

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-O-16226 - RAH
)	
ANTHONY ROBERT LOPEZ, JR.,)	DECISION
)	
Member No. 137401,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

Respondent Anthony Robert Lopez, Jr., is culpable, as charged, of failing to obtain written conflict-of-interest waivers from two plaintiffs he represented jointly in a personal injury lawsuit (rule 3-310(C)(2)) and of paying out a relatively small portion of the settlement proceeds to one of the joint clients despite outstanding medical liens (rule 4-100(A)). The three other counts, which charged failure to competently perform legal services (rule 3-110(A)), failure to inform client of significant developments (§ 6068, subd. (m)), and failure to respond to reasonable client status inquiries (§ 6068, subd. (m)), were dismissed with prejudice at trial on the motion of respondent.²

For the reasons set forth below, the court concludes that the appropriate level of discipline for the found misconduct is three years' stayed suspension and four years' probation with conditions, including a two-year (actual) suspension that will continue until respondent

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.

² The court sets forth the reasons for the dismissals of counts one, two, and three below.

establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct.³

Significant Procedural History

The notice of disciplinary charges (NDC) was filed on June 28, 2013. Respondent filed his initial response to the NDC on August 13, 2013. Respondent filed a first amended response to the NDC on March 11, 2014.

The parties filed a partial stipulation of facts on April 15, 2014, and a separate stipulation as to admission of documents on April 24, 2014.

A three-day trial was held on April 24, 28, and 29, 2014. The State Bar's Office of the Chief Trial Counsel (OCTC) was represented by Deputy Trial Counsel Lara Bairamian. Respondent was represented by Attorney James I. Ham of Pansky Markle Ham LLP.

At trial, the parties stipulated to the following amendments to the NDC to correct typographical errors. On page 4, in line 8, the phrase “(7) checks to David” was changed to read “5 checks to David.” On page 4, line 10 was modified to read as follows: “5 checks to David totaling \$5,000, only \$13,712.86 remained in Respondent’s CTA to.” On page 7, in the heading for count four, term “Potential Conflict” was changed to “Actual Conflict.” Finally, on page 7, in line 17, the cite to “rule 3-310(C)(1)” was changed to “rule 3-310(C)(2).”

The case was submitted for decision on April 29, 2014. On April 30, 2014, both parties filed posttrial briefs.⁴

///

³ The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

⁴ The court authorized the parties to address, in their posttrial briefs, the issues underlying the court’s dismissals of counts one, two, and three. After considering the parties’ posttrial briefing of those issues, the court affirms each of the dismissals. The court sets forth the reasons it dismissed counts one, two, and three below.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar of California since that time.

Facts

On May 25, 2007, brothers David and Miguel Baez were injured in a two-car automobile accident. David and Miguel were in one car together. David was the driver of the car, and Miguel was a passenger.

On July 10, 2007, David and Miguel signed a written fee agreement retaining respondent's law office to prosecute their personal injury claims against the driver of the other car involved in the accident. The clients' signatures on the retainer agreement were obtained by Roger Garcia in respondent's law office.

At the time David and Miguel retained respondent, respondent knew that David "rear-ended" the other car and that, at the time of the accident, David was under the influence of drugs and did not have a driver's license. Sometime later that summer or in early fall that same year, respondent learned that the police report of the accident stated that David was negligent. Respondent credibly testified in this State Bar Court disciplinary proceeding that, at that point, he spoke with both David and Miguel about the conflicts of interest and told them of the actual and reasonably foreseeable adverse risks/consequences to his representation of them jointly. Both brothers then told respondent that they still wanted him to represent them both. In addition, they told respondent that David did not have any assets or insurance and that they had agreed that they did not want to sue and would not sue each other over the accident.⁵ Respondent did not disclose the actual and reasonably foreseeable adverse risks/consequences of the joint

///

⁵ There is no documentation that confirms this discussion.

representation to David and Miguel in writing. Nor did respondent obtain David's and Miguel's written consent to the joint representation.

Not long after he was retained, respondent filed a personal injury lawsuit in the San Benito County Superior Court for David and Miguel against the driver of the other car involved in the May 25, 2007, car accident.

