

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: 13-O-14465-LMA
)
DERON ADAM KARTOON,) DECISION
)
Member No. 155925,)
)
A Member of the State Bar.)

Introduction¹

In this disciplinary proceeding, respondent Deron Adam Kartoon is charged with: (1) engaging in the unauthorized practice of law (UPL) in willful violation of sections 6068, subdivision (a) and 6106; and (2) failing to cooperate with the State Bar’s investigation of his UPL in willful violation of section 6068, subdivision (i).

The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. In light of the found misconduct and the factors in mitigation and aggravation (including respondent’s admitted drug abuse problem), the court recommends that respondent be placed on two years’ stayed suspension and three years’ probation on conditions including a thirty-day actual suspension as well as treatment for respondent’s admitted drug

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.

abuse problem, abstinence from the use of alcohol and drugs, and routine and random alcohol and drug testing.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on February 11, 2014. On March 4, 2014, respondent filed a response to the NDC. On May 30, 2014, the parties filed a partial stipulation as to facts and admission of exhibits.

A three-day trial was held on June 10 and 11 and September 25, 2014.² The court took the case under submission for decision on September 25, 2014, after the trial concluded.

The State Bar was represented by Deputy Trial Counsel Heather E. Abelson. Respondent was represented by Attorney Daniel A. Grout.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 17, 1991, and has been a member of the State Bar of California since that time.

Facts

Respondent failed to pay his annual State Bar membership fees for the year 2013 by the February 1, 2013, deadline. On March 8, 2013, the State Bar sent respondent a final delinquent notice. Respondent admits that he actually received and knew of the contents of that final delinquent notice shortly after the State Bar sent it to him.

The final delinquent notice informed respondent that, if he failed to pay both his 2013 membership fees and the penalty for late payment before 5:00 p.m. on July 1, 2013, he would be suspended from the practice of law effective July 2, 2013. The final delinquent notice further

² On June 11, 2014, the court granted respondent's motion to continue the trial so that respondent could complete a 30-day in patient treatment program for drug abuse. Respondent was not able to complete the program, and the trial resumed on September 25, 2014.

informed respondent that, if he was suspended for nonpayment of fees on July 2, 2013, his suspension would *continue* until the State Bar received his payment of all outstanding fees, penalties, etc.

On April 24, 2013, respondent sent the State Bar an email stating: “These dues are not affordable. I am suffering greatly due to my divorce and pending personal issues. Is there any kind of hardship the State Bar offers. I had to borrow money last year and felt that the Bar could have offered a low income member some sort of package. Please advise.” On April 29, 2013, a State Bar employee sent respondent a reply email informing respondent, among other things, that the State Bar had very few options available regarding reduced licensing fees. That reply email further informed respondent that, if his income qualified, he could apply for a hardship waiver to have his 2013 membership fees reduced by 50 percent.

On May 31, 2013, the State Bar sent respondent notice of the Supreme Court's May 23, 2013, suspension order in case number S210820, styled *In the Matter of the Suspension of Attorneys for Nonpayment of Fees Under the State Bar Act.*³ Attached to the State Bar's May 31, 2013, notice was a copy of the Supreme Court's May 23, 2013, order in case number S210820 as that order was amended nunc pro tunc by an order filed on May 29, 2013 (Supreme Court May 2013 suspension order). Respondent admits (1) that he received the State Bar's May 31, 2013, notice and the copy of the Supreme Court May 2013 suspension order that was attached to the notice and (2) that he knew of the contents of the notice and the attached order shortly after the State Bar sent the notice and order to him.

The State Bar's May 31, 2013, notice and the attached copy of the Supreme Court May 2013 suspension order again informed respondent that, if he did not pay his past due 2013 annual membership fees and late payment penalties by July 1, 2013, he would be suspended from the

³ The Supreme Court's May 23, 2013, order was amended nunc pro tunc by an order filed May 29, 2013.

practice of law effective July 2, 2013, and that he would thereafter remain suspended until he paid all outstanding fees, penalties, and costs with *certified funds*. The State Bar's May 31, 2013, notice further informed respondent that, if he were in fact suspended for nonpayment of fees on July 2, 2013, he would also be required to pay a \$100 reinstatement fee before his suspension could be terminated.

