

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: **12-O-14844-RAH**  
)  
**GLEN STEVEN FLEETWOOD,** )  
) **DECISION**  
)  
**Member No. 113429,** )  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

Respondent Glen Steven Fleetwood made derogatory comments about his client to a court and a city attorney in a motion filed in a criminal matter. He also disclosed a note from his client containing information which reasonably placed the client in a negative light. Apparently after he realized his error, rather than accepting responsibility for his misconduct, he claimed his behavior was justified because he feared for his life. Finding respondent lacked credibility in this assertion, the court recommends that respondent be suspended for two years, stayed, that he be placed on probation for three years, and that he be actually suspended for the first 90 days of probation.

**Significant Procedural History**

The Notice of Disciplinary Charges (NDC) in this matter was filed on December 21, 2012. Trial commenced on July 8, 2013. Deputy Trial Counsel Meredith McKittrick represented the Office of the Chief Trial Counsel of the State Bar of California (State Bar).

---

<sup>1</sup> 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.

Kevin Gerry represented respondent. The matter was submitted for decision on August 20, 2013.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on June 13, 1984, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

On or about March 5, 2012, Isaac Moultrie (Moultrie) employed respondent to represent him in a criminal case in the Los Angeles Superior Court, Metropolitan District, arising from Moultrie's arrest for driving under the influence (the DUI matter). The DUI matter was prosecuted by the Los Angeles City Attorney's Office (the city attorney).

Respondent had requested that Moultrie prepare and sign certain documents that respondent felt were necessary for his criminal matter. On April 23, 2012, Moultrie traveled to respondent's office without an appointment. After waiting for what Moultrie apparently felt was too long to see respondent, Moultrie placed a note in a sealed envelope addressed to respondent (the note). The note stated the following:

I don't believe you need these doc's if you are to renegotiate the 2  
yr probation to 1 yr.  
Why are We having such friction?  
Fuck You too. I'm Isaac.  
Phone call more important than me?  
/s/ I.  
P.S. I have called U "7" times. Let's finish this and get it over.  
Am I requested to be in Court on 24<sup>th</sup> or not or what?  
No Jail Time or Trial

On April 24, 2012, respondent lodged the note in the DUI matter, and asked the court to make it "part of the court file...part of my motion to be relieved." By doing so, respondent disclosed the note to the court and the city attorney. In presenting the note to the court, respondent stated, "I don't usually tolerate clients using profanity towards me for their inability

to complete a Tahl waiver.”<sup>2</sup> Respondent did not provide any inkling that he felt threatened by Moultrie.

On April 26, 2012, respondent wrote a letter to Moultrie, advising him that he had provided the note to the court and the city attorney, indicating “neither the judge nor City Attorney was pleased.” Significantly, respondent did not refer to the note as “threatening” in this letter. Rather, he characterized it as “foul mouthed” and “profanity laced.” Also, there was no evidence that respondent contacted the police to report the “threat.”<sup>3</sup>

Respondent’s April 26, 2012 letter to Moultrie states “Don’t show up without an Appointment.” Further, on April 27, 2012, only a couple days after respondent contends he first read the note, respondent wrote Moultrie a letter advising him to stop by his office and drop off an envelope with the requested documents and a payment to Okorie Okorochoa (apparently the expert witness in the DMV proceeding). This letter did not reflect any fear of confronting Moultrie, or any precautions to protect respondent’s staff from any perceived “threat.”<sup>4</sup>

On May 4, 2012, respondent filed a motion to be relieved as counsel (the motion) in the DUI matter. Respondent did not request that the motion, or any part thereof, be received by the

---

<sup>2</sup> Respondent testified that he received the envelope from his receptionist, but did not open it, thinking it was the document he had asked Moultrie to drop off at his office. Respondent asserted that he opened the envelope at the April 24, 2012 hearing on Moultrie’s case. He then provided the document to the court, without any requested restrictions on the court’s handling of the document (i.e., that it be received under seal). Respondent contended that he felt the note was “threatening” and that this fact and the surrounding circumstances justified its disclosure.

<sup>3</sup> Respondent testified that he researched the State Bar website and thought about filing a restraining order, but rejected that option, because he concluded that filing a Temporary Restraining Order would result in Moultrie receiving a new charge. Instead, he concluded that the best avenue was to make a restraining order a condition of Moultrie’s release on his own recognizance.