Both David's and Miguel's medical expenses were very high. David's medicals totaled more than \$200,000, and Miguel's totaled more than \$100,000.

The medical providers who claimed to have treated David's injuries resulting from the May 25, 2007, car accident included: St. Louis Regional Hospital; Doctors Medical Center; Hazel Hawkins Memorial Hospital; Foundation San Benito Clinics; NMCI; Hector Cervantes, D.P.M. (podiatrist Cervantes); Santa Clara Imaging; Sunnyvale Imaging Center (Sunnyvale Imaging); Bay Area Anesthesia and Bay Area Surgical Group (Bay Area); and Michael Esposito.

In October 2007, respondent's law office signed a medical lien giving podiatrist Cervantes a lien on David's claims and any recovery thereon for the value of the medical care Cervantes provided to David for the injuries he suffered in the May 25, 2007, car accident. Cervantes's bill for medical services totaled \$18,700.

In November 2007, respondent signed a medical lien giving Sunnyvale Imaging a lien on David's claims and any recovery thereon for the value of the medical services it provided to David. Sunnyvale Imaging's bill totaled \$1,983.

In February 2008, respondent signed a medical lien giving Bay Area a lien on David's claims and any recovery thereon for the value of the medical care it provided to David. Bay Area's bill totaled \$56,493. The total amount of the three liens on David's claims was \$77,176 (\$18,700 plus \$1,983 plus \$56,493).

///

At a mediation on December 15, 2009, respondent settled both David's and Miguel's personal injury claims with the insurance company for the driver of the other car involved in the accident (i.e., the defendant in the personal injury lawsuit respondent filed). Under the settlement, the insurance company agreed to pay David \$40,000 and to pay Miguel \$72,500. Neither of the settlement amounts was for the policy limits of the defendant's insurance policy. Furthermore, the settlement amounts were significantly less than David's and Miguel's medical bills/expenses.

On December 16, 2009, the defendant's insurance company sent respondent (1) a settlement check in the amount of \$40,000 made payable to David and respondent's law office and (2) a settlement check in the amount of \$72,500 made payable to Miguel and respondent's law office. On December 31, 2009, respondent deposited both of the settlement checks into his client trust account (CTA).

On January 5, 2010, respondent issued five \$1,000 checks drawn on his CTA that were made payable to David and seven \$1,000 checks drawn on his CTA that were made payable to Miguel. These checks were requested by David and Miguel to be in small increments so that they could cash them at a check-cashing store, since neither brother had a bank account or a Social Security number. As of January 2010, none of David's medical care providers had been paid.

Members of respondent's law office staff credibly testified that, before their lawsuit settled in December 2009, David and Miguel came into respondent's law office either together or alone more than a dozen times, but that after their lawsuit settled, David and Miguel came into the office only two times. Specifically, David and Miguel came into respondent's office together in January 2010 and then again in about April or May 2010.

///

In January 2010, David and Miguel came into respondent's law office to pick up the thirteen \$1,000 checks referred to above from respondent's office manager Yesenia Lopez. At that time, office Manager Lopez also gave the brothers detailed accountings of the settlement proceeds and the fees and expenses. When she began to explain the accountings to the two brothers, Miguel interrupted her, stating that they "were leaving," and the two men then left. At that point, it was clear to office manager Lopez that David and Miguel were no longer interested in their lawsuit or in learning what was going to happen next or what, if anything, else they needed to do.

After David and Miguel picked up their checks in January 2010, respondent lost all contact with both of them for a number of months. From January 2010 through about April or May 2010, neither David, Miguel, nor anyone on their behalf called or wrote to respondent's law office about David and Miguel's lawsuit. None of the numerous attempts to contact David and Miguel that respondent's office made during that period was successful.⁶

In April or May 2010, David and Miguel came into respondent's law office with Marty Estrada, who is a self-described "local community activist." Estrada was extremely rude and ill-mannered, announcing that he "represented" David and Miguel and that he "worked for the community." When office manager Lopez began speaking to David and Miguel, Estrada interrupted her and told her: "Look at me when I'm fucking talking to you." When Ms. Lopez asked David and Miguel about Estrada's authority, Estrada ordered them not to answer her and to allow him to do all the talking. Of course, because neither one of the brothers gave her the

⁶ Respondent and his office staff credibly testified that they had difficulty in contacting David and Miguel after they picked up their checks, despite multiple attempts. Respondent was not in the office during much of that time period because he was suspended from practicing law from January through April 2010. However, office manager Lopez was in the office, and she had excellent recall of the events that occurred during that time and was able to confidently provide the court with a very credible chronology of events regarding the office's attempts to locate David and Miguel.

authority to do so, office manager Lopez could not and did not discuss David's or Miguel's claims in any detail with Estrada.

