

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: **12-O-14994-RAP**
)
IWO OSTOJA-LOJASIEWICZ,)
) **DECISION**
)
Member No. 244259,)
)
A Member of the State Bar.)

Introduction¹

In this contested disciplinary proceeding, respondent Iwo Ostoja-Lojasiewicz is charged with one count of misconduct: improper communication with a judge. Respondent represented himself in this matter. The State Bar of California (“State Bar”) is represented by Deputy Trial Counsel William Todd.

Having considered the facts and the law, the court finds respondent culpable of an improper communication with a judge and recommends that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, that he be placed on probation for two years and that he be actually suspended for the first 90 days of probation.

Significant Procedural History

The State Bar filed a Notice of Disciplinary Charges (“NDC”) on October 30, 2012. Respondent filed a response to the NDC on February 1, 2013.

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.

Trial in this matter was held on March 4, 2013. The matter was submitted for decision on March 4, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on October 16, 2006, and has been a member of the State Bar of California at all times since that date.

Credibility Determinations

With respect to the credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner on which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g. Evid. Code section 780 [list of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of the witnesses to be credible.

Case No. 12-O-14994 – The Judge Timothy B. Taylor Matter

Facts

Respondent had represented the plaintiff in a civil matter entitled *Wawrzynski v. City of San Diego*, San Diego County Superior Court, case No. 37-2010-00065138 (the “Wawrzynski matter”).

Judge Timothy B. Taylor presided over the matter and had rendered a decision in favor of the defendant. On March 10, 2011, Wawrzynski filed a notice of appeal of the judgment in Judge Taylor’s court and the notice was later lodged at the California Court of Appeal, Fourth Appellate District, Division One.

On or about April 11, 2011, respondent sent a letter to Judge Taylor regarding the Wawrzynski matter. When he sent that letter, respondent was neither a party to the action nor representing a party.

Upon reviewing respondent's letter, Judge Taylor concluded that it was an improper judicial communication and immediately stopped reading the letter. Judge Taylor instructed a member of his office staff to return the letter, as an improper judicial communication, to respondent.

On May 4, 2011, a member of Judge Taylor's office staff sent a letter to respondent, returning respondent's original April 11, 2011 letter. Among other things, the May 4th letter also notified respondent that the court was unable to process the April 11th letter because it was not appropriate to communicate with the court regarding a matter pending before the court via letter. The May 4th letter also included cites to California Rules of Court, rule 3.1200 (the ex parte rules), and rule 5-300(B) of the Rules of Professional Conduct (prohibiting improper contact with officials).

Respondent received the May 4, 2011 letter, read its content, and was aware that rule 5-300(B) was the reason that the court rejected his letter. Undeterred by this notification, respondent continued to find a way to have Judge Taylor read his letter.

In furtherance of his plan to contact Judge Taylor, respondent then performed a public record search for Judge Taylor's home address.

On or about July 8, 2011,² respondent wrote a letter to Judge Taylor concerning the Wawrzynski matter. It was addressed to and received at Judge Taylor's home address. Respondent testified at trial that he wanted the judge to read his letter.

On or about July 13, 2011, Judge Taylor received respondent's letter at his home address. In the letter, respondent discussed, among other things, the merits of the Wawrzynski matter. The letter demanded that Judge Taylor take judicial action in a case in which he was presiding.

² The July 8, 2011 letter was originally dated June 20, 2011. The date "June 20" was scribbled over and the date "July 8" was handwritten in its place.

When Judge Taylor opened the July 8th letter in the presence of his wife, he was immediately astonished and fearful because an attorney for a party in a case pending before him had located his home address and contacted him. Judge Taylor had taken steps as best he could to keep his home address from being openly available. Judge Taylor did not provide his home address to respondent, nor did he provide respondent with permission to contact him at his home address.

There is no prior business or personal relationship between respondent and Judge Taylor that would permit respondent to send a letter to Judge Taylor's home address.

Respondent did not send a copy of this letter to any counsel of record in the Wawrzynski matter.

In addition, although Wawrzynski filed a notice of appeal in pro per, respondent testified that he worked with Wawrzynski in preparing his opening brief, which was filed on September 14, 2011, the same date respondent substituted in as Wawrzynski's attorney of record in the appeal. Clearly, respondent was Wawrzynski's attorney prior to September 2011, although respondent could not recall exactly when he started to advise Wawrzynski.

Conclusions

Count One - (Rule 5-300(B) [Improper Communication with a Judge])

Rule 5-300(B) provides that an attorney must not improperly communicate with or argue to, directly or indirectly, a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer.

Respondent argues that he did not violate rule 5-300(B) because at the time he sent the April 11 and July 8 letters, (1) there was no pending matter before Judge Taylor; and (2) he was not the attorney for record for Wawrzynski. He also contends that sending the July 8, 2011 letter

to Judge Taylor's home was permissible because he was sending the letter to Timothy B. Taylor, not Judge Taylor.

