

OCT 05 2016

**STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 13-O-15013-LMA
)	(14-O-00021)
BRYAN L. ROBINSON,)	
)	DECISION
Member No. 188493,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

Respondent Bryan L. Robinson (Respondent) was charged with thirteen counts of misconduct stemming from two client matters. Respondent failed to appear at trial, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²



¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

The present case, however, is distinguished from a typical default matter in that Respondent made multiple, yet sporadic, efforts to participate in the proceedings. While Respondent's most recent attempt to set aside default was denied, this court subsequently issued an order on its own motion concluding that in light of *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, the default in the present matter would be set aside, but only for the limited purpose of evaluating discipline.

Findings of Fact and Conclusions of Law

Respondent was admitted to practice law in this state on June 5, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 17, 2014, the State Bar filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at his membership records address.³ The NDC notified Respondent that his failure to file a written answer or appear at trial would result in a disbarment recommendation. (Rule 5.41.)

On January 5, 2015, Respondent filed a motion to dismiss the NDC. That same day, Respondent failed to appear for the scheduled status conference, and his motion to dismiss was denied. On January 7, 2015, Respondent filed a response to the NDC.

On February 2, 2015, Respondent appeared telephonically at a status conference. At that status conference, the court scheduled the trial in this matter to begin on March 17, 2015. That same day, the court issued an order reflecting the scheduled trial and pretrial dates.

On March 5, 2015, the State Bar filed a pretrial statement. Respondent did not file a pretrial statement. The court subsequently issued an order moving the first day of trial to May 6, 2015.

³ Unless otherwise indicated, all of the documents filed in this matter by the State Bar and the court were properly served on Respondent at his membership records address.

On April 24, 2015, Respondent filed a motion to continue the pretrial conference. That motion was denied on April 27, 2015. On May 6, 2015, Respondent failed to appear for trial and his default was entered.

On June 22, 2015, Respondent filed a motion to set aside his default. The court scheduled a status conference for July 20, 2015, and Respondent appeared telephonically. The court set trial dates beginning August 21, 2015, and ordered that the motion to set aside default would be ruled on then.

On August 21, 2015, Respondent did not appear for trial, and the motion to set aside default was denied. On September 14, 2015, the State Bar filed a disbarment petition pursuant to rule 5.85 of the Rules of Procedure.

On October 5, 2015, Respondent filed a second motion to set aside default.⁴ Respondent personally appeared for a status conference on November 9, 2015. At that status conference, the court set new trial dates beginning December 15, 2015. The court included an order stating that the second motion to set aside default would also be heard on December 15, 2015.

On December 15, 2015, Respondent did not appear for trial. Accordingly, his second motion to set aside default was denied and the matter was submitted for decision.

Following submission of this matter, the court reviewed the record and determined that Respondent's motions to set aside default warranted expedited rulings. (See rule 5.83.) Therefore, the court, on February 8, 2016, issued an order vacating submission and granting Respondent's second motion to set aside default. In this order, the court included a footnote acknowledging Respondent's history of failing to timely appear and advising Respondent to "take every precaution necessary to insure his timely appearance at all future court dates." The court also ordered that trial would begin on March 14, 2016.

⁴ Respondent later amended this motion on November 6, 2015.

On March 1, 2016, Respondent filed a motion for abatement or dismissal. In this motion, Respondent stated that he “has not been able to participate in and prepare a defense for trial because [he] has been locked out of the case management/electronic case filing system since he filed his notice of appeal and motion to proceed in forma pauperis [in the U.S. District Court].” This motion made no mention of Respondent’s subsequent assertion that he could not be present for trial because of medical appointments.

On March 2, 2016, the court denied Respondent’s motion for abatement or dismissal. On March 3, 2016, the State Bar filed an amended pretrial statement. Respondent again did not file a pretrial statement.

On March 7, 2016, Respondent filed a similar motion to dismiss or abate. This motion was denied on March 8, 2016.

Six days prior to trial, on March 8, 2016, Respondent filed a motion to continue the trial. In this motion, Respondent asserted for the first time that he had medical appointments that conflicted with the upcoming trial dates. This motion was denied on March 8, 2016.

One court-day prior to trial, on March 11, 2016, Respondent filed a motion for recusal or disqualification of the undersigned judge. This motion was not properly served or timely. Accordingly, on March 14, 2016, the court issued an order striking the motion for recusal or disqualification.

On March 14, 2016, Respondent again failed to appear for trial. The State Bar was represented by Deputy Trial Counsel Catherine Taylor. One witness testified and the State Bar’s exhibits were admitted into evidence. Respondent’s default was then entered.

Approximately 45 days later, on April 28, 2016, Respondent filed another motion to set aside default. In this motion, Respondent asserted that he could not attend the first day of trial

because of his “previously scheduled and difficult to obtain” medical appointments. On May 17, 2016, the court issued an order denying the motion to set aside default.