At the time, office manager Lopez thought that Estrada was an attorney and asked him for his business card. Estrada, however, not only refused to give her his card, but he also refused to give her any contact information, repeating only that he "represented" David and Miguel and that he "worked for the community."

A few weeks later, Estrada went to respondent's law office unannounced for a second time. He again swore at the staff and demanded: "Where's the money?" Because there was not an attorney in the office at the time, office manager Lopez threatened to call security, and Estrada left and did not return.

In June 2010, Attorney Michael Millen contacted respondent regarding the status of David and Miguel's case. On June 17, 2010, respondent sent a letter to Attorney Millen regarding the status of David and Miguel's case. On July 14, 2010, Attorney Millen sent a second letter to respondent regarding the status of David and Miguel's case, thanking respondent for his "hard work in the underlying matter" and requesting an accounting of the funds paid to medical providers to date. On July 22, 2010, respondent sent a response letter to Millen in which respondent clarified that he was still in the process of settling the claims of the medical providers. As noted above, three of David's medical care providers had liens on David's personal injury claims and any recovery thereon. Attorney Millen's July 14, 2010, letter was the last communication that respondent received from either David, Miguel, or anyone on behalf of them. Moreover, respondent was thereafter unable to locate David or Miguel despite trying to do so.

In April, May, August, September, and November 2010 and February, April, June, August, and November 2011, respondent's office sent many letters to all of David's and

Miguel's medical care providers seeking to negotiate a reduction in the amount of their bills and liens. In those letters (exhibits 16 and M), respondent informed the providers that the settlement amounts that David and Miguel received (\$40,000 and \$72,500, respectively) were much less than their medical bills (over \$200,000 and \$100,000, respectively). These letters were received by the addressees.⁷ (Evid. Code, § 671 [mailbox rule].) Nonetheless, in almost every instance, the medical care providers never responded to respondent's letters, which did not surprise respondent in light of the large disparity between the settlement proceeds and the plaintiffs' medical bills. One exception was Sunnyvale Imaging, which contacted respondent's office and negotiated a resolution. On June 23, 2011, respondent issued a \$1,000 CTA check made payable to Sunnyvale Imaging in full and final settlement of David's bill and Sunnyvale Imaging's medical lien.

David and Miguel filed a complaint against respondent with OCTC in 2012. In late 2012, OCTC contacted respondent about the complaint. Thereafter, on December 7, 2012, respondent filed an interpleader action in Santa Clara County Superior Court naming the medical providers/lienholders and David and Miguel as defendants. Respondent still did not have contact information for David or Miguel. Therefore, he hired a private investigator to perform a skip

⁷ OCTC attempted to prove that the medical providers did not receive these numerous letters by producing the custodian of the records for each provider. However, the testimony from each provider was inconclusive as to whether the custodian had sufficient information from the file to conclude that the provider had not received the letters. In all cases, the custodian had no personal knowledge of David or Miguel. Also, the custodians could not confidently testify as to the completeness of their files, in that they did not have all the correspondence that would have included the subject letters. This difficulty was more pronounced in light of the fact that neither David nor Miguel had Social Security numbers or driver's licenses, both of which are used as a means to organize and file medical bills and other documents in computer data bases. Further, David and Miguel often used different names. In stark contrast to OCTC's medical-provider witnesses, respondent and his staff, including office manager Lopez and Maria Gomez, credibly testified that they prepared and properly mailed the numerous letters and that none of the letters was returned by the Postal Service as being undeliverable or otherwise. The testimony of respondent and his staff is supported by the fact that Sunnyvale Imaging contacted respondent's office and agreed to reduce its bill (see discussion below).

trace. This was unsuccessful. Nevertheless, respondent again attempted to contact the brothers with the information he had. In May 2013, OCTC gave respondent the correct contact information for David and Miguel, and respondent served them with the interpleader complaint he had filed against them and their medical providers.

