

PUBLIC MATTER

FILED

JUN 14 2017 *ca*

STATE BAR COURT OF CALIFORNIA STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)
) Case No. 14-J-03438-PEM
JAMES ANDRE BOLES,)
)
A Member of the State Bar, No. 141639.) **DECISION**
)
)
)

Introduction¹

This disciplinary proceeding is based on respondent James Andre Boles's professional misconduct found in another jurisdiction.

On March 21, 2014, upon finding that respondent had committed professional misconduct, the Supreme Court of Nevada issued a disciplinary order suspending respondent from practicing law for two years to run consecutively to a one-year suspension previously imposed in another matter in June 2013. Thereafter, the decision of the foreign jurisdiction became final.

Section 6049.1, subdivision (a), provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction, shall be conclusive evidence that the member is culpable of professional misconduct in this state. As a result, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this disciplinary

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

proceeding pursuant to section 6049.1, subdivision (b), and Rules of Procedure of the State Bar, rules 5.350-5.354. The court took judicial notice and admitted into evidence the March 21, 2014 Nevada Supreme Court order; the Findings of Fact, Conclusion of Law and Decision by the Northern Nevada Disciplinary Board (Nevada decision; *State Bar of Nevada v. Boles*, State Bar of Nevada, Northern Nevada Disciplinary Board, case Nos. NG11-1513; NG11-1298; NG12-1241; and NG12-0645, filed July 8, 2013); and the applicable Nevada ethics rules.

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent's culpability in the Nevada proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Nevada; and (3) whether the Nevada proceeding lacked fundamental constitutional protection. (§ 6049.1, subd. (b).)

Pursuant to section 6049.1, subdivision (b), respondent bears the burden of establishing either: (1) that the conduct for which he was disciplined in Nevada would not warrant the imposition of discipline in California; or (2) that the Nevada proceedings lacked fundamental constitutional protection. Respondent, however, did not establish either of these factors. Consequently, in view of respondent's misconduct and the evidence in aggravation and mitigation, the court recommends that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for 60 days.

Significant Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) on December 22, 2014, and on January 14, 2015, respondent filed a response. On January 16,

2015, the State Bar filed an amended NDC, and on February 6, 2015, respondent filed an answer to the amended NDC.

This matter was abated from November 2015 to November 2016 pending investigation of other charges, as requested by respondent and was unopposed by the State Bar.

At the February 27, 2017 pretrial conference, the court granted the State Bar's motion to dismiss sections 6106 and 6068, subdivision (d).

A two-day trial was heard on March 15 and 16, 2017. Deputy trial counsel Jamie Kim represented the State Bar. Respondent represented himself.

Following closing arguments, the court took this proceeding under submission on March 16, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on August 21, 1989, and has been a member of the State Bar of California at all times since that date.

Facts

This case involves respondent's abandonment of two clients, Thompson and Encinas, in 2011 in the State of Nevada. The Nevada disciplinary record is conclusive evidence of culpability of misconduct in California.

The Thompson Grievance

Respondent was hired by the American Federation of State, County, and Municipal Employees (AFSCME) to represent union members employed by the State of Nevada regarding civil service administration proceedings involving employee discipline and termination. The AFSCME would determine if a particular employee was entitled to representation under applicable union membership rules and federal labor law and if eligible, respondent would be assigned by AFSCME to represent the employee at AFSCME's cost.

Respondent was assigned to represent Melvin Thompson, a member of the AFSCME, in a civil service proceeding contesting Thompson's termination from employment. Thompson did not prevail in the administrative hearing, and in June 2010, the AFSCME declined further legal representation for Thompson. Respondent, thereafter, filed a petition for judicial review of the administrative hearing officer's decision. Respondent repeatedly continued this matter with opposing counsel but had no record of any hearing dates and was never required to make any filings in the case.

On May 24, 2010, Thompson hired respondent to represent him as a plaintiff in a federal civil rights lawsuit against the State of Nevada for wrongful termination. The fee agreement was a contingency fee agreement where Thompson agreed to pay respondent \$2,000 in advance fees and \$500 in advance costs. The agreement also provided that respondent charged \$400 an hour. Respondent prepared and filed a federal civil rights lawsuit on behalf of Thompson in the United States District Court for the District of Nevada.

