STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of RICHARD J. SULLIVAN, A Member of the State Bar, No. 169297.	Case Nos. 14-O-04451 (15-O-11108); 16-C-10105-LMA (Cons.) DECISION

Introduction[1]

This contested matter involves two consolidated cases – a disciplinary proceeding and a conviction referral matter. Respondent Richard J. Sullivan is charged with four counts of professional misconduct in two client matters, including (1) failing to obey a court order; (2) failing to report court sanctions; (3) committing an act of moral turpitude; and (4) failing to cooperate with the State Bar. And, the conviction referral matter is based on Respondent's misdemeanor conviction of reckless driving - alcohol related (Veh. Code, §§ 23103/23103.5).

The court finds, by clear and convincing evidence, that Respondent is culpable of the alleged misconduct, and that the facts and circumstances surrounding his misdemeanor conviction involved moral turpitude warranting discipline.

Based on the nature and extent of culpability, the serious aggravating circumstances, and the lack of any mitigation, the court recommends, among other things, that Respondent be

[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.

suspended from the practice of law for two years, that execution of suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for 18 months and until he has made restitution and has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct (std.).

Significant Procedural History

1. Case Nos. 14-O-04451 (15-O-11108)

On May 8, 2015, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case Nos. 14-O-04451 (15-O-11108)). On June 19, 2015, Respondent filed a response.

On October 20, 2015, this matter was abated due to a pending appeal in a related proceeding.

2. Case No. 16-C-10105

Following the transmittal to the State Bar Court of the records of Respondent's January 12, 2017 conviction for violating Vehicle Code, sections 23103/23103.5 [reckless driving - alcohol related], a misdemeanor which may or may not involve moral turpitude, the review department filed an order on June 7, 2017, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violation of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.[2]

A Notice of Hearing on Conviction (NOH) was filed on June 12, 2017. Respondent filed an answer to the NOH on July 3, 2017.

[2] The State Bar and the review department incorrectly stated that Respondent was convicted of Vehicle Code section 20002, subdivision (a) [hit and run]. That charge was dismissed on January 12, 2017, in furtherance of justice under Penal Code section 1385.

On September 25, 2017, the court unabated the disciplinary matter in case Nos. 14-O-04451 (15-O-11108)) and consolidated it with the conviction referral matter.

On December 27, 2017, Respondent failed to timely appear at the trial of this case. His default was thus entered. On February 5, 2018, the court set aside his default.

A two-day trial was held in this matter on March 8 and 9, 2018. The State Bar was represented by Deputy Trial Counsel Timothy G. Byer and Angie Esquivel. Respondent represented himself.

On the second day of trial, the court accommodated Respondent's request by starting the trial late and taking a two-hour lunch break. Respondent never returned after the extended lunch on March 9. To date, the court has not heard from Respondent for his failure to return to trial.

The court took this matter under submission on March 9, 2018, after the State Bar's oral closing argument.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 13, 1993, and has been a member of the State Bar of California at all times since that date.

In general, the court did not find Respondent to be a credible witness. For example, in the Windsor civil matter, his claim that the sanctions order was for discovery is not credible. In fact, opposing party sought sanctions against Respondent and his clients for bringing a motion that was intended to harass and cause unnecessary delay and needlessly increased the litigation cost. In his conviction referral matter, he insisted that he was unaware that he had been involved in any accident or that he hit any car, despite his nolo contendere plea and the clear and convincing evidence of the damages to the parked cars caused by his reckless driving.

1. **Case No. 14-O-04451 (Judicial Sanctions)**

Facts

On November 29, 2011, Judge Ronald Sohigian ordered to arbitration in *Windsor Mango Way, LLC; Windsor Investments, Inc. v. Francis James Taylor, et al.*, Los Angeles County Superior Court, case No. BC 453450 ("civil case").

