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JUL 30 2015

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

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| In the Matter of |) | Case No.: 14-O-02058-PEM |
| |) | |
| BARTON ALBERT FRIEDMAN, |) | DECISION |
| |) | |
| Member No. 211241, |) | |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Introduction¹

In this contested disciplinary proceeding, respondent **Barton Albert Friedman** is charged with two counts of professional misconduct. The charged misconduct includes: (1) failing to obey a court order; and (2) failing to report judicial sanctions (\$1,500).

The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. In view of the misconduct and the evidence in mitigation and aggravation, respondent is hereby publicly reproved with attached conditions.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 26, 2014. On January 13, 2015, respondent filed a response to the NDC. On April 22, 2015, the parties submitted a first revised stipulation as to facts and admission of documents.

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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.

Trial was held on May 15, 2015. The State Bar was represented by Deputy Trial Counsel Drew Massey. Respondent represented himself. On May 15, 2015, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 5, 2000, and has been a member of the State Bar of California at all times since that date.

Case No. 14-O-02058 (Judicial Sanctions Matter)

Facts

Respondent works as an associate attorney at his father's law firm, Nathaniel J. Friedman, a Professional Law Corporation (law firm). Respondent represented a minor plaintiff in a medical malpractice action entitled *Marquez v. County of Riverside*, Riverside County Superior Court, case No. RIC10020000.

On May 3, 2012, Riverside Superior Court entered an Order Approving the Minor's Compromise. As part of that compromise, attorney fees from the settlement were awarded to the law firm in the amount of \$158,000.

On August 9, 2012, on its own motion, the court issued an Order to Show Cause (OSC) Regarding the Attorney's Fees on the Minor's Compromise. The court set the OSC hearing for September 7, 2012. And on August 15, 2012, the principal attorney at the law firm, Nathaniel Friedman (Nathaniel), filed a Declaration of Nathaniel J. Friedman and Points and Authorities in Response to OSC Set by Commissioner Joan F. Burgess. Nathaniel did not consent to the resolution of the matter via a commissioner. Because there was no consent, the matter was assigned to Judge Thomas H. Cahraman.

Nathaniel filed a challenge to Judge Cahraman and the matter was reassigned to Judge Mac R. Fisher. The OSC hearing was rescheduled for October 3, 2012. Nathaniel appeared at

the October 3, 2012 OSC hearing. At that hearing, the superior court ordered that the attorney fees were to be reduced to \$99,416.67 and that the difference was to be returned to the minor client via a blocked bank account. Nathaniel was specifically ordered to do so. Furthermore, at the October 3, 2012 OSC hearing, the court issued an additional OSC re Status of Deposit as to George Marquez, Jr. That hearing was scheduled for December 11, 2012, and later continued to December 21, 2012.

Nathaniel then filed an appeal of the court's order to return the attorney fees and also filed a motion to stay the court's order pending appeal. Nathaniel and his counsel, who was respondent, attended the December 21, 2012 hearing. Nathaniel's motion to stay was denied at the hearing. Also at the hearing, the superior court issued an OSC re \$500 Sanctions for Failure to Comply with Court Order as to Nathaniel. The OSC hearing was initially set for December 28, 2012, but continued to January 30, 2013.

Respondent attended the January 30, 2013 OSC hearing as Nathaniel's counsel. At that hearing, the superior court imposed a \$500 sanctions against Nathaniel. The court further issued an OSC re \$1,000 Sanctions for Failing to Comply with a Court Order and set the hearing for February 22, 2013.

Nathaniel attended the February 22, 2013 hearing through counsel who at that time was Patricia Law. But respondent did not appear. At that hearing, the court first imposed \$1,000 in sanctions against Nathaniel; and on its own motion, the court stayed all sanctions imposed against Nathaniel. The court issued a further OSC re \$1,500 Sanctions for Failure to Comply with Court Order as to Nathaniel *and* respondent and set the hearing date for March 29, 2013.

Nathaniel attended the March 29, 2013 hearing through counsel. Respondent did not appear. At the hearing, the court vacated all previous sanctions and imposed a new sanction of \$1,500 against Nathaniel. The court also indicated it was not satisfied that respondent had

received notice of the hearing. Therefore, the court ordered notice to be served and continued the OSC hearing as to respondent to April 19, 2013.

On April 4, 2013, the court sent the notice to respondent, followed by a fax, regarding the date of the next hearing and received confirmation that respondent's office had received the fax. The clerk's certificate of mailing indicated the notice of sanctions was sent to "Beverly" instead of Beverly Hills. But, the street address ("8500 Wilshire Blvd., Ste. 910") and the zip code ("90211") were accurate and the notice or the certificate of mailing was never returned as undeliverable.