Beginning on January 18, 2011, respondent found it necessary to take a medical leave. To this end, on August 15, 2011, respondent sent Thompson a letter indicating he must withdraw as Thompson's counsel due to medical reasons. The letter instructed Thompson to seek new counsel but failed to advise Thompson of any upcoming court dates or the urgency in seeking new counsel. Also, respondent did not file a substitution of counsel. Upon receiving the letter, Thompson repeatedly requested his file and a refund of the \$2,500 he paid respondent. Respondent refused to refund Thompson the advanced fees and failed to give Thompson his file.

In September 2011, the Nevada District Court held a hearing on the judicial review petition, at which Thompson was not present or represented. In an order entered September 23, 2011, the Nevada District Court granted the State of Nevada's unopposed motion to dismiss with prejudice the judicial review petition after an evidentiary review. Thompson submitted a

grievance to the Nevada State Bar, which then commenced an investigation of Thompson's grievance on October 21, 2011.

At the Nevada State Bar disciplinary hearing, respondent testified that he filed the judicial petition as counsel for AFSCME and soon thereafter his employment with the union terminated. Respondent insisted that Thompson's state court representation was undertaken by an in-house attorney for AFSCME, who decided to forgo the judicial review. He further testified that Thompson's federal civil rights case did not proceed because of Thompson's failure to act or "follow-up."

Thompson testified that he believed the retainer agreement provided for respondent to represent him in both the federal civil rights case and the state court judicial review proceedings. On the other hand, respondent's testimony on the issue was inconsistent. Thompson also testified that respondent never answered his cellular telephone and did not respond to messages.

The Encinas Grievance

Bernice Encinas, a member of AFSCME and a registered nurse employed by the State of Nevada Department of Corrections (NDOC) and the State of Nevada Employees Association (SNEA), independently hired respondent for \$2,700 to represent her in a related state civil service proceeding in connection with the employment discipline brought by the NDOC, including a related petition for judicial review, a State Inspector General's review of allegations made by Encinas and NDOC against each other, and a challenge to a retaliatory forced duty station reassigned by NDOC. Encinas also hired respondent to represent her in a professional licensing discipline case brought by the Nevada State Board of Nursing (Nursing Board) arising from the same common facts as the state civil service proceeding.

Respondent represented Encinas at two administrative hearings in 2007. Following that, the Inspector General and the Nursing Board dropped the charges against Encinas. In December

2007, respondent filed and pursued a state district court judicial review of the Reassignment Challenge on behalf of Encinas. In August 2010, the state district court entered an order upholding the decision of an administrative hearing officer that the Reassignment Challenge was without merit. Encinas met with respondent following the adverse decision. During that meeting, Encinas told respondent that she disagreed with his decision to withhold certain evidence as she believed the withholding caused the adverse decision. The meeting ended abruptly when respondent walked out of it. Nonetheless, Encinas believed, based on the meeting, that respondent would file papers in the Nevada Supreme Court to perfect an appeal.

After the meeting, respondent moved to California and abandoned Encinas's cases before bringing the Reassignment Challenge to conclusion. Encinas attempted to retrieve her file from respondent on multiple occasions but to no avail. In fact, on November 30, 2011, Encinas sent respondent a letter requesting the return of her files. Encinas was able to get the California address from publicly available information on the internet.² Respondent never responded to any of Encinas's communications or requests. Encinas eventually learned that respondent was on medical leave.

Encinas filed a complaint with the State Bar of Nevada. On August 23, 2012, the State Bar of Nevada opened a grievance file and sent a copy of the grievance for his response to respondent's Nevada office address. After respondent did not reply, the State Bar sent follow-up letters to the respondent on October 2 and December 3, 2012.

On January 1, 2013, respondent responded, asking the Nevada State Bar what it had done to resolve the Encinas complaint and why the delay in getting information to him. Respondent claimed he never received a copy of the Encinas complaint prior to December 28, 2012. In fact,

² At the hearing, respondent testified that the address she sent the letter to was not his address, as it was the residence of his brother.

respondent did not timely follow the procedures to make changes to his address for the purposes of State Bar communications pursuant to Nevada Supreme Court Rule 79 (SCR 79).