Following the ordering of the civil case to arbitration, the parties entered into an extended and unsuccessful negotiation over who was to serve as the arbitrator. During that period, plaintiffs Windsor changed counsel twice. The second change of counsel was when Respondent substituted in as plaintiffs' counsel. On September 10, 2012, Respondent filed several motions in Judge Sohigian's court, including a motion for sanctions under Code of Civil Procedure section 128.7,[3] on the ground that:

> "DEFENDANTS have embarked on a course of conduct the object of which is to utilize the Court's good offices and resources in a desperate effort to avoid litigating this matter at any cost, including [but] not limited to participating by appearing in the trial court proceedings, and making of various Motions therein, when they deem it to be in their interests to do so, and refusing to do so when they deem it not be in their interests, claiming said civil court lacks jurisdiction in favor of the bankruptcy court, thereby utilizing said assertions to justify disobeying direct court orders."

On September 26, 2012, defendants filed an opposition to the sanctions motion on numerous grounds, and also requested for sanctions under CCP §128.7 against plaintiffs for "presenting a rambling, often non-coherent, motion that bears little, if any resemblance to a proper CCP 128.7 motion, and could be better classified as a tantrum than a motion."

At a hearing on October 18, 2012, attended by Respondent, the motions were heard and argued. Judge Sohigian denied all of plaintiffs' motions, including their request for CCP 128.7

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[3] CCP § 128.7 (g) provides that this section shall not apply to discovery requests.

CCP § 128.7 (h) provides that a motion for sanctions for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions.

sanctions, but granted defendants' sanctions motion and awarded defendants $2,500, to be paid by Respondent and his clients. Judge Sohigian found that Respondent's motion for sanctions was brought for an improper purpose and thus it itself was subject to sanctions. Respondent knew about the sanctions, but he never reported the $2,500 sanctions to the State Bar, which remain unpaid.[4]

Conclusions of Law

Count 1 - (Bus. & Prof. Code, § 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.

The essential elements of a willful violation of section 6103 are: (1) knowledge of a binding court order; (2) knowledge of what the attorney was doing or not doing; and (3) intent to commit the act or to abstain from committing it. (*In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) Bad faith is not a necessary element of a section 6103 violation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47.)

Respondent argued that he did not have to comply with the October 18, 2012 sanctions order because it was unfair, not legal, and voidable. He tried to appeal the order but was unsuccessful.

The court rejects his arguments. Respondent's belief as to the validity of the order is irrelevant to a charge of violating the statute requiring attorneys to obey court orders. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9 [Regardless of the attorney's belief that the order was issued in error, he was obligated to obey the order unless he took steps

[4] Respondent's claim that the monetary sanctions were for discovery is not credible.

to have it modified or vacated, which he did not do].) The Supreme Court in *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951-952, rejected a similar argument of an attorney that he was relieved of the duty to comply with court orders because he believed them to be technically invalid. The Court found, "Such technical arguments are waived to the extent the orders became final without appropriate challenge. There can be no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid." (*Ibid.*)

When payment of sanctions is ordered by a court, an attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed. Respondent cannot sit back for five years and just asserts that the sanctions were not legal. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.) Regardless of his belief that the order was voidable or unfair, Respondent is obligated to obey the order unless he took steps to have it modified or vacated. Thus, his belief as to the enforceability of the order is irrelevant to a charge of violating the statute requiring him to obey court orders. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1.)

Accordingly, Respondent willfully violated section 6103 by failing to comply with the October 18, 2012 court order to pay $2,500 in sanctions in *Windsor v. Taylor,* the civil case.

Count 2 - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of $1,000 or more which are not imposed for failure to make discovery.

Respondent argued, among other things, that he did not have to report the $2,500 sanctions because section 6068, subdivision (o)(3), is inapplicable in that the judicial sanction in the civil case was imposed for failure to make discovery.

On the contrary, Judge Sohigian imposed sanctions against Respondent because Respondent brought a motion for an improper purpose that was intended to harass and cause unnecessary delay and needlessly increased the litigation cost, under CCP § 128.7, subdivision (h). Sanctions order under CCP § 128.7 does not apply to discovery requests. (See CCP § 128.7, subd. (g).)

Therefore, by failing to report to the State Bar the $2,500 sanctions in the civil case, Respondent willfully violated section 6068, subdivision (o)(3).