<sup>4</sup> In contrast to the credible evidence before the court, respondent testified that immediately after receiving the note, he informed his staff not to let Moultrie into his office.

court with any restriction such as being received under seal. The motion included the following statements:

- a. The note was “threatening” and “obscene;”
- b. When respondent asked Moultrie about his criminal record, Moultrie “lied about his criminal history;”
- c. Moultrie was a rapist and “VIOLENT CRIMINAL” hiding his prior strike and sex offender registrant status;
- d. Moultrie’s “modus operandi” was “to intimidate others by claiming to have an expertise in civil litigation;”
- e. Moultrie’s “‘personal assistant’ was a prostitute involved in an altercation with Moultrie in March, wherein the police were called;” and
- f. Moultrie was arrested in December 2003, but the “charges, were dismissed!!! ... How such could happen is ‘unknown’! But it is believed that answer rhymes with the word, ‘stitch’.”<sup>5</sup>

On May 7, 2012, respondent sent Moultrie a letter, explaining what he had done in the DUI matter. In this letter, respondent advised Moultrie that if he had not threatened respondent by stating, “I sue attorneys,” respondent might still have been working on Moultrie’s case.<sup>6</sup> Respondent also acknowledged that he would continue to represent Moultrie at the DMV hearing.

On May 25, 2012, the court granted the motion, thereby relieving respondent as counsel for Moultrie.

**Respondent’s claim of fear as a result of the “threatening conduct” of Moultrie.**

Respondent contends that the note was “threatening” and that he felt his life was in danger. He contends that the note was a “challenge to fight.” He supports this contention with certain facts set forth in his motion, including the fact that Moultrie lied to him by not disclosing

---

<sup>5</sup> The sole basis for respondent referring to Moultrie as a “snitch” was that he had no criminal record for many of his arrests.

<sup>6</sup> Respondent did not reference any threats relating to his safety or physical welfare.

a prior criminal record. Further, Moultrie was charged twice for possession of firearms, once as a felon in possession, and once as a drug addict in possession. In addition, respondent contends that the use of the phrase “I’m Isaac” in the note indicates a threat. Respondent also contends that he was on the telephone with Moultrie a week before the note was given to respondent. During this call, there were sounds of a fight in the background. Respondent and Moultrie ended their call, and Moultrie called him back later. He told respondent that the woman involved in the altercation was gone. Respondent interpreted his reference to her being “gone” as meaning that she had been killed. Respondent also was aware that Moultrie was listed on Megan’s List and had a rap sheet showing two rapes.

Respondent testified that after the “threat” from Moultrie, he began to take precautions to protect himself and his family. Included in those precautions were keeping the lights on at his home all night, not going outside unless prepared for violence (including keeping a gun and ammunition in the back seat of his car), not going to his office unless necessary, not getting out of his car until he cruised the parking lot, and having his home alarm adjusted. He claims to having difficulty eating and sleeping well.

**Respondent’s Credibility.**

The court finds that respondent’s assertion that he feared for his life and that he felt threatened by the note completely lacks credibility. Respondent seems to have created this “fear” as an after-the-fact justification for his conduct in disclosing the note and the statements contained in the motion. The court bases this credibility finding on respondent’s demeanor in court, his inconsistent correspondence with Moultrie, and the plain meaning of the note itself.

## **Conclusions**

### ***Count One - (§ 6068, subd. (f) [Duty Not to Advance Prejudicial Client Facts])***

Section 6068, subdivision (f), provides that an attorney must not advance facts prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged. By filing the motion in the DUI matter and making the aforementioned statements in the motion, respondent improperly advanced facts prejudicial to the honor or reputation of a party or witness, in willful violation of section 6068, subdivision (f).

### ***Count Two - (§ 6068, subd. (e) [Duty to Maintain Confidence and Secrets of Client])***

Section 6068, subdivision (e), provides that an attorney has a duty to maintain the confidence and secrets of a client, except where the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death or substantial bodily harm to an individual. Specifically, section 6068, subdivision (e), requires that an attorney “maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” By disclosing the note to the court and the city attorney and by stating in the motion that Moultrie “lied about his criminal history” to the court and the city attorney, respondent failed to properly maintain the confidence and secrets of a client, in willful violation of section 6068, subdivision (e).