In the interpleader action, respondent deposited a total of \$55,924.28. Of that amount, \$38,212.14 was from Miguel's personal injury settlement, and \$17,712.14 was from David's personal injury settlement. Judgment was entered in the interpleader action on February 13, 2014. From Miguel's many medical providers, only California Shock Trauma Air Rescue appeared as a medical-supplier defendant in the interpleader action. The \$38,212.14 from Miguel's settlement was distributed by the judgment as follows: \$4,314.54 was awarded to California Shock Trauma Air Rescue, \$28,659.00 was awarded to Miguel; and \$5,238.60 was awarded to respondent's law office.

The \$17,712.14 from David's settlement was distributed by the judgment as follows: \$500 was awarded to St. Louis Regional Hospital; \$14,783.94 was awarded to David; and \$2,428.20 was awarded respondent's law office.

Neither David nor Miguel testified in the present disciplinary proceeding. Although the record does not establish the exact date, it appears that David has been deported.

Conclusions

Count One - (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. The State Bar alleges that respondent violated rule 3-110(A) by failing to take further action to negotiate with the medical providers for David and Miguel after April 5, 2011, and by failing to file the interpleader action until December 7, 2012. However, the unrebutted evidence at trial established that respondent made several

attempts to contact the medical providers regarding their bill and liens after April 2011. Moreover, in light of all the relevant circumstances, including the medical providers' failures to respond to respondent's letters; and respondent's inability to locate David and Miguel despite his numerous attempts to do so, the court is unable to conclude that respondent is culpable of willfully violating rule 3-110(A).

The court is aware that the attorney in *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 9, 113-114 was disciplined because, after the attorney's attempt to have a medical lien reduced was unsuccessful, the attorney failed to promptly either pay the lien in full or take other appropriate steps to resolve the dispute. The court does not consider Riley controlling in the present case. First, in *Riley*, the lienholder made a demand on the attorney for payment, and no such demand has been made in the present case. Second, in the present case, respondent's clients disappeared and could not be located despite respondent's significant efforts to locate them. The client in *Riley* questioned the lien. In addition, the misconduct charged and found in *Riley* was not failing to perform legal services competently (rule 3-110(A)), but was failing to timely pay out client funds on demand (rule 4-100(B)(4)).

At worst, perhaps respondent was negligent in waiting until December 2012 to file the interpleader action. However, he could not locate his clients to serve them. The review department has repeatedly held that an attorney's negligence, even that rising to professional malpractice, is insufficient to establish a rule 3-110(A) violation.

In sum, the court dismissed count one with prejudice at trial because OCTC failed to prove either of the charged rule 3-110(A) violations by clear and convincing evidence.

Counts Two and Three - (§ 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. In count two, OCTC charges that respondent violated section 6068, subdivision (m) by failing to notify David and Miguel that he intended to file the interpleader action, by failing to notify Miguel that he filed the interpleader until May 2013, and by failing to notify David that he filed the interpleader. In count three, OCTC charges that respondent violated section 6068, subdivision (m) “[b]y failing to respond to David’s and Miguel’s repeated status inquires between in or about March 2010 and in or about June 2010.”

The court dismissed count two with prejudice at trial because respondent established that he and his law office staff repeatedly attempted to locate David and Miguel but were unable to do so. In addition, once OCTC finally provided respondent with David’s and Miguel’s address, respondent immediately contacted his clients. Without question, respondent more than fulfilled his fiduciary duty to keep his clients apprised of significant developments by repeatedly trying to locate them.

The court dismissed count three with prejudice at trial because there is no clear and convincing evidence that either David or Miguel made any reasonable status inquires between about March 2010 and about June 2010. While David and Miguel went to respondent’s office with Estrada in April or May 2010, there is no clear and convincing evidence that either one of them asked for a status update.