The court rejects these and all of respondent's arguments.

Code of Civil Procedure section 1049 (pending action defined) defines an action as pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Clearly, the Wawrzynski matter was still a pending matter before Judge Taylor when respondent mailed the two letters to Judge Taylor. The appeal was pending and had not passed; and the judgment had not been satisfied.

Also, rule 5-300(B) prohibits an attorney from improperly communicating with or arguing to, directly or indirectly, a judge. The rule does not distinguish between an attorney and an attorney of record. "It is, in essence, a rule of fairness meant to insure that all interested sides will be heard on an issue." (*Heavey v. State Bar* (1976) 17 Cal.3d 553, 559.)

Therefore, by clear and convincing evidence, the court finds that respondent improperly communicated directly with a judge outside of open court, without the consent of all other attorneys in the matter or in the presence of all other counsel in such matter, in writing without a copy furnished to such other counsel, not in an ex-parte matter, and upon the merits of a contested matter pending before the judge, in willful violation of rule 5-300(B).

Aggravation³

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

Respondent has shown complete indifference or remorse toward rectification or atonement for his misconduct. He fails to demonstrate an appreciation of his misconduct or insight into his wrongdoing. Instead, he maintains that he has not committed any misconduct.

Other (Respondent's Attempts to Personally Serve Judge Taylor)

Judge Taylor had filed a complaint against respondent with the State Bar for respondent's improper communication with the court.

Respondent decided to issue a trial subpoena for Judge Taylor to appear as witness in this proceeding. Respondent did not attempt to serve Judge Taylor at his chambers at the Hall of Justice but instead, he decided to personally serve the subpoena on Judge Taylor at his home address.

On February 18, 2013, a court holiday, respondent appeared at Judge Taylor's home in the early morning hours. However, Judge Taylor was not at home. Judge Taylor's wife ("Mrs. Taylor")⁴ was at home and offered to accept service of the subpoena on behalf of Judge Taylor. Respondent refused.

After respondent left Judge Taylor's home, Mrs. Taylor contacted Judge Taylor, informing him of respondent's service attempt at their home. She was aware of respondent because he had appeared before her as an attorney in bankruptcy court. Mrs. Taylor told Judge Taylor that she was fearful of respondent appearing at their home.

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁴ Mrs. Taylor is a bankruptcy judge. The court identifies Bankruptcy Judge Taylor as Mrs. Taylor for identification purposes.

The next day, February 19, 2013, respondent again appeared at Judge Taylor's home at approximately 7:30 a.m. and attempted service. Judge Taylor had already left for work.

Before knocking on the front door, respondent peeked into the front window and saw a man in the living room. Respondent knocked on the front door and Mrs. Taylor appeared. She informed respondent that her husband had already left for work and was not at home. Not believing her, respondent stated to Mrs. Taylor that he had looked in the window and Judge Taylor was in. Mrs. Taylor offered to accept service on behalf of Judge Taylor but respondent again refused.

Mrs. Taylor was in fear of respondent, especially after learning that he had peeked into the front window of her home. A construction contractor was in the Taylor residence at the time respondent attempted service of the subpoena. The contractor followed respondent for about four blocks to where respondent had parked his car. When the contractor returned to the house, Mrs. Taylor contacted Judge Taylor.

Judge Taylor considers respondent's peeking into his front window as a grave invasion of his privacy. Judge Taylor testified it is not possible for anyone to peek into his front window by just walking to the front door. Respondent testified that he saw a man through the living room window as he approached the door.

On February 20, 2013, respondent attempted service of the subpoena for a third time at Judge Taylor's residence, arriving at about 6:25 a.m. Judge Taylor testified that respondent was pounding on the door.

Judge Taylor could not open the front door due to the construction. He exited through the rear door and saw respondent on the front step. Judge Taylor and respondent met, at which time respondent announced in a loud voice that he had legal papers for Judge Taylor. Judge

Taylor accepted and signed for the subpoena. A neighbor of Judge Taylor's was also outside during this time.

After Judge Taylor signed for the papers, respondent then proceeded to the real purpose for his attempts to serve Judge Taylor at his home. Respondent's real purpose, as he admits, was to embarrass Judge Taylor.

In a loud voice respondent called Judge Taylor, among other things, a corrupt judge and yelled, "The pedicab case went to trial after you lost an appeal to me, and we won, so fuck you Timothy B. Taylor!" Respondent continued to yell at Judge Taylor as he retreated to his house.

Judge Taylor's neighbor could hear respondent's verbal attack but was unable to understand what was said.

With his mission accomplished to embarrass Judge Taylor, respondent left the area.

Since this last incident, Judge Taylor and Mrs. Taylor are fearful for their safety.