## **Aggravation<sup>7</sup>**

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

Respondent has one prior record of discipline. In October 2007, he received a public reproof in case no. 06-O-11172. This matter involved respondent’s failure to promptly return

---

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

an unearned fee in a single client matter. The misconduct underlying this discipline occurred in 2005-2006.

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

Respondent's actions significantly harmed Moultrie at a time when he was particularly vulnerable. Respondent disclosed damaging information about Moultrie to the judge and opposing council, undermining Moultrie's perception that he could receive a fair trial.

**Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)**

Respondent showed no remorse or understanding of the impropriety of his conduct. He irrationally asserted that his conduct was justified based on his alleged fear for his life. He failed to recognize the significance of his disclosure and neglected one of the primary duties of attorneys, to wit, maintaining the confidences of his client.

**Mitigation**

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

Respondent presented two witness declarations attesting to his good character. Both were aware of his misconduct, and, nevertheless, spoke very highly of respondent's character and strong sense of ethics. Two witnesses, however, do not provide adequate evidence of good character. Consequently, respondent is entitled to nominal mitigation for their testimony. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [respondent not entitled to mitigation for good character based on testimony of two witnesses].)

**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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards offer a range of sanctions from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6(b), 1.7(a), and 2.6 apply in this matter.

Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standard 2.6 provides that culpability of a violation of section 6068 must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 1.7(a) provides that, when an attorney has one prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar recommends, among other things, that respondent be actually suspended for a period of 90 days. Respondent, on the other hand, urges that the matter be dismissed.



Although not directly on point, the court found guidance in *In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387. In *Gillis*, the attorney received six months' actual suspension for violating rule 3-300 and sections 6106 and 6068, subdivision (e), in a single client matter. The attorney sold his residential property to his client in exchange for a portion of the settlement funds that the attorney obtained for his client in a wrongful death action. The Review Department found that the attorney committed acts of moral turpitude and breached his fiduciary duty to his client because the transaction was not fair and reasonable. The moral turpitude finding stemmed from the attorney's deliberate attempt to mislead the State Bar investigator, and the violation of section 6068, subdivision (e), related to the attorney's release of his client's confidential settlement agreement to a third party for the attorney's own benefit. With the exception of misleading the State Bar investigator, the Review Department found the attorney's acts were unintentional but grossly negligent. In mitigation, the attorney practiced for 26 years without prior discipline. In aggravation, the attorney committed multiple acts of misconduct.

Respondent's misconduct herein, although serious, is not as egregious as that in *Gillis* and does not involve a finding of moral turpitude. That being said, the court is concerned by respondent's failure to recognize the significance of his misconduct and his duties as an attorney. Respondent justified his client betrayal as an appropriate response to a perceived threat to the physical welfare of himself and his family. This justification, however, is belied by respondent's actions and communications at the time he claims to have felt threatened.

"[T]he protection of confidences and secrets is not a rule of mere professional conduct, but instead involves public policies of paramount importance which are reflected in numerous statutes." (*In re Jordan* (1972) 7 Cal.3d 930, 940-941.) The fundamental purpose for both the duty of confidentiality and the attorney-client privilege is to foster frank and open

communication between client and lawyer so that the lawyer will be fully informed of the client's case and may counsel the best means to achieve the client's aims. (See *Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 599.) Contrary to respondent's testimony, the evidence indicates that his desire to withdraw from Moultrie's case was motivated by Moultrie's failure to follow through with the negotiated settlement and his off-hand comment about suing attorneys. If this court were to affirm respondent's divulging of confidential attorney/client communications based on such a frivolous perception of physical peril, it could have a dramatic chilling effect on future attorney/client relations. Accordingly, the court declines to validate respondent's less than credible rationalization for his actions.

Therefore, having considered the evidence and the law, the court believes that a 90-day period of actual suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

### **Recommendations**

It is recommended that respondent Glen Steven Fleetwood, State Bar Number 113429, 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<sup>8</sup> for a period of three years subject to the following conditions:

1. Respondent Glen Steven Fleetwood 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.
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

---

<sup>8</sup> 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.)

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. 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.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
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.)

At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

### **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: December \_\_\_\_\_, 2013

---

RICHARD A. HONN  
Judge of the State Bar Court