2. Case No. 15-O-11108 (MCLE Non-Compliance)

Facts

Respondent was required to complete 25 hours of Minimum Continuing Legal Education (MCLE) for the compliance period covering February 1, 2011, through January 31, 2014. On February 3, 2014, Respondent reported to the State Bar, under penalty of perjury, that he had completed all the required hours of the MCLE within the compliance period. Subsequently, Respondent was the subject of an MCLE audit. At that time, Respondent did not provide documentation to substantiate that he completed 25 hours of MCLE within the compliance period. On October 31, 2014, Respondent submitted a late audit submission and paid a $75 late fee. Respondent did not include a letter of explanation as to why he affirmed compliance and did not provide any proof of his MCLE compliance.

Thereafter, Respondent made up the 25 hours of MCLE courses from October 5 to October 20, 2014. But that occurred outside of the compliance period.

On April 3 and 17, 2015, State Bar investigator sent letters to Respondent, requesting his response to the allegations that he affirmed compliance with MCLE requirement, when in fact, he had not complied. Respondent did not respond to either letter.

Conclusions of Law

Count 3 - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Respondent provided various excuses for his MCLE non-compliance, including his address changes and good faith belief that he had complied. None of the reasons are meritorious. Moreover, Respondent's defense that he was too busy "doing real lawyer work with real cases" to spend time to comply with the audit is also rejected. Such a cavalier and dismissive attitude goes against the aim of continuing legal education, which is "to provide continuing assurance to the public that all California attorneys, no matter how many years may have passed since their law school graduation and State Bar admission, have the knowledge and skills to provide their clients with high quality legal services." (*Warden v. State Bar* (1999) 21 Cal.4th 628, 654 (dis. Opn. Of Kennard, J.).)

"Requiring attorneys to submit accurate MCLE compliance affirmation is essential to maintaining public confidence in the legal profession." (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334.) In *Yee*, the court found the attorney's failure to accurately report her MCLE compliance was an act of moral turpitude by gross negligence. Similarly, Respondent affirmed his MCLE compliance without making any effort to confirm its accuracy. When he was randomly audited by the State Bar, he failed to correct his error or submit proper proof of compliance.

Therefore, the court finds, by clear and convincing evidence, that Respondent's inaccurate compliance report was the result of gross negligence amounting to moral turpitude, in willful violation of section 6106.

Count 4 – (§ 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.

By failing to respond to the State Bar investigator's April 3 and 17, 2015 letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

3. Case No. 16-C-10105 (Conviction of Reckless Driving)

For purposes of attorney discipline, Respondent's conviction proves his guilt of all requisite elements of his crime. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.)

Facts and Circumstances Surrounding Respondent's Conviction

On November 2, 2015, Respondent was extremely intoxicated under the influence of alcohol and drove his vehicle. Respondent "side swiped" numerous parked vehicles, but did not immediately stop his car at the scene of the accident. Nor did he inform the owners of the vehicles about the damages to their vehicles or leave them a written notice containing his contact information, as required by Vehicle Code section 20002. Instead, Respondent continued to drive his car away from the location of the parked vehicles and fled the scene of the accident. Although Respondent was approached by a witness to get out of his vehicle and report the accident to police officers, Respondent left the scene of the accident, driving erratically and swerving, until he reached a stop and parked his vehicle at a Chevron gas station.

When police officers arrived, they observed a partially empty bottle of tequila in Respondent's vehicle. When Respondent was approached by one of the officers, the officer noted a strong odor of an alcoholic beverage emitting from Respondent, his bloodshot eyes,

disheveled appearance, and slurred rambling speech. Upon questioning by a police officer, Respondent denied that he had been drinking or that he had been involved in an accident and refused to submit to a field sobriety or chemical test. Respondent was thereafter arrested for violating Vehicle Code 23152, subdivision (a), driving under the influence.

Once transported to the police station, Respondent was an aggressive bully towards the Los Angeles Police Officers. He was sloppy drunk and belligerent. Respondent refused all further tests and called the officers names, such as "dickheads" and "fucking sissys." Respondent cited the United States Constitution and complained that his handcuffs were too tight.[5]

Before pleading to wet reckless on November 29, 2016, Respondent had three bench warrants on March 29, April 28, and June 1, 2016, for failing to appear at his court-ordered hearings.