At the Nevada disciplinary hearing, respondent testified that in his opinion, his engagement with Encinas ended after the meeting at his office following the adverse ruling of the state district court in August 2010. Respondent said Encinas did not want to pursue the appeal to the Nevada Supreme Court after he told her of the high cost and the unlikelihood of her prevailing. On the other hand, in the words of the disciplinary panel, Encinas convincingly contested respondent's suggestion that she did not pursue the appeal because of the fees and costs associated with continuing the litigation, as well as that the AFSCME was a concurrent client or otherwise responsible for maintaining, and had in fact maintained, a duplicate of his file for Encinas. Respondent admitted that he never confirmed with Encinas or documented in writing that no appeal would be taken.

Violations of the Rules Regulating the Nevada State Bar

The Nevada Supreme Court found that respondent had violated the following Nevada Rules of Professional Conduct (RPC) in the Thompson and Encinas matters:

1. Rule 1.3 (diligence) [A lawyer shall act with reasonable diligence and promptness in representing a client; To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action];
2. Rule 1.4 (communication) [A lawyer shall (a) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is

required by these Rules; (b) Reasonably consult with the client about the means by which the client's objectives are to be accomplished; (c) Keep the client reasonably informed about the status of the matter; (d) Promptly comply with reasonable requests for information; and (e) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law];

3. Rule 3.4 (fairness to opponents);
4. Rule 8.4 (misconduct) [It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, engage in conduct involving misrepresentation or that is prejudicial to the administration of justice]; and
5. Supreme Court Rule 79 (current address).

Violations of California Laws

The court finds, as a matter of law, that respondent's culpability in the Nevada proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Nevada, as follows:

RPC 1.3 [Diligence] and 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.

RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

Respondent willfully violated rule 3-110(A) by failing to advise Thompson of any pending court dates or the urgency in seeking new counsel. As a consequence, Thompson was not present or represented at the September 12, 2011 hearing on his judicial review petition.

Respondent also willfully violated rule 3-110(A) by failing to diligently represent Encinas. Respondent left the issue of whether or not to take an appeal unresolved and took no steps to confirm with the client. The appeal is now time barred.

RPC 1.3 [Diligence] and 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.

RPC 1.3 provides that "to prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action."

By clear and convincing evidence, respondent withdrew from employment without taking appropriate steps to avoid prejudice to Thompson's and Encinas's rights, in willful violation of rule 3-700(A)(2).

In the Thompson matter, respondent's indefinite medical leave affected Thompson's pending matter to move forward. Respondent did not prepare any plan for his client, designate another lawyer to review the file, or take any immediate protective action, pursuant to RPC 1.3. Because of respondent's neglect and lack of diligence, Thompson did not know of his hearing and neither he nor a new counsel were present to represent Thompson's interests.

In the Encinas matter, because of respondent's withdrawal, which occurred before respondent's assertion of a medical condition, Encinas lost her right to appeal. Respondent failed to make certain that Encinas was knowingly abandoning her only legal recourse of

appellate review of the adverse ruling on judicial review. Encinas credibly testified that respondent left this issue unresolved by abruptly leaving a meeting without a final and definitive decision. He did not present believable testimony or evidence to support his assertion that she intended to abandon the appeal. The Nevada State Bar found respondent less than credible in his very limited explanation of his situation and the utter lack of documentation on the important subject of a client's knowing decision not to pursue an appeal. Because respondent violated RPC 1.3 by failing to prevent neglect of Encinas's appeal matter, he also willfully violated rule 3-700(A)(2).

RPC 1.4 [Communication] and Section 6068, Subdivision (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.

RPC 1.4 requires that an attorney must keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

Respondent failed to answer Thompson's or Encinas's phone calls or to respond to their messages. The evidence of record reliably and undeniably shows that respondent's failure to communicate with Thompson and Encinas deprived them of their right to effectively direct and participate in their representations, to make informed decisions about their legal matters and to consult on the means by which their objectives were to be accomplished. Respondent did not present any evidence to directly refute the specific communication lapses cited by Thompson and Encinas. Instead, respondent offered general evidence of the means by which these individuals and others could communicate with him or his office staff.

After taking medical leave, the respondent made no affirmative effort to inform Thompson that he would be indefinitely suspending his law practice and was unable to carry his

matter forward promptly. Instead, respondent waited until less than a month prior to a critical and dispositive hearing affecting Thompson's substantial rights before withdrawing.