Count Four - (Rule 3-310(C)(2) [Avoiding Representation of Adverse Interests, Written Consent])

Rule 3-310(C)(2) provides that an attorney must not, without the written consent of each client, accept or continue representation of more than one client in a matter in which the clients’ interests actually conflict. As the review department held in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 , 616, after California adopted the doctrine of comparative negligence, a potential conflict of interest exists between every driver and passenger

involved in an automobile accident. Concomitantly, if a passenger has a viable negligence claim against the driver, the conflict is no longer potential, but actual. Notwithstanding the actual conflicts of interest between David and Miguel, respondent could properly represent both of them under rule 3-310(C)(2) because they were brothers and because David was not insured and was judgment proof.⁸

Respondent, however, did not initially recognize the conflict when he accepted the joint representation of David and Miguel in July 2007. Respondent did not recognize the conflict until late summer or early fall 2007 when he saw the police report in which David was found to be negligent. Respondent's failure to recognize the conflict before he accepted the joint representation is not a defense to the charged rule 3-310(C)(2) violation.

The record clearly establishes that respondent willfully violated rule 3-310(C)(2)⁹ when he accepted the joint representation in July 2007 without first disclosing the actual and reasonably foreseeable adverse risks/consequences of the joint representation to David and Miguel in writing and then obtaining David's and Miguel's written consent to the joint representation.

Count Five - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. As set forth above on page 2, the parties stipulated to modify certain factual allegations in the NDC. Some of the modifications affect the charges in count five. The court deems the charges in count five to

⁸ These facts also prevent the actual conflict from being a non-waivable conflict under *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893, 898.

⁹ As noted above on page 2, the parties stipulated to modification of the charges alleged in the NDC in count four.

be modified so that they are consistent with modified factual allegations. In short, the court deems count five to charge respondent with willfully violating rule 4-100(A) by failing to maintain \$18,712.86 in his CTA for the benefit of David and medical lien holders podiatrist Cervantes, Sunnyvale Imaging, and Bay Area when he disbursed \$5,000 of the \$18,712.86 in settlement funds to David in January 2010, before paying David's medical lien holders. The record clearly establishes a violation based on the rule 4-100(A) charge, as modified.

Without question, respondent was required to honor podiatrist Cervantes's, Sunnyvale Imaging's, and Bay Area's medical liens. Likewise, it is clear that respondent was required to deposit and maintain in his CTA the funds he received for David that are subject to those three medical liens until they are properly disbursed. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 242.) Respondent's contentions to the contrary are meritless.

When respondent signed the three medical liens he assumed a fiduciary relationship with each of the medical providers. Therefore, if he violated his duty to the lienholders in a manner that would justify discipline if the relationship were that of an attorney and a client, respondent may be disciplined for his misconduct. (*Crooks v. State Bar* (1990) 3 Cal.3d 346, 355; see also *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.) In short, respondent's failure to maintain the entire \$18,712.86 in his CTA until it was properly disbursed was a willful violation of rule 4-100(A).

Aggravation

Prior Records of Discipline (Std. 1.5(a).)

Respondent has two prior records of discipline.

In case no. 03-J-01119, respondent was suspended for one year, stayed, and placed on probation for one year. That discipline became effective on May 23, 2004. That case arose out

of discipline in Arizona involving respondent's mishandling of client trust account funds by failing to safeguard money belonging to a nonclient. Had that misconduct occurred in California, respondent would have violated California rules 4-100(A) and 4-100(B).

In case numbers 07-O-12039, 07-O-13033, 07-O-13145, 07-O-140055, 08-O-11160, 08-O-12906, 08-O-13013, and 09-O-12980, respondent was suspended for one year, stayed, placed on one-year probation with a 90-day actual suspension for misconduct he committed between 2007 and 2009. That discipline became effective on January 14, 2010. In a stipulation filed on July 30, 2009, in those case numbers, respondent stipulated to eleven acts of misconduct in seven personal injury contingency matters and to running misleading radio advertisements in Nevada in violation of rule 1-400(D)(2). He also stipulated that he failed to obtain court approval of settlements involving minor clients in violation of section 6068, subdivision (a); failed to communicate by providing an inaccurate disbursement sheet to his client indicating that his client's medical expenses had been reduced when they had not in violation of section 6068, subdivision (m); failed to inform his client about a written settlement offer in violation of rule 3-510; failed to file a complaint for an interpleader until ten months after his client received a collection notice on behalf of her medical provider in violation of rule 3-110(A); and failed to adequately explain the terms of the settlement agreement in violation of section 6068, subdivision (m). It is notable that, in this prior record of discipline, respondent also stipulated that he failed to properly honor a medical lien by delaying payment of the lien for over a year in violation of rule 4-100(B)(4) and that he failed to pay the balance of the client's bill from a medical provider in a prompt manner in violation of rule 4-100(B)(4).

