

PUBLIC MATTER

FILED

JUL - 1 2015 ¹⁸

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 14-O-02057-LMA
)	
NATHANIEL JAY FRIEDMAN,)	DECISION
)	
Member No. 33135,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary matter, respondent **NATHANIEL JAY FRIEDMAN** is found culpable on the following three counts of misconduct involving a single client matter: (1) failing to obey a court order to disgorge to his client \$58,583.33 in illegal fees (§ 6103); (2) failing to obey a court order to pay \$1,500 in sanctions (§ 6103); and (3) failing to report the \$1,500 in sanctions to the State Bar (§ 6068, subd. (o)(3)).

For the reasons set forth *post*, the court recommends that respondent be placed on two years' stayed suspension and two years' probation on conditions, including sixty days' actual suspension. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Drew Massey. Respondent represented himself.

Significant Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on December 16, 2014. Respondent filed a response to the NDC on January 2, 2015.

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

On April 1, 2015, the State Bar filed a request that the court take judicial notice of (1) the unpublished opinion that Division Two of the Fourth District Court of Appeal filed on September 15, 2014, in its case number E057369, styled *George Marquez, Jr., a Minor, Plaintiff and Respondent v. the County of Riverside et al., Defendants; Nathaniel J. Friedman et al., Objectors and Appellants*; and (2) a case information sheet dated March 16, 2015, showing that the Supreme Court rejected respondent's petition for review of the Court of Appeal's September 15, 2014, opinion in case number E057369 on December 10, 2014.

On April 13, 2015, the parties filed a partial stipulation as to facts and the admission of documents.

A one-day trial in this matter was held on April 14, 2015. On April 14, 2015, this court granted the State Bar's April 1, 2015, request to take judicial notice and judicially noticed the Court of Appeal's September 15, 2014, opinion in case number E057369 and the case information sheet dated March 16, 2015, showing that the Supreme Court rejected respondent's petition for review of that opinion on December 10, 2014.

This court took the case under submission for decision at the conclusion of the trial on April 14, 2015.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 13, 1962, and has been a member of the State Bar of California since that time.

Facts

In 2010, the parents of George Marquez Jr., a minor, retained respondent to represent George Marquez Jr. in a medical malpractice lawsuit on a contingency fee basis. The fee

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agreement provided that, if the matter was resolved favorably, respondent would be entitled to MICRA² fees.

Thereafter, respondent filed a medical malpractice lawsuit for George Marquez Jr. through his guardian ad litem in the Riverside County Superior Court. In April 2012, the case was settled for \$395,000 plus interests and costs. Under MICRA and the terms of respondent's contingency fee agreement, the maximum amount of attorney's fees respondent could lawfully recover on the \$395,000 settlement at the time was \$99,416.67. Respondent, however, filed an amended petition to approve a minor's compromise in which respondent requested attorney's fees in the amount of \$158,000 (which is 40 percent of the \$395,000 settlement) without disclosing that \$158,000 was in excess of the MICRA limit. Thereafter, on May 3, 2012, Superior Court Temporary Judge Tom Swortwood entered an order approving the minor's compromise.

On August 9, 2012, on his own motion, Superior Court Commissioner Burgess issued an order to show cause (OSC) directing respondent to appear in court and show why the court should not reconsider its May 3, 2012, order approving compromise; reduce respondent's attorney's fee to from \$158,000 to \$99,416.67 in accordance with MICRA's limitations on attorney's fees; and order respondent to refund the remaining \$58,583.33 (\$158,000 less \$99,416.67) to the client by depositing it into the minor's blocked account.

The hearing on the OSC was held before Superior Court Judge Fisher on October 3, 2012. Respondent appeared at the hearing both in person and through counsel. At that hearing, Judge Fisher reduced respondent's attorney's fees to \$99,416.67, which was the maximum lawful amount under MICRA (i.e., section 6146), and ordered respondent to refund \$58,583.33 in fees to the minor client via the minor's blocked bank account. At the hearing, Judge Fisher also

² MICRA is the acronym for the Medical Injury Compensation Reform Act of 1975 (§ 6146).

issued an additional OSC directing respondent to appear in court on December 11, 2012, and report the status of the deposit of \$58,583.33 into the minor's blocked account.

