May 8, 2012, a State Bar investigator sent a letter to respondent regarding the McArn complaint. The letter, among other things, requested that respondent provide a written response to the allegations of misconduct made by the McArns. Respondent received the letter shortly after it was sent. Respondent did not provide a written response to the investigator's letter.

While respondent pursued legal actions on behalf of the McArns, he failed to provide a written response to the State Bar investigator's request for information about the McArn complaint.

Conclusions

Counts One and Two - (§ 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.

By not informing the McArns that the court had awarded $1,920 in sanctions against them and respondent for failure to provide Statewide with responses to discovery, by failing to respond to the McArns' December 5, 2011 letter asking respondent for information regarding the status of their case, and by failing to respond to any of the numerous phone calls, which the McArns made to respondent between November 2011 and March 2012, respondent failed to keep a client reasonably informed of a significant development relating to a matter with regard to which he had agreed to provide legal services and failed to promptly respond to the reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

[9] Kathy McArn testified that she believed that respondent was no longer representing her.

Count Three - (§ 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 provide a written response to the State Bar investigator's May 8, 2012 letter to him as requested, regarding the allegations made against him by the McArns, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

Case No. 12-H-12694 - The Reproval Matter

Facts

On or about April 14, 2011, respondent executed a stipulation re: facts, conclusions of law and disposition (stipulation), which the State Bar executed on April 15, 2011. On May 9, 2011, the State Bar Court filed an order approving the stipulation. Effective May 30, 2011, respondent was publicly reproved for a period of one year by the State Bar Court.

The reproval required that respondent submit quarterly reports to the Office of Probation on a quarterly basis beginning July 10, 2011. Respondent was required to submit quarterly reports by July 10, 2011, October 10, 2011, January 10, 2012, April 10, 2012, and a final quarterly report by May 30, 2012.

The reproval also required respondent to attend State Bar Ethics School and provide proof of attendance at State Bar Ethics School to the Office of Probation by May 30, 2012. (Exhs. 6 and 12.)

It was not until March 15, 2012, that respondent filed his quarterly reports due July 10, 2011, October 10, 2011, and January 10, 2012. The reports were untimely. Respondent also failed to file the quarterly reports due April 10, 2012 and May 30, 2012.

Additionally, respondent failed to attend Ethics School as required by his reproval and failed to provide proof of Ethics School attendance to the Office of Probation.

Conclusions

Count Four - (Rule 1-110 [Failure to Comply with Reproval Conditions])

Rule 1-110 provides that an attorney must comply with conditions attached to private or public reprovals imposed by the State Bar Court.

By not timely filing the quarterly reports, which were due on July 10, 2011, October 10, 2011, and January 10, 2012, and by failing to file the quarterly reports due April 10, 2012, and May 30, 2012, respondent failed to comply with a condition attached to a public reproval, in willful violation of rule 1-110.

And, by failing to attend Ethics School and provide proof of his attendance to the Office of Probation on or before by May 30, 2012, respondent failed to comply with a condition attached to his public reproval, in willful violation of rule 1-110.[10]

Case No. 12-O-15239 – The State Bar Investigation Matter Re: the Binford Complaint

Facts

On or about July 31, 2012, a State Bar investigator sent a letter to respondent regarding a complaint filed by Bryan Binford (Binford) requesting that respondent provide a written response to the allegations of misconduct raised by Binford's complaint. Respondent received the letter shortly after it was sent. Respondent failed to provide a response to the investigator's letter.

[10] Moreover, to date respondent still has not attended Ethics School or provided proof of attendance thereof to the Office of Probation.

Conclusions

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 provide a written response to the State Bar investigator's July 31, 2012 letter to him as requested, regarding the allegations of misconduct raised by the Binford complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

Aggravation[11]

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

Respondent has a record of two prior disciplines.

Respondent was privately reproved with conditions in State Bar Court case Nos. 04-O-15350 (05-O-00077), filed on April 28, 2005 (effective May 19, 2005). In this two-client matter, respondent stipulated that he had failed to respond to reasonable status inquiries of one client and in the second matter had ceased performing services and had failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client. In mitigation, respondent had no prior record of discipline and displayed candor and cooperation throughout the disciplinary proceeding. The parties stipulated to an additional mitigating circumstance. Upon learning that a paralegal in respondent's employ was not returning client phone calls, respondent changed his office practices and implemented new procedures so that all phone messages would go directly to him for action; he also purchased a software program which documented phone calls and their

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

content so that he would be able to better manage them. No aggravating circumstances were involved.