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent's misconduct involved multiple acts.

///

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent entered into a detailed partial stipulation of facts with OCTC that saved the court time by shortening the trial.

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

Respondent presented several witnesses testifying to his good character. Several former clients were very supportive of respondent. In one instance, respondent performed work on a pro bono basis in a child custody matter. Others complimented respondent on his hard work, honesty, work ethic, and integrity in handling difficult legal matters, and several stated that they would recommend him to others in need of legal advice. Also, chiropractors testified as to respondent's promptness in returning calls and handling lien issues. In particular, the court valued attorney Robert Garcia, Jr.'s testimony. Mr. Garcia has been an attorney for 23½ years and has known respondent for more than 20 years. They worked closely together in the same building. He had almost daily exposure to respondent and was able to observe first-hand his business practices and personal demeanor. He considers respondent to have outstanding moral character. He finds that respondent is very conscientious and always available. He was impressed at the extent to which respondent manages his files and keeps them up-to-date through the use of a database program.

All of the above referenced witnesses were aware of the nature of the charges against respondent.¹⁰ The court gives significant mitigation credit to these character references.

Respondent also testified that he has performed community service by volunteering as a local board member of the Selective Service System.

¹⁰ The court reduced the mitigating impact of the testimony of Maria Sala, since she testified that she was unaware of the charges and the nature of this proceeding.

Remorse/Recognition of Wrongdoing (Std. 1.6(g).)

Respondent credibly testified as to changes he has made in his intake procedures to avoid potential and actual conflicts of interest that may occur in the future.

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 legal profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.” Presumably, the most severe sanction is set forth in standard 2.15, which provides: “Suspension not to exceed three years or reproof is appropriate for a violation of a provision of the Business and Professions Code or the Rules of Professional Conduct not specified in these Standards.”

Also relevant is standard 1.8(b), which provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or (3) the prior

disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

Much of respondent's misconduct underlying his second prior record of discipline occurred during the same time period as much of the current misconduct. Much of the misconduct in respondent's second prior record of discipline occurred during 2007 and 2008. Respondent's rule 3-310(C)(2) violation in the present proceeding occurred in late summer to early fall 2007. Accordingly, the court concludes that disbarment is not appropriate under standard 1.8(b). (See also in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) Even though the mitigating circumstances in the present proceeding are not compelling and do not predominate so as to make disbarment inappropriate under standard 1.8(b), they do counsel against disbarment.

Even though the court finds that disbarment is not warranted under the standards, the court is very concerned because the record raises a significant issue as to whether respondent has adequately learned from his two prior records of discipline such that he will avoid future misconduct. Respondent's violation of rule 4-100(A) occurred almost seven months after respondent entered into the lengthy stipulation with OCTC in his second prior record of discipline and just days before the 90-day actual suspension imposed on him in that prior proceeding. Had respondent earnestly sought to abide by the lessons of his two prior records of discipline, his rule 4-100(A) violation would not have occurred. Accordingly, the court concludes that a lengthy period of actual suspension that will continue until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) is necessary to fulfill the goals of attorney discipline.

On balance the court concludes that the appropriate level of discipline for the found misconduct is three years' stayed suspension and four years' probation on conditions, including a

two-year (actual) suspension that will continue until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct.

Recommendations

It is recommended that respondent Anthony Robert Lopez, Jr., State Bar number 137401, 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 probation¹¹ for a period of four years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first two years of probation and respondent will remain suspended until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and present learning in the general law pursuant to standard 1.2(c)(1).
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. 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 the Supreme Court order in this proceeding, Respondent must contact the Office of Probation and schedule a meeting

¹¹ 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.)

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 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 of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within the period of his suspension and to 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 that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 28, 2014.

RICHARD A. HONN
Judge of the State Bar Court