Judge Taylor bases his fear of respondent to the escalation of respondent's conduct. During the trial in the Wawrzynski matter, respondent became upset and was hollering and pounding the table. Next, respondent appeared at his home and was peeking into the front window. Lastly, respondent was yelling and cursing at him in front of his house.

Respondent contends that he has a constitutional right to confront a public official about his incompetence and that respondent's speech is constitutionally protected. Respondent wanted Judge Taylor's neighbors to be aware of his incompetence as information for his next election.

During trial in this matter, respondent repeatedly stated that Mrs. Taylor had no reason to fear him because she was a good judge. Respondent testified that it made him feel good to yell at Judge Taylor and that he still feels good today about yelling at him.

Respondent's screaming accusations and profanities at Judge Taylor may be constitutionally protected. However, when included with respondent's escalating conduct

toward Judge Taylor, respondent's conduct has caused Judge Taylor and Mrs. Taylor to have a justified fear of respondent.

Thus, respondent's aggressive and offensive behavior in serving the trial subpoena for this proceeding constitutes a serious aggravating circumstance.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent has been a member of the State Bar since 2006 and has no prior record of misconduct. However, respondent had been a member for only about four and a half years when his misconduct occurred in 2011. Therefore, his lack of a prior record is not entitled to mitigation.

Discussion

Standard 1.3 provides that the primary purposes of disciplinary proceedings “are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 1.6(b) provides, in pertinent part, that the specific sanction 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 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle*, (Review Dept. 2006) 4 Cal. State 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 that respondent be actually suspended for 90 days or more. Respondent, on the other hand, argues for a dismissal or stayed suspension. Neither party cited to any supporting case law.

The court finds *Heavey v. State Bar, supra*, 17 Cal.3d 553 to be an analogous case. There, an attorney was suspended from the practice of law for two years, with the execution of the order of suspension stayed, and was placed on probation for two years, and was actually suspended for 30 days for commingling client funds and for writing to a judge on the merits of a pending case without furnishing a copy of the letters to opposing counsel. He wrote four letters to the judge, twice in the face of unmistakable warnings from the judge that copies of the letters should be sent to the other parties involved. His refusal to do so demonstrated “a brazen disregard of his professional duties.” (*Id.* at p. 559.) The court said that the attorney had violated the spirit and the text of former rule 16⁵ of the Rules of Professional Conduct (predecessor of current rule 5-300(B)). Despite his mitigation, including 30 years without any disciplinary record, active in community affairs and none of his offenses appeared to involve intentional dishonesty, the court found that there was little indication that the attorney yet realized the gravity of his violations.

⁵ Former rule 16 read, in part: “A member of the State Bar shall not, in the absence of opposing counsel, communicate with or argue to a judge ... except in open court upon the merits of a contested matter pending before such judge ...; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to judge or judicial officer concerning the merits of a contested matter pending before such judge.”

Similarly, respondent deliberately chose to ignore the rule prohibiting him from communicating with a judge in the absence of the parties. Respondent knew or should have known that the Wawrzynski matter was still pending based on the notice of appeal filed in March 2011. Any doubt he may have had should have been resolved when Judge Taylor's office wrote back to him and returned his April 2011 letter, referring him to the ex parte rules. Instead of heeding to the advice, respondent sent a second letter to Judge Taylor. But more egregiously, this time it was mailed to the judge's home address.

To further aggravate his misconduct, not only did respondent personally serve a trial subpoena at Judge Taylor's home, he accompanied the service with insulting and inflammatory language addressed to Judge Taylor. He admitted that his calculated hostility was aimed at embarrassing the judge and in the hope of affecting the judge's next election. Due to the increasing seriousness of respondent's uncivil and insolent behavior, Judge Taylor and Mrs. Taylor feared for their safety. As the Supreme Court noted in *Heavey*, "we condemn such unprofessional conduct." (*Heavey v. State Bar, supra*, 17 Cal.3d at p. 559.) Respondent's offensive attack against a member of the bench is totally unwarranted. Yet, he asserts that he feels good today about his verbal outburst and admits no wrongdoing.

Accordingly, having further considered the evidence, the standards, the case law, and the aggravating factors, the court concludes that a more severe level of discipline than that was imposed in *Heavey* is necessary to protect the public, the courts and the legal profession. A 90-day actual suspension would be appropriate.

Recommendations

It is recommended that respondent Iwo Ostoja-Lojasiewicz, State Bar No. 244259, be suspended from the practice of law in California for one year, that execution of that period of

suspension be stayed, and that respondent be placed on probation⁶ for a period of two years subject to the following conditions:

1. Respondent Iwo Ostoja-Lojasiewicz 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 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.
4. 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.
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

⁶ 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.)

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. 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 Exam

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: May 13, 2013

RICHARD A. PLATEL
Judge of the State Bar Court