At the October 3, 2012, OSC hearing and at all times thereafter, including the present, respondent insists that the superior court did not have jurisdiction to issue an order requiring him to refund any of his fees to the minor client. Respondent did not deposit any portion of the \$58,583.33 into the minor's blocked account. Instead, respondent appealed the superior court's October 3, 2012, order and sought a stay of that order from the superior court pending his appeal.

The December 11, 2012, OSC hearing was continued to December 21, 2012. Respondent appeared at the December 21 hearing through counsel. At that hearing, the superior court not only denied respondent's request to stay its October 3, 2012, order, but also issued a new OSC ordering respondent to appear in court on December 28, 2012, and show why he should not be sanctioned \$500 for not complying with the court's October 3, 2012, order to deposit \$58,583.33 into the minor's blocked account.

The December 28, 2012, OSC hearing was continued to January 30, 2013. Respondent attended that hearing through counsel. At that hearing, the superior court sanctioned respondent \$500 and issued an additional OSC ordering respondent to appear in court on February 22, 2013, and show why he should not be sanctioned \$1,000 for failing to comply with the court's October 3, 2012, order.

Respondent attended the February 22, 2013, OSC hearing through counsel. At that hearing, the superior court sanctioned respondent \$1,000, but later that same day, the court sua sponte stayed all sanctions against respondent and issued an additional OSC ordering respondent to appear in court on March 29, 2013, and show why he should not be sanctioned \$1,500 for failing to comply with the superior court's October 3, 2012, order.

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Respondent appeared at the March 29, 2013, OSC hearing through counsel. At that hearing, the superior court vacated all of its prior sanctions and imposed a new \$1,500 sanction on respondent, which respondent was ordered to pay by April 12, 2013. Respondent did not pay the sanction by April 12, 2013. Nor did respondent report the \$1,500 sanction to the State Bar within 30 days after it was issued on April 12, 2013, which was when respondent learned of it.

On September 15, 2014, the Second Division of the Fourth District Court of Appeal filed its opinion in respondent's appeal of the superior court's October 3, 2012, order. In that opinion, the Court of Appeal rejected each of respondent's points contending that the order was void for want of jurisdiction and affirmed the superior court's October 3, 2012, order.

In respondent's January 2, 2015, response to the NDC in this proceeding, respondent again asserts that the superior court's October 3, 2012, order is invalid and void for want of jurisdiction and again raises the same points that the Court of Appeal aptly rejected in its September 15, 2014, opinion.

Even though the California Supreme Court denied respondent's petition for review of the Court of Appeal's opinion on December 10, 2014, respondent did not pay the \$1,500 sanctions until February 11, 2015, or refund the \$58,583.33 illegal fee until March 3, 2015.

Conclusions

Count One – (§ 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 the attorney ought in good faith do or forbear, constitutes cause for suspension or disbarment. To be disciplined for violating section 6103, "the State Bar must prove two elements by clear and convincing evidence: 1) that respondent wilfully disobeyed an order of the court; and 2) that the court order required respondent to do or forbear an act in

connection with or in the course of respondent's profession which he ought in good faith to have done or not done." (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.)

In count one, the State Bar charges that respondent willfully violated section 6103 "by failing to comply with the October 3, 2012 order to repay [\$58,583.33 in] attorney's fees to a minor client via a blocked account." Respondent had actual knowledge of the superior court's October 3, 2012, order the day it was issued, and he promptly filed an appeal in which he contended, inter alia, that the order was void for want of jurisdiction. For whatever reason, respondent choose not to take the "more prudent course to comply with the order while seeking a judicial determination as to its jurisdictional validity." (*In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. at p. 604.) Instead, respondent chose to willfully disobey the order and now seeks to raise his jurisdictional contentions as a defense to the charged section 6103 violation.

The Court of Appeal rejected each of respondent's jurisdictional contentions in its well-supported September 15, 2014, opinion, which is now final. Respondent presents no valid reason for this court "to go behind" that opinion. In any event, this court finds that the superior court's October 3, 2012, order was a valid, binding court order.