Respondent was publicly reproved with conditions in State Bar Court case No. 09-O-19363, filed on May 9, 2011, effective May 30, 2011. In this single-client matter, respondent failed to perform legal services competently by: (1) failing to perform any work on behalf of the client except for having filed an answer to the complaint; (2) failing to file an opposition to a motion for summary judgment; (3) failing to appear at the summary judgment hearing; and (4) failing to file a motion to set aside the summary judgment. Respondent also stipulated to failing to promptly return unearned fees amounting to $1,500 to his client and failing to respond to reasonable status inquiries by failing to reply to the client's phone calls requesting status updates. In mitigation, respondent was found to have displayed candor and cooperation by entering into the stipulation re facts and conclusions of law. In aggravation, respondent had a prior record of discipline, his misconduct included multiple acts of wrongdoing, and his misconduct of not promptly returning the $1,500 in unearned fees caused significant harm to the client.

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

Respondent has been found culpable of failing to communicate in one client matter, failing to cooperate in two State Bar investigations by not responding to two State Bar letters, and failing to comply with certain of his reproval conditions. Multiple acts of misconduct are an aggravating factor.

Mitigation

Lack of Harm (Std. 1.2(e)(iii).)

Although respondent initially failed to communicate with the McArns, he eventually followed through and performed admirably in the case, albeit after having been contacted by the State Bar. He paid the sanctions and he did the trial in the Statewide matter at no extra cost to

the McArns. The McArns prevailed at trial. Respondent then tried to work with the Statewide defendants, as well as the DMV, so that the McArns could registrar the car, which they had bought from the Stockers. The DMV, however, would not register the car. But, its determination not to register the car was not the result of any failure by respondent. (Apparently, the Stockers had never paid Statewide for the car. Nonetheless, they sold the car to the McArns without informing them that they had never paid for it.) Thus, respondent completed the work he agreed to perform for the McArns.[12]

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

At the time of his misconduct, respondent was dealing with the fact that his teen-age daughter was diagnosed as suffering from a bipolar disorder. For several years her moods had been unstable and resulted in significant school truancy. Furthermore, until recently, she had been exhibiting suicidal ideation, which caused significant stress to respondent, as well as other family members. (Exhibit F.) In March 2012, a medication that worked for respondent's daughter was found. She is now in therapy and her mental health issues are under control. She is now better than she has ever been. She is attending college, has a 4.0 GPA, and is a field worker for the Young Democrats. However, until March 2012, the previously undiagnosed and untreated mental illness of respondent's daughter caused significant disruption in respondent's life and that of his family.

Matthew House, a board certified psychiatrist, who has been treating respondent, stated that until the mental health issues of respondent's daughter were brought under control, the ongoing stress caused by those issues not only negatively impacted respondent's family life, but respondent's general health and ability to manage his law practice. (Exh. F.)

[12]Respondent had had never agreed to do a writ and thus was under no obligation to do a writ for the McArns.

Equally significant is the fact that since 2008, respondent has been suffering from what his psychiatrist termed "treatment resistant depression." (Exh. F.) He has not responded well to medication. According to Dr. House, respondent's depressive symptoms have included significant anhedonia (loss of interest and drive), as well as diminished energy and memory impairment. This was further complicated by the development of gout in 2008 and diabetes in 2009, which resulted in a life-threatening complication at one point. Additionally, respondent, who has only one kidney, has long suffered from stage three chronic kidney disease.

However, as noted by Dr. House, when the mental health issues of respondent's daughter were brought under control, respondent started to address his own emotional and health problems. Consequently, respondent's emotional issues have shown improvement. Dr. House stated that respondent's mood is stabilized and while he still lacks drive at times, he is trying to "get back on track." As Dr. House explained, the fact that respondent's law practice and the way he practiced law had suffered was not the result of an ethical or moral failure by respondent, but rather was due to the significant health issues and emotional issues with which he has had to deal. (Exh. F.)