Moreover, respondent failed to make certain that Encinas was knowingly abandoning her only legal recourse of appellate review of the adverse ruling on judicial review. Respondent left this issue unresolved by abruptly concluding a meeting without a final and definitive decision.

Therefore, by clear and convincing evidence, respondent willfully violated section 6068, subdivision (m), by failing to communicate with Thompson and Encinas on significant developments in matters with regard to which he had agreed to provide legal services and by failing to promptly respond to reasonable status inquiries of clients.

RPC 1.4 [Communication] and Rule 3-700(D)(1) [Failure to Return Client Papers/Property]

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

RPC 1.4 provides that an attorney must promptly comply with reasonable requests for information.

There is clear and convincing evidence that respondent willfully violated rule 3-700(D)(1). Thompson and Encinas testified without credible contradiction that their repeated efforts to obtain their files for substitute counsel went unanswered. Encinas attempted to retrieve her file from respondent on multiple occasions but to no avail, including a November 30, 2011 letter which Encinas sent respondent requesting the return of her files. Thus, by failing to comply with the clients' reasonable requests for information, such as their files, in willful violation of RPC 1.4, respondent also violated rule 3-700(D)(1).

SCR 79 [Current Address] and Section 6068, Subdivision (j) [Failure to Update Membership Records Address]

Section 6068, subdivision (j), provides that it is an attorney's duty to comply with the requirements of section 6002.1. Section 6002.1 requires, in pertinent part, that members maintain, on the official membership records of the State Bar, their current office address and telephone number; and in the event that a member's address or office telephone information changes, the member must notify the membership records office of the State Bar within 30 days. If the member does not maintain an office, then the member is required to maintain on the State Bar's membership records an address to be used for State Bar purposes.

Nevada State Bar SCR 79 provides that "[e]very member of the state bar ... provide to the state bar, for the purposes of state bar communications, ... a permanent mailing address; a permanent telephone number; and a current e-mail address." The Nevada State Bar found that respondent failed to timely follow the procedures to make changes to his SCR 79 information so that the state bar, the courts, and his clients could have real, timely and meaningful communication with respondent.

Therefore, respondent willfully violated section 6068, subdivision (j), by failing to maintain on the Nevada State Bar's membership records an address to be used for state bar purposes.

Nevada Proceedings Did Not Lack Fundamental Constitutional Protection

In this proceeding, respondent repeated many of the same arguments he had made in his prior California disciplinary proceeding (State Bar Court case No. 13-J-13500, opinion filed June 12, 2015); to the Northern Nevada Disciplinary Board (Nevada decision); to the Nevada Supreme Court; and to the U.S. Court of Appeals for the Ninth Circuit (*In re Boles*, case No.

14-80100, Report and Recommendation filed December 9, 2014). Because there is no documentary evidence to substantiate his claims, this court agrees with the other courts' determinations that respondent failed to demonstrate, among other contentions:

- (1) That the Nevada proceedings were fundamentally unconstitutional;
- (2) That the Northern Nevada Disciplinary Board impermissibly discriminated against him because of his medical condition;
- (3) That the Disciplinary Board's denial of respondent's request to reduce his practice in lieu of going inactive due to his medical condition was a violation of his First Amendment rights;
- (4) That the composition of the Northern Nevada Disciplinary Board violated due process because the panel contained too many prosecutors; and
- (5) That the Nevada Supreme Court decision was not de novo.

Aggravation³

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

Respondent has a record of one prior discipline.

On October 19, 2015, the California Supreme Court ordered that respondent be suspended from the practice of law for one year, stayed, placed on probation for two years, and was actually suspended for 30 days, for his failure to act with reasonable diligence and to communicate with two clients in Nevada. Mitigation included no prior record of discipline in 20 years of practice, steps taken to protect his clients, and the lack of significant harm.

(Respondent's physical difficulties were not entitled to mitigating weight because there was no nexus between his neurological problems and his misconduct.) Aggravation involved multiple

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

acts of wrongdoing. The review department decreased the hearing department's recommendation of 90 days to 30 days, which the Supreme Court adopted. (Supreme Court case No. S228331; State Bar Court case No. 13-J-13500.)