It has long been established that a client cannot waive the statutory fee limitations in MICRA and is entitled to recover from an attorney any fees that exceed those limits. (E.g., *Fineberg v. Harney & Moore* (1989) 207 Cal.App.3d 1049, 1050.) Moreover, a client is entitled to recover from an attorney any fees that exceed MICRA's limits even if the attorney's fees were expressly approved in an order approving the compromise of a minor's claim, as respondent's \$158,000 fees were in the present case. (*Schultz v. Harney* (1994) 27 Cal.App.4th 1611, 1618-1620.) Accordingly, it is clear that the superior court's valid and binding October 3, 2012, order

requiring respondent to refund \$58,583.33 in attorney's fees was an order that required respondent to do an act in connection with his profession which he ought in good faith to have done.

Finally, even if respondent lacked the financial ability to promptly comply with the superior court's October 3, 2012, order, to disgorge the \$58,583.33 (i.e., the portion of the \$158,000 fee award that exceeded MICRA's limits), the inability to comply with the order would not be a defense to the charged section 6103 violation because respondent failed to establish that he sought relief from the October 3, 2012, order based on such an alleged inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 & fn. 4.)

In sum, the record clearly establishes the section 6103 violation charged in count one.

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

In count two, the State Bar charges that respondent willfully violated section 6103 "by failing to comply with the March 29, 2013 order to pay sanctions" of \$1,500 by April 12, 2013. Respondent's counsel was present at the March 29, 2013, OSC hearing when the superior court ordered respondent to pay \$1,500 in sanctions by April 12, 2013. Accordingly, respondent is charged with having actual notice of the order when it was issued. Respondent admits that he failed to obey the order, and that he did not pay the sanctions until February 11, 2015.

In sum, the record clearly establishes the section 6103 violation charged in count two.

Count Three – (§ 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. As noted *ante*, respondent is charged with having actual knowledge of the \$1,500 sanction order when it was issued on March 29, 2013. Moreover, respondent admits that he failed to report that order to the

State Bar within 30 days of its issuance. Accordingly, the record clearly establishes the charged violation of section 6068, subdivision (o)(3).

Aggravation³

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

Respondent has one prior record of discipline. In 1970, respondent was publicly reprimanded by a State Bar Local Administrative Committee. The committee found that respondent willfully violated section 6106 proscription of acts involving moral turpitude and dishonesty when he falsified an exhibit which he attached to a verified complaint that he filed. In light of the fact that respondent's one prior record of discipline is now 45 years' old, it merits very little aggravating weight.

Multiple Acts (Std. 1.5(b).)

Respondent's present misconduct involves multiple acts of misconduct.

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

Respondent's misconduct harmed his client because it deprived his client of \$58,583.33 for more than a year.

Lack of Respect

At trial and in correspondence to the State Bar, respondent made unsubstantiated claims to the effect that he was being railroaded; that the Court of Appeal Justices were flunkies out to "get him" and were "covering up" for the superior court; and that a superior court judge was mentally ill and certifiably insane. Respondent's unprofessional, boorish statements and remarks are strong evidence that respondent lacks respect for the disciplinary process and that he fails to comprehend either the seriousness of the charges against him or his duty to cooperate and to

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

participate in a disciplinary proceeding pending against him. Such lack of respect and failures to comprehend are serious aggravating factors. (E.g., *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77-78, and cases there cited.)

Lack of Insight

“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’s failure to express any remorse for his misconduct and his continuous denial of any wrongdoing clearly establish that respondent lacks insight into the wrongfulness of his conduct. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958.) Respondent’s lack of insight is particularly aggravating because it strongly suggests that the misconduct will reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

Mitigation

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

Respondent testified credibility that he suffers from renal failure and must undergo dialysis three times a week.

Candor And Cooperation (Std. 1.6(e).)

Even though many of the facts would have been easy to prove, respondent is still entitled to limited mitigation for his cooperation with the State Bar by entering into the partial stipulation as to facts. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567.)