Moreover, the Supreme Court May 2013 suspension order expressly informed respondent that, if he was suspended for nonpayment of fees, he would be “precluded from practicing as an attorney at law, or an attorney or agent of another in and before all courts, commissions and tribunal of this state and from holding [himself] out to the public as an attorney or counselor at law” *until he was fully reinstated by paying all current and accrued fees and/or penalties and/or costs*.

Thereafter, respondent did not pay his 2013 membership fees and penalties by July 1, 2013. Accordingly, respondent was suspended from the practice of law effective July 2, 2013. On July 2, 2013, respondent knew that he was suspended under the Supreme Court's May 2013 suspension order and that he would thereafter remain suspended until he paid all outstanding fees, penalties, and costs in certified funds.

On July 18, 2013, respondent appeared at a change-of-plea hearing in a criminal case in the Marin County Superior Court for his client Melinda Stube. When respondent appeared at that July 18 hearing on behalf of Stube, respondent knew that he was suspended from the practice of law pursuant to the Supreme Court's May 2013 suspension order. Nonetheless, respondent appeared for Stube and failed to disclose his disqualification to practice law to the superior court, the assistant district Attorney, or Stube.

On July 19, 2013, respondent completed and faxed a State Bar 2013 Fee Waiver Application Form to the State Bar's Member Services Center in San Francisco. In the

application, respondent applied for a waiver of 50 percent of his 2013 membership fees. Under the Rules of the State Bar of California, rule 2.16(C)3(c), 50 percent of an attorney's annual membership fees may be waived upon application if the attorney has a total gross annual household income from all sources of \$20,000 or less. The 50 percent waiver of membership fees provided for in rule 2.16(C)3(c) is the largest reduction of State Bar membership fees that an attorney may obtain based on financial hardship, lack of income, or inability to pay. Contrary to respondent's contentions, there is no "full fee waiver" based on financial hardship, lack of income, or inability to pay. In any event, as respondent was well aware when he signed the 2013 Fee Waiver Application Form that he faxed to the State Bar, he requested a waiver of 50 percent (and not 100 percent) of his 2013 annual membership fees. Respondent was well aware that, if the State Bar granted his application for a waiver of 50 percent of his 2013 membership fees, he was required to pay the remaining 50 percent plus penalties, etc. with certified funds before his suspension would be terminated.

On July 22, 2013, respondent appeared at a hearing in a criminal case in the Marin County Superior Court for his client Alysha Jean Vail. When respondent made that appearance on behalf of Vail, respondent knew that he was suspended from the practice of law under the Supreme Court's May 2013 suspension order, but did not disclose that fact to the superior court, the assistant district Attorney, or Vail.

On July 25, 2013, the State Bar sent respondent a letter notifying him that his 2013 fee waiver application had been granted and that 50 percent of his annual membership fees had been waived. The letter reiterated that respondent had to pay the remaining/outstanding 50 percent of his 2013 membership fees plus penalties, etc. before he could be reinstated to practice. Shortly thereafter, respondent received the State Bar's July 25, 2013, letter and was aware of its contents.

On July 30, 2013, respondent paid the remaining/outstanding 50 percent of his 2013 membership fees plus penalties, etc. with certified funds. And, on July 31, 2013, the State Bar sent respondent a letter notifying respondent that his suspension terminated as of July 30, 2013. Shortly thereafter, respondent received the July 31, 2013, letter and was aware of its contents.

On August 23, 2013, and again on September 16, 2013, a State Bar investigator sent respondent a letter requesting that respondent respond in writing to specified allegations that he had engaged in UPL in July 2013, which the State Bar was investigating. Respondent admits both that he received each of those letters shortly after they were sent to him and that he failed to provide a written response to either letter.