Because respondent's misconduct in the prior matter occurred contemporaneously with the current misconduct in 2011, the court assigns limited aggravating weight to respondent's prior record. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619 [diminished aggravating weight for two acts of contemporaneous misconduct charged in separate cases]; and *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 289.)

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct constitutes multiple acts of wrongdoing, including failing to perform services competently, failing to communicate with his clients, improperly withdrawing from employment, failing to return client files, and failing to provide a current address for State Bar purposes. Such multiple acts of misconduct constitute an aggravating factor.

Mitigation

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

The State Bar agreed that respondent suffered health problems that rendered him unable to continue representation of Thompson and Encinas. Extreme physical difficulties mitigate misconduct if the attorney suffered these difficulties at the time of the misconduct, engaged in misconduct as a direct result of them, and no longer suffers from them. There is a nexus between respondent's medical concerns in 2011 and the misconduct. Therefore, respondent's overall health issues are entitled to mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (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 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) 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 Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) 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.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

Standard 1.7(b) states, “If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.”

Standard 1.7(c) states, “If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.”

In this case, the standards provide a broad range of sanctions ranging from reproof to suspension, depending upon the gravity of the offenses and the harm to the victim. Standards 2.7(b), 2.12(b), and 2.19 apply in this matter.

Standard 2.7(b) states, “Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.”

Standard 2.12(b) provides that the presumed sanction for a violation of an attorney’s duties under Business and Professions Code section 6068, subdivision (i), (j), (l), or (o) is reproof.

Standard 2.19 states, “Suspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards.”

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.) As 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.)

The State Bar argues that respondent should be actually suspended for 90 days in consideration of the instant matter and respondent's prior disciplinary matter.

Respondent, on the other hand, contends that this matter should be dismissed, reiterating the same issues that he argued before the Nevada State Bar, the Nevada Supreme Court, and the Ninth Circuit, including due process violation, discrimination, First Amendment violations, prosecutorial misconduct, and excessive nature of discipline.

The court finds respondent's arguments without merit.

Respondent's misconduct in his prior and current matter involved a total of four clients. As discussed previously, because respondent's misconduct in the prior two client matters occurred contemporaneously with the current misconduct in 2011, the aggravating effect of his prior discipline is diminished as it is not indicative of respondent's inability to conform to ethical norms. Thus, the court will consider the totality of the findings in both cases to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

The review department in respondent's prior case found that a 30-day actual suspension was appropriate for his failure to perform and failure to communicate in two client matters in light of the relatively short duration of respondent's misconduct, his more than 20 years of discipline-free practice, the steps taken to protect his clients, the lack of significant harm, and the unlikelihood that misconduct will recur. The review department considered four cases in reaching its recommended level of discipline, and so does this court: *King v. State Bar* (1990) 52 Cal.3d 307 [90-day actual suspension for two client matters]; *Harris v. State Bar* (1990) 51 Cal.3d 1082 [90-day actual suspension for one client matter]; *Van Sloten v. State Bar* (1989) 48

Cal.3d 921 [six-month stayed suspension for one client matter]; and *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [six-month stayed suspension for one client matter].

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) While respondent may have had health issues, the court’s “primary concern must be the fulfillment of proper professional standards, whatever the unfortunate cause” (*In re Abbott* (1977) 19 Cal.3d 249, 254.) Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law and the standards, the court concludes that an actual suspension of 90 days would have been appropriate for the four client matters had the matters been brought as one case. Since respondent has already been actually suspended for 30 days for his misconduct in the two client matters, an additional 60 days of actual suspension would be adequate. The court does not recommend that respondent again take and pass the State Bar’s Ethics School or the Multistate Professional Responsibility Exam because he was previously ordered to do so in Supreme Court case No. S228331.

Recommendations

It is recommended that respondent James Andre Boles, State Bar Number 141639, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation⁴ for a period of two years subject to the following conditions:

1. Respondent James Andre Boles is suspended from the practice of law for the first 60 days of probation.

⁴ 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.)

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. 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.
5. 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.
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.

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

Multistate Professional Responsibility Exam

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S228331.

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: June 14, 2017


PAT McELROY
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 June 14, 2017, 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:

JAMES A. BOLES
LAW OFC JAMES ANDRE BOLES
475 OLD VENTURA AVE
OAK VIEW, CA 93022 - 9725

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Jamie Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 14, 2017.


George Hue
Case Administrator
State Bar Court