Respondent now reports that his depression and drive have improved significantly. The court believes respondent as the court has been able to observe improvement in respondent's participation and energy level over the course of this case.

As noted, respondent's psychiatrist has attributed respondent's lapses in managing his cases with the emotional and health issues with which he has had to deal – thus , establishing a nexus between respondent's misconduct and his emotional and physical issues. And, while respondent has not totally overcome his depression, he has been making strides in that direction. Accordingly, the court finds that respondent is entitled to mitigating credit based on his emotional and physical difficulties.

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

Respondent cooperated in this proceeding by entering a stipulation as to facts and culpability. Because of respondent's cooperation the length of the trial in this matter was significantly shortened. By stipulating to culpability the State Bar did not have to put on witnesses in the reproval matter or have to call State Bar investigators to testify in the other matters. Respondent admitted his wrongdoing. Thus, significant judicial resources were saved. Accordingly, respondent's cooperation and candor merit mitigating credit.

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

Respondent not only verbally acknowledged his wrongdoing, but did so through his acts. While respondent had an obligation to represent the McArns in the Statewide litigation, he did not have any obligation to do it at no cost to them. Yet, he did represent them at no additional cost. Nor did respondent have an obligation to follow-up with the DMV on behalf of the McArns. But, again he did so at no additional cost to the McArns. By so doing respondent has demonstrated remorse and recognition of his wrongdoing.

He has also made a recommendation for discipline that is consistent with his wrongdoing. He suggests that he be actually suspended for a period of between one and two years. Moreover, respondent also has recommended that the court require that he remain suspended until he demonstrates that he has satisfied the requirements of standard 1.4(c)(ii) and has been rehabilitated. Respondent's recommendation shows that he recognizes the seriousness of his wrongdoing and is intent upon earnestly engaging in the rehabilitative process.

Respondent's recognition of wrongdoing and remorse are accorded significant mitigating weight.

Discussion

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

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 more or most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.4(b), 2.6, and 2.9 apply in this matter. The most severe sanction is found at standard 2.6, which provides for the imposition of sanctions ranging from suspension to disbarment.

Due to respondent's prior record of discipline, the court also must consider standard 1.7(b). Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." The standards, however, are guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards. [Citation.]" (*Id*. at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred pursuant to standard 1.7(b). The Supreme Court and Review Department, however, have not historically applied standard 1.7(b)

in a rigid fashion. In *Arm v. State Bar* (1990) 50 Cal.3d 763, the Supreme Court made clear that the number or fact of prior disciplinary proceedings cannot, without more analysis, foretell the result. Instead, the courts typically consider the facts and circumstances involving the attorney's present and prior disciplines. Disbarment has not been found to be the appropriate sanction in matters where the nature and extent of the attorney's prior record lacked the severity to warrant disbarment. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

In recommending disbarment, the State Bar emphasized standard 1.7(b), which calls for disbarment of an attorney, who like respondent, is found culpable of misconduct and has been disciplined at least twice before "unless the most compelling mitigating circumstances clearly predominate." Generally, the court will not reject a recommendation arising from application of the Standards unless [it] has grave doubts as to the propriety of the recommended discipline." (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1366.) Here, this court does have grave doubts regarding the appropriateness of disbarring respondent in the instant matter. The court does not believe that that disbarring respondent would serve the purposes of imposing discipline and concludes that disbarment is not warranted because of the compelling mitigating circumstances which predominate with respect to the misconduct of which respondent has been found culpable in this matter.

In the instant proceeding, there has been no demonstration by clear and convincing evidence that respondent's present transgressions actually "harmed significantly a client, the public or the administration of justice" Additionally, as attested to by Dr. House, respondent's failure to attentively deal with client matters and his law practice was not caused by a moral or ethical failure on the part of respondent, but rather by the significant health and emotional issues with which he had been dealing. Furthermore, respondent has demonstrated remorse and recognition of his misconduct, by providing services to his client free of charge, although he had

no obligation to do so. He also has cooperated in this proceeding by entering into a stipulation regarding facts and culpability, which has helped to conserve judicial resources.

And, although respondent has been disciplined on two previous occasions, neither matter involved serious or extensive misconduct. As a result, respondent has never served a period of actual suspension. Both the nature and extent of respondent's prior record lack the severity to warrant disbarment. (Cf. *In the Matter of Meyer*, *supra*, 3 Cal. State Bar Ct. Rptr. 697, 704.)

