



PUBLIC MATTER

FILED

JUL - 1 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 14-O-02715-LMA
)	
DERON ADAM KARTOON,)	DECISION
)	
Member No. 155925,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary proceeding, respondent Deron Adam Karton is charged with two counts of failure to obey court order for missing multiple court appearances.

Because respondent admitted to culpability, the only issue reserved for the court is the question of disposition. In view of the misconduct and the evidence in mitigation and aggravation (including respondent's admitted drug abuse problems), the court recommends that respondent be placed on two years' stayed suspension and three years' probation on conditions including an actual suspension of 60 days.

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) against respondent on December 16, 2014. On January 15, 2015, respondent filed a response to the NDC. On April 16, 2015, the

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.

parties filed two stipulations: a stipulation as to facts and conclusions of law and a further stipulation as to facts.

A one-day trial was held on April 16, 2015. The State Bar was represented by Deputy Trial Counsel Heather E. Abelson. Respondent represented himself. The court took the case under submission for decision on April 16, 2015, after the trial concluded.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 17, 1991, and has been a member of the State Bar of California since that time.

Facts

Respondent represented Lindsey Sims in a criminal matter entitled *People v. Lindsey Sims*, El Dorado County Superior Court, case No. S13CRM0052 (the criminal matter).

On February 26, 2013, respondent sent a letter to the District Attorney's office stating that Sims would not move forward in any legal proceeding at that time because Sims' identity had allegedly been stolen. The letter also requested a continuance.

Respondent and Sims did not appear at the February 27, 2013 arraignment hearing in the criminal matter. The court scheduled a further arraignment hearing for May 1, 2013, and Sims' bench warrant was held until May 1, 2013. A copy of this minute order was mailed to respondent's official membership records address.

On April 30, 2013, respondent faxed a letter to the court stating that he could not attend the May 1, 2013 arraignment due to scheduling conflicts, and that he was not authorizing Sims to be booked given potential identity theft claims. On May 1, 2013, respondent and Sims did not appear at the arraignment hearing, and the court scheduled a pretrial conference for May 31, 2013, at 1:00 p.m.

On May 31, 2013, respondent and Sims did not appear for the pretrial conference. The court was not clear whether respondent was notified of this hearing, and continued the pretrial conference to June 14, 2013. The courtroom clerk faxed a copy of this order to respondent's official membership records fax number, which was also the fax number provided to the court. The fax was successfully sent to respondent's fax number.

On June 11, 2013, respondent faxed a letter to the court stating that he could not appear at the June 14, 2013 hearing due to scheduling conflicts, and again stated that he would not authorize Sims to be booked due to possible identity theft allegations.

On June 14, 2013, respondent and Sims did not appear for the pretrial conference. The court continued the pretrial conference to July 26, 2013, at 8:30 a.m., and directed both respondent and Sims to be present. The courtroom clerk faxed a copy of this order to respondent's official membership records fax number. The clerk also spoke to respondent on the phone and notified him of the July 26, 2013 hearing date.

On July 26, 2013, respondent and Sims failed to appear for the pretrial conference. A bench warrant was issued against Sims, and bail was set at \$5,000. An Order to Show Cause (OSC) re Contempt hearing was scheduled for August 16, 2013, at 8:30 a.m. The court ordered that respondent personally appear. The courtroom clerk faxed a copy of this order to respondent's official membership records fax number.

On August 16, 2013, respondent and Sims appeared for the OSC re Contempt. The court set a pretrial conference for November 15, 2013, at 8:30 a.m.

On November 15, 2013, respondent and Sims failed to appear for the pretrial conference. The court issued a bench warrant for Sims, and bail was set at \$10,000.

On January 8, 2014, respondent sent a letter to the court requesting a return on warrant be set for January 17, 2014, at 9:00 a.m. On January 17, 2014, respondent and Sims appeared at a

return on warrant hearing. At the hearing, the court set a pretrial conference for March 14, 2014, at 8:30 a.m.

On March 14, 2014, a pretrial conference was held in the criminal matter. Respondent and Sims failed to appear. As a result, the court issued a bench warrant for Sims in the amount of \$5,000, and issued an OSC re Contempt. The OSC hearing was scheduled for April 4, 2014, at 8:30 a.m. and respondent and Sims were ordered to personally appear.

On April 4, 2014, respondent telephonically appeared for the OSC re Contempt hearing. As a result of respondent's failure to personally appear, the court continued the OSC re Contempt to April 7, 2014, at 1:30 p.m.

Respondent had car problems on April 6, 2014. On April 7, 2014, respondent sent an email to the courtroom clerk, stating that his car had been towed and requesting a continuance of the OSC re Contempt. Respondent did not receive a response email from the court or courtroom clerk.

On April 7, 2014, respondent failed to appear for the OSC re Contempt. Thus, the court ordered a further OSC re Contempt, and issued a bench warrant for Sims in the amount of \$10,000. The OSC hearing was scheduled for May 9, 2014, at 8:30 a.m. and respondent was ordered to personally appear. The April 7, 2014 OSC re Contempt Order was successfully faxed and sent by certified mail to respondent. Respondent received a copy of this Order.