On May 2, 2016, Respondent made a claim for damages and injuries against the City of Los Angeles. He demanded $1 million for the tight handcuffs, $10 million for unlawful assault by the officers, and $50 million for civil rights violations.

Conviction

On January 12, 2017, Respondent pled nolo contendere to a misdemeanor violation of Vehicle Code section 23103, misdemeanor reckless driving per Vehicle Code section 23103.5, misdemeanor, wet reckless in *People v. Richard Sullivan,* Los Angeles County Superior Court, case No. 5WA02096. Respondent was sentenced as follows: three years' summary probation; pay various fees and fines; 130 hours of community service; enroll and complete a three-month First Offender Alcohol and other drug education and counseling program; pay restitution to the court in the amount of $1,465; attend 52 alcoholics anonymous/narcotics anonymous meetings;

[5] Videotape footage of the arrest shows the handcuffs were not tight.

and ordered not to drive a motor vehicle without a valid driver's license and proof of liability insurance.

Conclusion of Law

In light of the foregoing facts, the issue before the court is whether the facts and circumstances surrounding Respondent's conviction involved moral turpitude or other misconduct warranting discipline.

Reckless driving in and of itself does not inherently involve moral turpitude. (*In re Titus* (1989) 47 Cal.3d 1105, 1106.) But, "[c]riminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]" (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3.) An act of moral turpitude is any "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty." (*In re Craig* (1938) 12 Cal.2d 93, 97.) "It is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]" (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214.)

In *In re Alkow* (1966) 64 Cal.2d 838, the Supreme Court found that the circumstances surrounding a vehicular manslaughter conviction of an attorney involved moral turpitude because of his complete disregard of the law, the conditions of a prior criminal probation order

and the safety of the public. "Although he did not intend the accident, he knew his vision was defective and reasonably must have known that injury to others was a possible if not a probable result of his driving." (*Id.* at p. 840.)

In this proceeding, Respondent continued to argue: (1) that he did not leave the scene of the accident, when in fact, he drove off to a gas station after he had hit the parked cars; (2) that he had no notice that he was impaired, when he knew or should have known that drinking and then driving are prohibited; and (3) that he did not lie to the police about how much he had to drink, when he was intoxicated and combative, swearing at the police.

The court finds these and other arguments without merit.

Indeed, his overall misconduct demonstrates a refusal to take responsibility for his criminal act and a disregard for the law. After considering his credibility, the court finds that the current misconduct and the facts and circumstances surrounding Respondent's reckless driving conviction involved moral turpitude – because of his disregard of the law and the safety of the public by drinking and driving, causing damages to the parked cars; because of his denial that he had fled the scene of the accident, refusing to heed the advice of a good samaritan; because of his misrepresentations to the police that he had not been drinking; because of his belligerent behavior towards the police; and because of his frivolous claim against the City of Los Angeles for $50 million.

Therefore, the court finds that the facts and circumstances surrounding Respondent's reckless driving conviction involved moral turpitude warranting discipline.

Aggravation[6]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

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

Respondent has one prior record of discipline, which is a significant aggravating factor, because of the moral turpitude culpability.

On July 18, 2002, the Supreme Court filed an order in case No. S106676 (State Bar Court case No. 00-O-15562), suspending Respondent from the practice of law for one year, stayed, with a two-year period of probation, including a 120-day actual suspension and until restitution was made. Respondent stipulated to three counts of misconduct, including failing to promptly pay client funds, failing to maintain client funds, and misappropriating $7,100 in client funds, an act of moral turpitude. In mitigation, Respondent had no prior record of discipline and cooperated with the State Bar. In aggravation, Respondent was unable to account to the client for his trust accounting violations and caused significant harm to the client.

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct are considered a significant aggravating factor. He disobeyed a court order, failed to report the sanctions to the State Bar, failed to accurately report his MCLE compliance, and failed to cooperate with the State Bar. Moreover, the facts and circumstances surrounding the misdemeanor of which he was convicted involved moral turpitude.