On June 1, 2016, Respondent filed a motion to reconsider the order denying his April 28, 2016 motion to set aside default. On June 22, 2016, the court issued an order denying the motion for reconsideration. However, in that same order, the court, on its own motion, set aside default for the limited purpose of evaluating discipline pursuant to the guidance provided in *In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. 348. Accordingly, the court ordered that the matter be taken under submission for a decision to determine whether the facts alleged in the NDC establish that Respondent has violated one or more statutes, rules, or court orders that would warrant the imposition of discipline and, if so found, a recommendation as to the discipline to be imposed for the violation or violations. The State Bar was invited to file, no later than July 11, 2016, any evidence of aggravating circumstances that it wished the court to consider in the event Respondent was found culpable on one or more of the violations alleged in the NDC.

On July 8, 2016, the State Bar filed its brief re: evidence of aggravating circumstances. This matter was submitted for decision that same day.

On July 11, 2016, Respondent filed a petition for interlocutory review of the court’s June 22, 2016 order. On July 21, 2016, the Review Department issued an order denying the petition based on procedural defects.

On July 29, 2016, the Review Department issued another order granting Respondent’s request for additional time to file a petition for interlocutory review of this court’s June 22, 2016 order. The Review Department gave Respondent until August 29, 2016, to file his petition.

There is no indication in the record that Respondent timely filed such a petition.

On July 29, 2016, Respondent filed with the Review Department a request to stay the present proceedings during the pendency of the interlocutory review. On August 4, 2016, the Review Department referred this motion to the undersigned judge. On August 15, 2016, the State Bar filed an opposition to the request to stay. No good cause having been shown, Respondent's July 29, 2016 request to stay is hereby denied.⁵

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC – which were bolstered by evidence presented at trial – support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 13-O-15013 – The Lifted Visions Productions Matter

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform the services for which Respondent was retained, namely, revising the LLC operating agreement pertaining to Lifted Visions Productions and providing strategic planning and consultation regarding the entertainment industry.

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund \$5,200 in unearned advanced fees to clients Jerome Saddler, Sean Guadamuz Monar, and Augustin Bonney.

⁵ Respondent's request to stay is also moot, as there appears to be no pending interlocutory proceeding.

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to numerous reasonable client status inquiries.

Count Four – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client's papers and property upon his client's request following termination of employment.

Count Five– Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to provide substantive responses to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 14-O-00021 – The Ricks Matter

Count Six – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to cure known defects in the bankruptcy petition he prepared on behalf of his clients and failing to appear at a confirmation hearing.⁶

Count Seven – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments) by failing to inform his clients that Respondent failed to cure defects in his clients' bankruptcy filing and failed to make arrangements for an appearance attorney to be present at the confirmation hearing on his clients' behalf.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to numerous reasonable client status inquiries.

⁶ Respondent's failure to appear and failure to cure defects resulted in the bankruptcy court's dismissal of his client's bankruptcy petition.

Count Nine – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund \$6,350 in unearned advanced fees to clients Jason and Tanisha Ricks.

Count Ten – Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with a January 15, 2013 order, in *In re Ricks*, U.S. Bankruptcy Court, Central Division of California, San Fernando Valley Division, case No. SV 11-23654-VK, requiring Respondent to disgorge fees in the amount of \$6,350 within 14 days of the entry of the order. (See Exhibit 27.)

Count Eleven – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating in writing, on or about December 10, 2011, to the U.S. Bankruptcy Court, Central District, that he received \$4,500 from his clients for legal services when Respondent was grossly negligent in not knowing the statement was false, and that he actually received \$6,350.

Count Twelve – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating in writing, on or about May 24, 2012, to his clients, Jason and Tanisha Ricks, that their bankruptcy petition was dismissed for not being current with their payment plan when Respondent was grossly negligent in not knowing the statement was false.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to provide substantive responses to the allegations in a disciplinary investigation after being contacted by the State Bar.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,⁷ std. 1.5.) The court finds the following with respect to aggravating circumstances.

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

Respondent's multiple acts of misconduct are an aggravating factor.

Significant Client Harm (Std. 1.5(j))

Respondent's misconduct caused significant harm to his clients. Specifically, his misconduct deprived the Ricks of money they needed to meet their bankruptcy plan payments and the increased costs associated with Tanisha Ricks's cancer diagnosis and treatments. Further, the Ricks were forced to hire and pay a new attorney to properly refile their bankruptcy petition. Consequently, Respondent's significant harm to the Ricks warrants considerable weight in aggravation.

Indifference (Std. 1.5(k))

This matter has been pending since November 2014. Throughout the proceedings, Respondent has caused numerous delays, has been in default twice, and has repeatedly filed meritless motions to dismiss the proceedings. As noted by the State Bar in its brief re: evidence of aggravating circumstances, Respondent has sought to "obfuscate the merits and stay mired in process to exhaust the parties, leveraging his nuisance value instead of the truth."

