

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 13-O-17670-LMA
)	
BARRY L. VANSICKLE,)	DECISION
)	
Member No. 98645,)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION¹

In this contested, original disciplinary proceeding, Respondent Barry L. VanSickle was charged with violations of Rules of Professional Conduct, rule 3–700(A)(2) (improper withdrawal from employment) and Business and Professions Code section 6103 (not obeying a court order), but was found culpable only of the latter. Having considered the misconduct, aggravating and mitigating factors and the law, the court recommends that Respondent be suspended from the practice of law for 90 days and until he satisfies the judgment entered on August 8, 2013 in *In re Sandra Lynn Concetti*, (U.S. Bankruptcy Court, N.D.Cal.), case no. 13–30705–HLB, and provides satisfactory proof thereof to the State Bar Office of Probation.

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.

II. SIGNIFICANT PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a notice of disciplinary charges (NDC) on September 3, 2014 to which Respondent filed a response on October 8, 2014.

The matter was submitted for decision on January 7, 2015 at the conclusion of trial.

The State Bar was represented by Erica L. M. Dennings. Respondent represented himself.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in California on July 10, 1981, and has been a member of the State Bar of California since that time.

B. Findings of Fact

In July 2012, Sandra Concetti was facing foreclosure on at least one of her properties. She hired Respondent to represent her in a Chapter 7 bankruptcy proceeding to stall the foreclosure of her homes.

In December 2012, Concetti's Chapter 7 bankruptcy was discharged and she was again facing foreclosure of her homes.

In March 2013, Respondent filed a Chapter 11 bankruptcy petition on Concetti's behalf to again stall the foreclosure process. (*In re Sandra Lynn Concetti*, (U.S. Bankruptcy Court, N.D.Cal.), case no. 13-30705-HLB.) Respondent did substantial work on the Concetti's bankruptcy matter.

Respondent appeared at two "341" meetings of creditors for Concetti, the last one on May 21, 2013. On that day, Respondent informed Concetti and the bankruptcy trustee that he would discontinue working on this Chapter 11 matter because he had severe medical issues,

including a hip fracture and other injuries arising out of an accident. He also told Concetti that she needed to retain other counsel and that efforts were underway to help her do so.

On May 23, 2013, Respondent filed a status conference statement informing the bankruptcy court that he would not be continuing on this matter as he had hip injuries.

On May 30, 2013, Respondent did not appear at a Chapter 11 status conference of which he had notice.

In June 2013, Respondent arranged for Concetti to meet with attorney Russell Marne about representing her in the Chapter 11 bankruptcy, but Marne did not agree to represent her.

On June 3, 2013, the bankruptcy court issued an Order to Show Cause (OSC) requiring Respondent to appear on June 20, 2013 and to show cause why the court should not issue sanctions for his failure to appear at the May 30, 2013 status conference. The court also ordered Respondent to file a response by June 13, 2013.

On June 13, 2013, Respondent filed a response to the OSC stating that he was in severe pain on May 30, 2013; would not attend any further pending hearings in this matter; had left California and expected to be moving to Honduras; and had encountered unexpected difficulty in finding other counsel for Concetti. He did not appear at the June 20 OSC hearing.

On June 24, 2013, the bankruptcy court issued an order requiring Respondent to disgorge all of the fees he received in the Concetti matter and to file a declaration showing proof of disgorgement by July 5, 2013. The court also stated it would issue an OSC re contempt if he did not comply with the disgorgement order. Respondent did not comply with the order.

On July 6, 2013, Concetti hired Keith McAllister to represent her in the bankruptcy proceedings.

On July 15, 2013, the bankruptcy court issued an OSC re contempt for Respondent's noncompliance with the disgorgement order and requiring him to appear personally on August 8,

2013. He appeared telephonically at the OSC hearing. The bankruptcy court issued a judgment in favor of Concetti against Respondent for \$5,100.00 plus interest and further ordered that it would not employ Respondent in any future bankruptcy cases unless this judgment had been satisfied in full.

Respondent has not paid any part of the judgment to Concetti.

C. Conclusions of Law

Count 1 – (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

There is not clear and convincing evidence that Respondent willfully violated rule 3-700(A)(2) because he notified his client, the trustee and the court that he was not going to participate in further proceedings; he filed an extensive status conference statement on May 23, 2013; and tried to assist his client in obtaining other counsel. Accordingly, this charge is dismissed with prejudice.

Count 2 – (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent willfully violated the court's June 3 and 24, 2013 orders by not appearing at the June 20, 2013 OSC hearing and by not disgorging the fees in the Concetti matter and filing proof thereof.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES²

A. Mitigation

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Respondent suffered extreme physical and emotional difficulties, including pain and hip surgery, due to a bicycle vs. automobile accident.

B. Aggravation

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

Respondent has one prior disciplinary record. In order no. S216890, filed May 13, 2014, the Supreme Court imposed discipline consisting of one year's stayed suspension and two years' probation for not performing competently and not returning an unearned fee in one client matter. In aggravation, the parties stipulated to multiple acts of misconduct and to harm. Mitigating factors were no prior discipline in 29 years of practice and candor and cooperation.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent's misconduct caused harm to the administration of justice. The bankruptcy court held additional proceedings because of his misconduct.

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single

² All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standard 2.8(a) applies here, calling for actual suspension or disbarment for disobedience of a court order. The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190; std. 1.1.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; std. 1.1.)

This case involved violations of section 6103. The court considered Respondent’s prior disciplinary record and harm to the administration of justice in aggravation. Respondent’s extreme physical and emotional difficulties were mitigating factors.

“Other than outright deceit, it is difficult to imagine conduct in the course of legal representation [violating a court order] more unbecoming an attorney.” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Respondent willfully and without adequate explanation disobeyed two court orders. He has a prior disciplinary record and caused harm to the administration of justice. Accordingly, having considered the nature and extent of the misconduct, the aggravating and mitigating factors, and the law, the court recommends actual suspension for 90 days and until Respondent satisfies the judgment awarded to Concetti, among other things, as sufficient to protect the public in this instance and to impress upon him the importance of compliance with court orders or of seeking relief therefrom if compliance is not possible.

VI. DISCIPLINE RECOMMENDATION

It is recommended that Respondent Barry L. VanSickle, State Bar No. 98645, 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 probation³ for a period of two years subject to the following conditions:

1. Respondent Barry L. VanSickle is suspended from the practice of law for a minimum of the first 90 days of probation and Respondent will remain suspended until the following requirements are satisfied:
 - i. Barry L. VanSickle must satisfy the judgment entered on August 8, 2013 in *In re Sandra Lynn Concetti*, (U.S. Bankruptcy Court, N.D.Cal.), case no. 13-30705-HLB, and provide satisfactory proof thereof to the State Bar Office of Probation.
2. If Respondent remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also 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).) Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, Respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent must state in each report whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of Respondent's probation

³ 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)

conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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

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.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was ordered to do so in connection with Supreme Court order no. S216890, filed May 13, 2014.

Costs

This court recommends 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: April _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court