Conclusions

Count One – § 6068, subd. (a) [Attorney’s Duty to Support Constitution and Laws of United States and California]

Count Two – § 6106 [Moral Turpitude]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Section 6125 provides that only active members of the State Bar may lawfully practice law in California. And section 6126, subdivision (b) provides that it is a crime for an attorney who has been involuntarily enrolled inactive, suspended, or disbarred from practice or who has resigned from the State Bar with disciplinary proceedings pending (1) to practice or to attempt to practice law or (2) to advertise or hold himself or herself out as practicing or entitled to practice law. When an attorney engages in UPL, he or she violates either or both sections 6125 and 6126. Moreover, when an attorney violates either or both sections 6125 and 6126, the attorney also violates his or her duty, under section 6068, subdivision (a), to support the laws of this state and

is subject to discipline. (E.g., *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236, 237; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

UPL includes the mere holding out that one is entitled to practice law. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666.) “[A]n attorney cannot expressly or impliedly create or *leave undisturbed the false impression* that he or she has the present or future ability to practice law when in fact he or she is or will be on suspension.” (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91, italics added.)

When respondent appeared at the July 18, 2013, hearing in the Marin County Superior Court on behalf of his client Stube and when respondent appeared at the July 22, 2013, hearing in the Marin County Superior Court on behalf of his client Vail, respondent engaged in acts constituting the practice of law when he was not entitled to practice law in willful violation of sections 6125 and 6126 and thereby failed to support the laws of this state in willful violation of section 6068, subdivision (a). Moreover, when respondent appeared at those hearings and failed to disclose his disqualification to practice law, respondent wrongfully held himself out as entitled to practice law to the superior court, the assistant district attorneys, and his clients in willful violation of sections 6125, 6126, and 6068, subdivision (a).

By deliberately engaging in UPL and by knowingly misrepresenting to the superior court, the assistant district attorneys, and his clients that he was entitled to practice law in the State of California on July 18, and 22, 2013, respondent committed acts involving moral turpitude in willful violation of section 6106 as charged in count two.⁴

⁴ In count two, the State Bar charges that respondent willfully violated section 6106 because “Respondent held himself out as entitled to practice law and actually practiced law when Respondent knew, *or was grossly negligent in not knowing*, Respondent was not an active member of the State Bar.” (Italics added.) The charge in count two that respondent willfully

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. The record clearly establishes that, as charged, respondent willfully violated section 6068, subdivision (i) by failing to provide some type of a substantive response to the State Bar's August 23 and September 16, 2013, letters. Respondent contends that he cooperated with the State Bar's disciplinary investigation because respondent attempted to speak with the State Bar investigator by telephone and left a telephone message asking the investigator to call respondent back and because, in late January 2014, respondent sent Deputy Trial Counsel Abelson a letter requesting an Early Neutral Evaluation Conference (ENEC) (Rules Proc. of State Bar, rule 5.30). The court cannot agree. As the review department aptly held in *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 189:

By choosing not to reply in writing to the State Bar's investigatory [letters] when he knew a written reply was necessary, respondent intentionally violated section 6068(i). Any telephone messages which he may have left were an obviously inadequate response to the State Bar's investigation.

violated section 6106 when he held himself out as entitled to practice law and practiced law because he was grossly negligent in not knowing that he was not an active member of the State

Bar of California is DISMISSED with prejudice because it fails to state a disciplinable offense. UPL does not involve deception or moral turpitude in violation of section 6106 if the attorney was unaware of his or her suspension or inactive enrollment. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319; see also *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 239 [UPL, even in deliberate or knowing violation of sections 6125 and 6126, does not inherently involve moral turpitude, deception, or misrepresentation].) Thus, an attorney's belief, even if mistaken and unreasonable, that he or she is entitled to practice law precludes a finding that attorney's UPL violated section 6106. (Cf. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 589 [misappropriation of client funds does not involve moral turpitude or dishonesty when an attorney has an honest, but mistaken and unreasonable belief in a right to the funds].)

Likewise, requesting an ENEC four months after he received the investigator's letters was an obviously inadequate response to the State Bar's investigation of respondent's UPL.

Aggravation⁵

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h))

The State Bar contends that the multiple misstatements in respondent's May 29, 2014, pretrial statement establishes lack-of-candor aggravation under standard 1.5(h). The court cannot agree because the State Bar failed to establish, by clear and convincing evidence, that respondent drafted or controlled the contents of his pretrial statement, which is signed only by respondent's counsel, Attorney Grout. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225.)

Mitigation

No Prior Record (Std. 1.6(a))

Before respondent's misconduct in July 2013, respondent had practiced law for more than 22 years without a prior record of discipline. Even though respondent's misconduct is serious, he is entitled to very significant mitigation for his many, many years of misconduct free practice. (Std. 1.6(a); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that, even in cases involving serious misconduct, the Supreme Court has repeatedly given mitigation to attorneys who do not have prior records of discipline] citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 and *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.