Respondent's conduct in this proceeding clearly shows a pattern of indifference toward rectification and atonement for the consequences of his misconduct. When not in default, Respondent would routinely fail to participate, including failing to file pretrial statements and

⁷ All further references to standard(s) or std. are to this source.

failing to appear for trials. Once his defaults were entered, Respondent would then file a flurry of motions seeking to set aside the default and abate or dismiss the proceedings.

Respondent's primary strategy in this matter was stalling and delay, rather than defending the matter on its merits. When his numerous motions to abate or continue the proceedings were denied, he simply wouldn't show up for trial. His demonstrated indifference toward rectification and atonement for the consequences of his misconduct warrant substantial consideration in aggravation.

Failure to Make Restitution (Std. 1.5(m))

Despite being ordered to disgorge his fees, Respondent failed to refund any portion of the \$6,350 in unearned fees paid by the Ricks. Respondent also failed to refund any portion of the \$5,200 in unearned advanced fees paid by clients Jerome Saddler, Sean Guadamuz Monar, and Augustin Bonney. Respondent's failure to pay restitution warrants some consideration in aggravation.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Although Respondent did not appear for trial, the court takes judicial notice of the fact that he does not have a prior disciplinary record.

No Prior Record (Std. 1.6(a))

Respondent has no prior record of discipline over several years of practice. Respondent had been admitted to practice law in California for approximately 14 years before the misconduct in this matter. Respondent's 14 years of practice without prior discipline warrants significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over ten years of practice before first act of misconduct given significant weight].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.)

Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding the most severe sanction must be imposed. In the present proceeding, the most severe sanction is found at standard 2.11 which provides that disbarment or actual suspension is the presumed sanction for an act of intentional or grossly negligent misrepresentation.

The State Bar requested that Respondent be disbarred. In support of its recommended discipline, the State Bar cited *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. In *Varakin*, the attorney was disbarred for repeatedly filing frivolous motions and appeals in four different cases for a dozen years for the purpose of delay and harassment of his ex-wife and others. He continued this pattern despite being sanctioned numerous times. The attorney lacked insight into his misconduct, expressed no remorse, refused to mend his ways, and greatly harmed the individuals involved and the administration of justice.

While the present matter does not rise to the level of *Varakin*, the court agrees that Respondent's misconduct and present demeanor represent a significant threat to public protection. The court looked to the case law for further guidance and found *King v. State Bar* (1990) 52 Cal.3d 307, and *Lester v. State Bar* (1976) 17 Cal.3d 547, to be somewhat helpful.

In *King*, the attorney abandoned two clients, failed to forward their files promptly to successor counsel, and gave false assurances⁸ to one of the clients regarding the status of his case. The attorney demonstrated a failure to accept responsibility for his actions and to appreciate the severity of his misconduct. The attorney's misconduct also resulted in an \$84,000 default judgment against his client. In mitigation, the attorney had no prior record of discipline. Additionally, he was experiencing depression and financial difficulties, and was going through a marital dissolution. The Supreme Court ordered that the attorney be suspended for four years, stayed, with four-years' probation, and three-months' actual suspension.

In *Lester*, the Supreme Court ordered that the attorney be suspended for six months actual for failing to perform legal services with competence and failing to refund unearned fees. This matter involved four client matters. In aggravation, some of the attorney's testimony lacked

⁸ The false assurances did not result in a finding of moral turpitude.

candor. The attorney also did not demonstrate remorse or insight into the misconduct. No mitigating factors were identified.

While *King* and *Lester* provide some additional insight, *King* contained more mitigation and neither case involved moral turpitude. Accordingly, the court concludes that a level of discipline greater than *King* and *Lester*, but less than *Varakin*, is warranted. Further, given Respondent's "contemptuous attitude toward the disciplinary proceedings" (*Weber v. State Bar* (1988) 47 Cal.3d 492, 507 [member's attitude toward disciplinary proceedings is relevant to determination of appropriate sanction]) and his unwillingness or inability to address his misconduct, the interests of public protection mandate a significant period of actual suspension.

Therefore, the court recommends, among other things, that Respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that he be placed on probation for four years, including a minimum period of actual suspension of two years and until Respondent makes full restitution and provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

Recommendations

It is recommended that respondent **Bryan L. Robinson**, State Bar Number 188493, 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 probation⁹ for a period of four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and Respondent will remain suspended until the following requirements are satisfied:

⁹ 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.)

- i. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
 - (1) Jerome Saddler, Sean Guadamuz Monar, and Augustin Bonney in the amount of \$5,200 plus 10 percent interest per year from January 25, 2013; and
 - (2) Jason and Tanisha Ricks in the amount of \$6,350 plus 10 percent interest per year from May 8, 2012.
 - ii. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 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. 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.)

7. 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.

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

Multi-State Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October 5, 2016



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 5, 2016, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

BRYAN L. ROBINSON
LAW OFC BRYAN ROBINSON
945 TARAVAL ST PMB 403
SAN FRANCISCO, CA 94116

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ERICA L. M. DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 5, 2016.



Bernadette Molina
Case Administrator
State Bar Court