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

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professional standards for attorneys; and to preserve public confidence in the 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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court does not follow the standards talismanically. As the final and independent arbiter of attorney discipline, the Supreme Court is “ ‘permitted to temper the letter of the law with considerations peculiar to the offense and the offender.’ ” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

Next, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).) The most severe sanction for respondent’s present misconduct is found in standard 2.8(a), which provides:

Disbarment or actual suspension is appropriate for disobedience or violation 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(a)-(h).

As set forth *post*, the discipline imposed in five of the key cases in which the primary misconduct was the violation of the duty under section 6103 to obey court orders issued in connection with the practice of law ranges from disbarment to reproof.

In *Barnum v. State Bar* (1990) 52 Cal.3d 104, the attorney was disbarred for violating four court orders. In addition, the attorney also refused to refund a \$10,000 illegal, unconscionable fee to a client. In aggravation, the attorney had three prior records of discipline. There was no mitigation.

In *Natali v. State Bar* (1988) 45 Cal.3d 456, the attorney was placed on five years' stayed suspension and five years' probation on conditions, including a three-year actual suspension for violating orders to file an at-issue memorandum and to pay sanctions. In addition, the attorney was culpable on two counts of client abandonments and dishonesty. In aggravation, the attorney had one prior record of discipline, engaged in a pattern of misconduct, did not cooperate with the victim or the State Bar, and displayed indifference. The attorney was given some mitigation for emotional difficulties.

In *Maltaman v. State Bar* (1987) 43 Cal.3d 924, the attorney was placed on five years' stayed suspension and five years' probation on conditions, including a one-year actual suspension, for violating orders to return property to an estate and to pay sanctions, which violations resulted in contempt orders. In aggravation, the attorney lacked cooperation, displayed indifference, caused substantial harm, and engaged in dishonesty and multiple acts of misconduct. In mitigation, the attorney had no prior record of discipline in 21 years.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 and in *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, the attorneys were privately reproofed.

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In *Respondent Y*, the attorney failed to obey a court order to pay \$1,000 in sanctions and failed to report the sanctions to the State Bar. There was no aggravation. In mitigation, the attorney had no prior record of discipline. There were conditions attached to the reproof requiring the attorney to pay the sanctions, attend Ethics School, and pass the Multistate Professional Responsibility Examination.

In *Respondent X*, the attorney violated a court's confidentiality order regarding a settlement agreement. There was no aggravation. In mitigation, the attorney had no prior record of discipline in 18 years and the attorney acted in good faith. No conditions were attached to reproof in *Respondent X*.

On balance and in light of the foregoing case law, the court concludes that the appropriate level of discipline in the present proceeding is two years' stayed suspension and two years' probation on conditions, including a sixty-day actual suspension. The sixty-day suspension should be sufficient to impress upon respondent the necessity to conform his conduct to the strictures of the profession and to provide him with adequate time in which to reflect upon the professional duties he owes to his clients, the profession, and the courts.

Recommendations

Discipline

It is recommended that respondent **NATHANIEL JAY FRIEDMAN**, State Bar number 33135, be suspended from the practice of law in California for two years, that execution of that two-year period of suspension be stayed, and that respondent be placed on probation⁴ for two years subject to the following conditions:

1. Respondent **NATHANIEL JAY FRIEDMAN** 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 in this matter. (See Cal. Rules of Court, rule 9.18.)

2. Within 30 days after the effective date of the Supreme Court order in this matter, 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. Thereafter, respondent must also promptly meet with the probation deputy as directed and upon the deputy's reasonable request.
3. 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.
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 State Bar's Membership Records Office and Office of Probation.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. 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 Supreme Court order in this matter, 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 school. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent is ordered not to claim any MCLE credit for attending Ethics School. (Accord Rules Proc. of State Bar, rule 3201.)
8. 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 further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the

Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

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

Dated: July 1, 2015.



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 1, 2015, I deposited a true copy of the following document(s):

DECISION

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

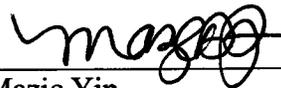
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

NATHANIEL JAY FRIEDMAN
8500 WILSHIRE BLVD STE 910
BEVERLY HILLS, CA 90211

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 1, 2015.



Mazie Yip
Case Administrator
State Bar Court