Good Character (Std. 1.6(f))

⁵ All references to standards (or studs.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent presented good character testimony from four credible witnesses. One of respondent's witnesses is an attorney. Each of respondent's four witnesses credibly testified that respondent is of good character and that respondent is an honest and truthful person.

Respondent has also performed a significant amount of pro bono work, which reflects favorably on respondent's character.

Even though respondent's four witnesses testified favorably as to respondent's good character, almost all of them expressed concern over respondent's admitted drug abuse problem. The court is also very concerned with respondent's admitted drug (and alcohol) abuse problem. In short, respondent is not entitled to any significant mitigation for his good character testimony because four witnesses is insufficient to constitute the "wide range of references in the legal and general communities" required under standard 1.6(f).

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. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

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 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the applicable sanction is to be the most severe of the different sanctions. In the present proceeding, the most

severe sanction for respondent 's misconduct is found in standard 2.3, which provides for disbarment or actual suspension for violating section 6106. Even though standard 2.3 appears to be the applicable standard in this proceeding, the court deems it appropriate to also consider standard 2.6(b), which provides that the appropriate level of discipline for engaging in UPL when suspended or ineligible to practice law for nondisciplinary reasons (e.g., nonpayment of membership fees) is suspension or reproof depending on whether the attorney knowingly engaged in UPL.

Moreover, the court finds that *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229 is instructive on the issue of level of discipline. In *Trousil*, the attorney engaged in UPL in a single client matter while suspended for nonpayment of State Bar membership fees and, later, during a disciplinary suspension. In that case, there was one aggravating circumstance (the attorney had three prior records of discipline) and four mitigating circumstances (lack of harm, candor and cooperation with the State Bar, emotional disabilities, and rehabilitation). The discipline imposed in *Trousil* was two years' stayed suspension and two years' probation on conditions, including a thirty-day actual suspension. The very serious aggravation in *Trousil* was effectively ameliorated by the very significant mitigating circumstances. Thus, the discipline imposed in *Trousil* is instructive in the present case even though the aggravation in *Trousil* is significantly greater than that in the present case.

On balance, the court concludes that the appropriate level of discipline for the found misconduct in the present case is two years' stayed suspension and three years' probation with conditions, including a 30-day actual suspension as well as treatment for respondent's admitted drug abuse problem, abstinence from the use of alcohol and drugs, and routine and random alcohol and drug testing.

Recommendations

Discipline

It is recommended that respondent Deron Adam Kartoon, State Bar Number 155925, 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 probation⁶ for a period of three years subject to the following conditions:

1. Respondent Deron Adam Kartoon is suspended from the practice of law for the first 30 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 purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. 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.
6. 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.)

⁶ The probation period will commence on the effective date of the Supreme Court order in this matter. (See Cal. Rules of Court, rule 9.18.)

7. Respondent must abstain from using alcoholic beverages and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
8. Respondent must promptly select an abstinence based drug abuse recovery program approved by the Office of Probation. During each of the first 12 weeks of his probation, respondent must attend at least five separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. During each of the remaining 40 weeks of his first year of probation, respondent must attend at least four separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. During each week of the last two years of his probation, respondent must attend at least three separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. Respondent must provide to the Office of Probation satisfactory proof of his weekly attendance with each of his quarterly reports.
9. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must arrange to have the laboratory perform, on a monthly basis and at respondent's expense, an ethyl glucuronide (EtG) test and a ten-panel drug test which will test for amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by a laboratory pursuant to Department of Transportation guidelines and testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens. Respondent must be tested within the first three days of each month of the probation period and must cause the laboratory to provide to the Office of Probation, within one week of testing and at respondent's expense, the results or screening reports from such tests.

Respondent must maintain with the Office of Probation a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning substance testing within 12 hours. For good cause, the Office of Probation may require respondent to have additional tests as described above performed by the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires additional testing or additional screening reports.

10. 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.
11. 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 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.

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 ____, 2014.

LUCY ARMENDARIZ
Judge of the State Bar Court