Turning to the applicable case law for guidance, the court finds *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 (*Meyer III*), to be instructive.

In *Meyer III*, the attorney was found culpable of violating two conditions attached to a private reproval previously imposed on him by failing to file two probation reports and failing to provide proof of completion of six hours of continuing legal education. In aggravation, the *Meyer* attorney had two prior records of discipline. In the first prior record of discipline (*Meyer I*), the attorney was given a private reproval in a one-client matter for: (1) repeatedly failing to respond to a client's reasonable status inquiries and failing to inform the client of significant developments in his case; (2) improperly withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client; and (3) failing to forward the client's file to new counsel in accordance with the client's instructions. In the second prior record of discipline (*Meyer II)*, a reproval violation proceeding, the attorney stipulated to violating conditions attached to the reproval in *Meyer I*. The attorney admitted violating the conditions attached to his first reproval by not filing a quarterly report, filing another quarterly report 12 days late, and not timely taking and completing the State Bar's Ethics School in accordance with his reproval conditions.

Additional aggravation in *Meyer III* involved: (1) engaging in multiple acts of misconduct; (2) showing indifference towards rectification; and (3) failing to cooperate – most particularly by failing to appear at the disciplinary trial.

The Review Department concluded that the nature and extent of the prior discipline in *Meyer III* did not justify a recommendation of disbarment under standard 1.7(b) and recommended, among other things that the attorney be suspended from the practice of law for two years, that execution of the two-year suspension be stayed and that he be placed on probation for the first 90 days of his probation.

While *Meyer III* is not directly on point, it is in many ways similar to the present matter. Both cases involve a reproval violation matter. The present case, however, also includes additional misconduct. Respondent herein failed to communicate with a client and failed to cooperate by not responding to a State Bar investigator's letter in the client matter. He also failed to respond to a State Bar's investigator's letter in a third matter. And, while respondent failed to reply to two letters regarding State Bar investigations, his failure is not as serious as the *Meyer* attorney's failure to participate in and appear at his disciplinary trial.

Additionally, the present matter involves a lesser degree of aggravation than that found in *Meyer* III. Moreover, the mitigating circumstances in the present matter are more extensive than that in *Meyer*, where no mitigating circumstances were found. And, the misconduct of respondent, herein, was causally connected to his emotional and physical difficulties. Respondent not only demonstrated his cooperation and candor in this proceeding by stipulating to both the facts and culpability; but, he has shown remorse regarding his misconduct and attempted to atone for his wrongdoing by performing services free of charge for his client, although under no obligation to do so. Finally, respondent has shown insight into the nature of his wrongdoing and a desire to engage in the rehabilitative process. He has proposed that he be

actually suspended for a significant period of time and that he be required to show his rehabilitation under standard 1.4(c)(ii) before he is able to again practice law in this state. Respondent's proposal shows recognition of wrongdoing and that he is in earnest about engaging in the rehabilitative process.

Therefore, after considering the totality of the circumstances, the court finds that a recommendation of disbarment would be excessive.

Nonetheless, respondent's present misconduct is more extensive than that of the attorney in *Meyer III* and requires a lengthier actual suspension than the 90-day suspension imposed in *Meyer III*.

Thus, after considering the standards and relevant case law and balancing the mitigating and aggravating circumstances, including respondent's prior record of discipline, the court concludes that respondent, among other things, should be actually suspended for a minimum of two years and remain suspended until he has complied with standard 1.4(c)(ii), and has demonstrated his rehabilitation to the satisfaction of the court.

Recommendations

It is recommended that respondent Kevin Moore O'Casey, State Bar Number 159858, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation[13] for a period of three years subject to the following conditions:

1. Respondent Kevin Moore O'Casey is suspended from the practice of law for a minimum of two years of probation and he will remain suspended until the following requirement is satisfied:

    i. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules

[13] 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.)

Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

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.

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. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

5. 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.

6. 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.

7. 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.)

8. Respondent must obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist or clinical social worker, at respondent's own expense, a minimum of one time 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. At the Office of Probation's request, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

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 during the period of his suspension 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: May _____, 2013

Pat McElroy
Judge of the State Bar Court