On April 19, 2013, Nathaniel appeared through counsel, who was Janice Cleveland, but respondent did not appear. The court sanctioned respondent in the amount of \$1,500. The sanctions was ordered to be paid by May 3, 2013. Again, the clerk's certificate of mailing indicated the notice of sanctions was sent to "Beverly" instead of Beverly Hills. But, the street address ("8500 Wilshire Blvd., Ste. 910") and the zip code ("90211") were accurate and the notice or the certificate of mailing was never returned as undeliverable.

Respondent did not report the sanctions to the State Bar within 30 days of its issuance or at any time thereafter.

In 2014, the superior court reported respondent's failure to pay court sanctions to the State Bar. On March 25, 2014, the State Bar notified respondent about the court sanctions. The next day respondent wrote to the State Bar, stating that this was the first time he heard about the sanctions having been imposed against him. The State Bar then sent him documents regarding the sanctions. Thereafter, there was an exchange of correspondence between the State Bar and respondent, wherein respondent engaged in vicious personal attacks against the State Bar deputy trial counsel and investigator.

On November 19, 2014, the State Bar sent respondent a letter, notifying him of its intent to file a NDC against him. On November 26, 2014, respondent paid the court ordered sanctions.

Conclusions

Count 1 - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

Respondent argued that he did not receive notice of the April 2013 court sanctions until March 2014, when the State Bar notified him of the sanctions. He also claimed that he never saw the April 4, 2013 fax from the superior court and that during the day, many faxes may come through his office and he did not see them all.

The court finds his arguments unpersuasive and inexcusable. "The fact that the internal mail handling procedures of a company may have resulted in the misplacement of documents that the evidence establishes were delivered to the company is not a sufficient excuse." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 505.)

Based on the following facts and circumstances, respondent had constructive knowledge of the court ordered sanctions:

- On March 29, 2013, Nathaniel, his father, appeared in court when the judge continued the OSC because it was not satisfied that respondent had received notice of the OSC. Nathaniel was in court with counsel on March 29 and April 19, when the issue of sanctions was addressed as to respondent and Nathaniel. Respondent shares an office with his father and is an associate in his father's firm. It is hard to believe that his father did not tell him about the sanctions order.

- While the Clerk's Certificate of Mailing on April 4 and April 19, 2013, indicated that the court mailed the notice of the OSC to "Beverly" instead of Beverly Hills, the street address and the zip code were accurate and the notice or the certificate was never returned as undeliverable.
- Moreover, on April 4, 2013, the court, out of concern that maybe respondent had not received notice, followed up with a fax addressed specifically to respondent. The fax was received by respondent's office.

Arguably, because section 6103 requires a somewhat more precise level of willfulness (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603), it must be shown that respondent "knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." (*King v. State Bar* (1990) 52 Cal.3d 307, 314.)

Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.) Here, there are no reasonable doubts that respondent did not know of the sanctions. Even if respondent did not have constructive knowledge of the court sanctions in April 2013, he admitted that he knew about it after the State Bar informed him in March 2014.

Yet, he did not pay the sanctions until November 26, 2014, eight months after he had actual notice and a week after the State Bar's notice of intent to file an NDC against him in this matter.

Moreover, "[i]n the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed." (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403.) The April 19 court order clearly instructed respondent to pay the sanctions by May 3, 2013. At the very least he should have paid the sanctions within a month of the State Bar notifying him of it in March

2014, or taken some legal action to have the sanctions set aside. If respondent disagreed with the order, he should have sought relief from it. Furthermore, there is no evidence that respondent acted diligently to pay the sanctions. Nor is there any evidence that he took any steps to set the sanctions aside. Instead, he willfully chose to disregard the order until November 2014.

Therefore, by failing to complying with the April 19, 2013 court order to pay \$1,500 sanctions to the Riverside County Superior Court, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103.

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.

The willful violation of section 6068, subdivision (o)(3), does not require a bad purpose or an evil intent. All that is required for a violation is a general purpose of willingness to commit the act or omission. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867.)

Respondent admitted that he did not report the sanctions to the State Bar within 30 days of its issuance or at any time thereafter. Under the circumstances, he willfully violated section 6068, subdivision (o)(3), by not timely reporting the sanctions order.

Aggravation²

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h.))