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

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

Respondent significantly harmed the public and the administration of justice. Respondent's MCLE noncompliance harmed the administration of justice because he refused to acknowledge his wrongdoing and failed to provide proof of compliance when he was being audited. His reckless driving and belligerent behavior towards the police caused significant harm to the public. It is a serious breach of a duty owed to society and a flagrant disrespect for the law.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. "The law does not require false penitence. [Citation.] But it does require that the Respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of the serious consequences of his misbehavior. Regarding the $2,500 sanctions order, Respondent claimed that the sanctions were not fair and that they were for discovery. Even after admitting they were not for discovery, he still has not paid them. Regarding the MCLE noncompliance and his failure to respond to the State Bar investigation, Respondent said, "I was busy being a real lawyer, helping real clients, with real problems, unlike the [State Bar]." He further argued that the State Bar was just gouging fees. And, regarding his reckless drunk driving, he expressed no remorse even after watching the video of his arrest at trial. He contended that the prosecutor reduced his criminal charge to wet reckless for lack of evidence. He even tried to impeach the good Samaritan witness by saying she had petty thefts convictions.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) No mitigation was presented.

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.) Standards 1.7, 1.8(a), 2.11, 2.12(a) and (b), and 2.15(c) apply.

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) provides that 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 in the future.

Standard 1.8(a) provides that, when an attorney has one prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a),(b),(d),(e),(f), or (h) is actual suspension or disbarment.

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 reproval.

Standard 2.15(c) states, "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude."

On the first day of trial, Respondent argued that this matter should be dismissed. But on the second day of trial, after a lunch break, he never came back to court to put on his trial.

The State Bar urges two years' actual suspension, in view of the significant aggravating factors, arguing that Respondent has no recognition of wrongdoing, intimidated a witness by impeachment, attacked the State Bar as just gouging fees, harmed the administration of justice with three bench warrants for his failure to appear in court, and behaved as a bully.

The following cases demonstrate similar violations to those of Respondent but involve none of the serious aggravating factors present in this matter. Thus, great weight must be given to the aggravation in assessing the appropriate level of discipline.

In *In the Matter of Yee, supra,* 5 Cal. State Bar Ct. Rptr. 330, the attorney was publicly reproved for her inaccurate MCLE compliance report. Unlike Respondent, *Yee* had compelling mitigation and no aggravation. She had no prior record of discipline and an exemplary record of pro bono and community service. Her misconduct was a one-time error. Most significantly, she immediately accepted responsibility for her wrongdoing, rectified the situation, and implemented a corrective plan to avoid future problems. Respondent, on the contrary, arrogantly claimed that he was "busy being a real lawyer" to comply with the MCLE requirements.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, an attorney failed to report to the State Bar and to pay the court-ordered sanctions of $1,000. He was disciplined with a private reproval with conditions, including requiring him to pay the sanctions after considering that he had no prior record of discipline and the "narrow" ethical violations. There were no aggravating factors. Here, Respondent's ethical violations were not narrow and he refused to accept his duty to report to the State Bar, arguing that the sanctions order was for discovery.

In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, the Review Department found that the attorney provoked a dangerous and risky confrontation with the police in his own domestic dispute and that he should have known better given his extensive experience in handling family law matters. Considering the aggravating circumstances such as his prior discipline, use of alcohol, and lack of appreciation for the seriousness of his misconduct, the court suspended the attorney for two years, stayed, and placed him on probation for two years with a 60-day actual suspension, for his criminal conviction of the misdemeanor battery on a police officer.

But, in the context of convictions involving moral turpitude, the Supreme Court has stated: "the degree of discipline must correspond to some reasonable degree with the gravity of the misconduct. [Citation.]" (*In re Strick* (1987) 43 Cal.3d 644, 656.) Here, unlike *Stewart*, Respondent's misconduct is not limited to a misdemeanor conviction. He maintained that he did not side-swipe parked cars or leave the scene of the accident. Thus, the facts and circumstances surrounding his conviction involved moral turpitude.