Respondent's unrestrained personal attacks on the State Bar and another attorney are significant aggravation. On February 17, 2015, instead of accepting responsibility in his failure to pay the sanctions and cooperating with the State Bar, respondent wrote an offensive letter to Deputy Trial Counsel Massey regarding discovery in this matter. On April 13, 2015, respondent wrote a similar insulting letter to Sarah L. Overton, the attorney representing Judge Fisher³ regarding a subpoena served on Judge Fisher by respondent in this matter. Respondent argued at trial that he wrote those belligerent letters to demonstrate how offended he was by the State Bar's accusations that implied he was lying about not receiving notice of the April 2013 sanctions order.

Respondent neglected his professional demeanor and failed to cooperate with the State Bar with civility and professionalism. Such behavior is unacceptable and harms the integrity of the legal profession.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent's practice of law for over 13 years with no prior record of discipline at the time of his misconduct is a mitigating factor.

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

³ Judge Fisher was the judge who heard the OSC regarding reducing the attorney fees from \$158,000 to \$99,416.67 because the plaintiff was a minor. He was also subpoenaed by respondent to appear at the hearing on this matter. With regard to the motion to quash the subpoena, Judge Fisher was represented by attorney Sarah L. Overton. This court granted the motion to quash the subpoena.

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.

However, 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.

In this case, standards 2.8(a) and (b) provide a broad range of sanctions ranging from reproof to disbarment.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) – (h).

Section 2.8(b) provides for reproof for violation of the duties required of an attorney under Business and Professions Code section 6068, subdivisions (i), (j), (l), or (o).

The State Bar urges that respondent be actually suspended for 30 days, citing *Barnum v. State Bar* (1990) 52 Cal.3d 104 and *Natali v. State Bar* (1988) 45 Cal.3d 456 in support of its recommendation. "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.)

Respondent maintains that he is not culpable of any misconduct, and argues that, if any culpability is found, a private reproof would be adequate, citing *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 in support of his arguments.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, an attorney was culpable of failing to obey a court order to pay \$1,000 sanctions that were imposed as a result of his bad faith tactics and actions while defending a lawsuit and failing to timely report the sanctions to the State Bar. He was privately reproved with conditions. There were no aggravating factors.

In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney was suspended for six months, stayed, and placed on probation for one year due to his failure to perform services with competence, failure to comply with Supreme Court orders, and

failure to timely report judicial sanctions of \$1,000. His misconduct was aggravated by harm to the administration of justice. But in mitigation, he had no prior record of discipline in 17 years of practice.

While respondent's misconduct is analogous to *Respondent Y*, of greater concern is his behavior of uncivility and lack of cooperation during the State Bar's investigation, which is a significant aggravating factor. Yet, his conduct is less extensive than that of *Riordan* in that respondent was culpable of two counts of misconduct whereas *Riordan* committed three counts of misconduct. Accordingly, respondent's misconduct warrants discipline on a level somewhere within the range provided by *In the Matter of Respondent Y* (private reproof) and *In the Matter of Riordan* (six months' stayed suspension and one year's probation).

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.) In view of respondent's misconduct, the case law, the evidence in aggravation and mitigation, and the standards, the court concludes that a public reproof with conditions is an appropriate disposition of this matter.

Disposition

It is ordered that respondent **Barton Albert Friedman**, State Bar Number 211241, is publicly reproofed. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, the public reproof will be effective when this decision becomes final. Furthermore, pursuant to the California Rules of Court, rule 9.19(a), and rule 5.128 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproof imposed in this matter:⁴

⁴ Failure to comply with any condition(s) attached to the public reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct.

1. Within one year after the effective date of this order, 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.)
2. Respondent must take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

Costs are 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: July 30, 2015


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 July 30, 2015, I deposited a true copy of the following document(s):

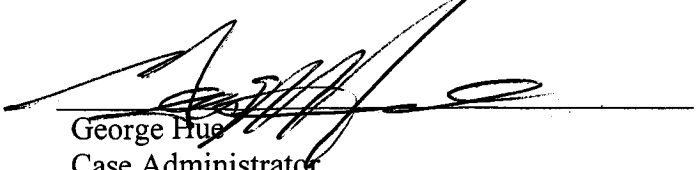
DECISION

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:
- BARTON A. FRIEDMAN
NATHANIEL FRIEDMAN, A PROF CORP
8500 WILSHIRE BLVD STE 910
BEVERLY HILLS, CA 90211
- ☐ 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:

Drew D. Massey, Enforcement, Los Angeles
Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 30, 2015.


George Hue
Case Administrator
State Bar Court