Collectively, Respondent's misconduct is much more egregious than that of *Yee*, *Respondent Y*, and *Stewart*. Not only did Respondent commit multiple acts of dishonesty and moral turpitude, but also, significantly, he has no insight into his wrongdoing and refuses to conform to ethical conduct. Respondent has not made any efforts to rectify his misconduct. Even right up to the time of trial, he demonstrated complete indifference to his obligation to comply with the sanctions court order or to acknowledge that his conviction is not limited to a traffic offense. He is culpable of moral turpitude based on his fleeing the scene of an accident, followed by his acts of denial, offensive conduct towards the police and frivolous claim against the City of Los Angeles. He maintains that his reckless driving conviction was a mere wet reckless and that his failure to comply with the sanctions order was justified. Breach of a court

order is serious misconduct that offends the ethical responsibilities an attorney owes to the courts. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 [violation of a court order is serious misconduct].) Yet, Respondent refuses to recognize the seriousness of his misconduct or his duty to the court.

Respondent's use of specious and unsupported arguments in an attempt to evade culpability in his disciplinary matter revealed his lack of appreciation both for his misconduct and for his obligations as an attorney. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.) He filed a false MCLE compliance report under penalty of perjury, but trivialized it, claiming that he was busy "doing real lawyer work." "The filing of a false verification by an attorney not only undermines the ability of the courts to rely on the accuracy of sworn declarations, it also diminishes the public's confidence in the integrity of the legal profession." (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157.) His false report violates the fundamental rules of ethics – "common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.)

In sum, Respondent has yet to pay the court sanctions or acknowledge the facts that he was drunk and fled the scene of the crime, demonstrating his indifference and failure to understand the seriousness of his misconduct. Respondent has a track record of repeated violations of his professional obligations in 2012, 2014, and 2015. Respondent's one prior imposition of discipline in 2002 has not operated to cause Respondent to conform his conduct to ethical norms. In fact, both his prior disciplinary matter (misappropriation of $7,100) and the current misconduct involved acts of moral turpitude. Thus, his record of prior discipline, multiple acts of misconduct, significant harm, criminal conviction, dishonesty, and lack of insight raise concerns that he would repeat his misdeeds. (See *In the Matter of Layton* (Review

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.) He has shown no remorse of his wrongdoing. Under standard 1.8(b), a greater sanction is appropriate where the record demonstrates that Respondent is unwilling or unable to conform to ethical responsibilities in the future.

Therefore, in view of the totality of the circumstances, a long period of actual suspension is necessary and appropriate to preserve public confidence in the profession. Accordingly, based on the standards and after balancing all relevant factors, including the underlying misconduct, the significant aggravation, no mitigation, and the case law, the court concludes that an 18 months' actual suspension, with a showing of rehabilitation and fitness to practice before termination of the actual suspension, would serve to underline to Respondent the seriousness of his professional responsibilities and the need for him to conform to his ethical duties.

Recommendations

It is recommended that Respondent Richard J. Sullivan, State Bar Number 169297, 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 probation[7] for two years, subject to the following conditions:

1. Respondent Richard J. Sullivan is suspended from the practice of law for a minimum of 18 months of his probation, and Respondent will remain suspended until the following requirements are satisfied:

   (i) He must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

   (ii) He must pay court sanctions in the amount of $2,500 to the defendants, Francis Taylor Living Trust, Francis James Taylor, and Dolores Kelley Taylor, or their attorney, Marc J. Schwartz, in *Windsor Mango Way, LLC; Windsor Investments, Inc. v. Francis James Taylor, et al.*, Los Angeles County Superior Court, case No. BC 453450.

[7] 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.)

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.

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.

Multistate 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: May 7, 2018

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 Court Specialist 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 May 7, 2018, 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:

RICHARD J. SULLIVAN
LAW OFFICES OF RICHARD J
SULLIVAN
219 S BARRINGTON AVE APT 217
LOS ANGELES, CA 90049

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 7, 2018.

Bernadette Molina
Court Specialist
State Bar Court