On May 9, 2014, respondent failed to personally appear at the OSC re Contempt hearing. As a result of his failure to appear, the court directed that respondent's conduct be reported to the State Bar, and re-activated Sims' bench warrant.

On October 23, 2014, respondent and Sims did not appear for a return on warrant hearing. A bench warrant was issued against Sims, and bail was set at \$3,000.

On January 29, 2015, respondent and Sims did not appear for a return on warrant hearing, after respondent left a message with the clerk's office that he could not appear. The court continued the return on warrant hearing to February 6, 2015, at 1:30 p.m., which was the date requested by respondent. Also on that day, respondent spoke with the courtroom clerk who notified him of the February 6, 2015 hearing.

On February 6, 2015, respondent and Sims did not appear for the return on warrant hearing. The court directed the clerk to prepare a transcript of the hearing and provide it to the State Bar. The court also issued a bench warrant against Sims, and set bail in the amount of \$10,000. To date, Sims' bench warrant is outstanding.

During March 2015, Sims resided with respondent at his personal residence, notwithstanding the fact that there was a bench warrant out against her. When Sims left California, he knew that her bench warrant was still outstanding.

Respondent was arrested on April 9, 2015, on a bench warrant for failing to appear at his arraignment in his separate criminal matter pending in Marin County Superior Court.

Respondent remains as Sims' counsel of record to this day in the criminal matter in El Dorado County Superior Court.

Conclusions

Counts One and Two – (§ 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.

By failing to personally appear for the OSC re Contempt hearings held on April 7, 2014² (count one) and May 9, 2014 (count two), 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, in counts one and two.

Aggravation³

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

Respondent has one prior record of discipline.⁴ Respondent was ordered suspended for two years, stayed, placed on probation for three years, and actually suspended for 30 days for engaging in the unauthorized practice of law and committing an act of moral turpitude.

(Supreme Court case No. S224720, effective June 4, 2015; State Bar Court case No. 13-O-14465.)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing by repeatedly failing to appear in the criminal matter, including the arraignment hearing, pretrial conference, return on warrant hearing, and OSC re Contempt hearing from February 27, 2013, through February 6, 2015.

² On that date, respondent did not attempt to call the court, to make a telephonic appearance, or to make other attempts to personally appear for the April 7, 2014 OSC re Contempt, including renting a car, getting a ride from another individual, taking public transportation, flying in to the nearest airport, or hiring a car service.

³ All references to standards (stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. The standards have been amended, effective July 1, 2015. As this case was submitted before the effective date, the court applies the standards that were effective January 1, 2014, and not the newly revised version.

⁴ The court takes judicial notice of the Supreme Court order (case No. S224720) regarding this prior discipline since it was filed May 5, 2015, after the trial in this matter. The court admits it into evidence and directs the Clerk to include a copy in the record of this case.

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

Respondent significantly harmed the administration of justice. His repeated failures to appear in court over the course of two years wasted valuable judicial time and resources to continue the hearings and conferences.

Other

Respondent further burdened the State Bar Court's resources by failing to appear at the January 26, 2015 initial status conference, the February 23, 2015 further status conference, and the April 6, 2015 pretrial conference. (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388 [An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Court because it repeatedly burdens the resources of the State Bar Court and the disciplinary system].)

Mitigation

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

In his prior disciplinary matter, respondent admitted to having a drug problem, including frequent use of methamphetamines. At this trial, respondent admitted to continued use of methamphetamine after being kicked out of drug rehab at Marin Services for Men. Since then, respondent has not obtained treatment for his drug addiction, and frequently continues to use methamphetamine.

Respondent's substance abuse problem is not a mitigating factor because it is the product of illegal drug abuse and he has not established that the difficulties no longer pose a risk that he will commit misconduct.

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e))

Respondent cooperated with the State Bar by stipulating to facts and culpability for failing to obey court order. This saved valuable trial time and benefited the State Bar and the court.

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 Silvertown* (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.

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.”

In this case, the standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standard 2.8(a) applies in this matter.

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).

The State Bar urges that respondent be actually suspended for 90 days.

Respondent argues that an actual suspension of 60 days would be adequate.

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, failed to comply with Supreme Court orders, and failed to timely report judicial sanctions. He had no prior record of discipline in 17 years of practice.

Unlike the attorney in *Riordan*, respondent has a prior record of discipline. But his conduct is less egregious than that of *Riordan* in that respondent was culpable of two counts of misconduct whereas *Riordan* committed three counts of misconduct.

Under the applicable standards 1.8(a) and 2.8(a), a period of more than 30 days' actual suspension would be proper, since respondent was previously sanctioned for 30 days.

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.) Here, it is proper to recommend a lengthy period of probation requiring appropriate substance abuse treatment where the record clearly shows that respondent suffers from such difficulties. Accordingly, the court concludes that the appropriate level of discipline for the misconduct in the present case is two years' stayed suspension and three years' probation with conditions, including a 60-day actual suspension as well as treatment for respondent's admitted drug abuse problem, abstinence from the use of alcohol and drugs, and routine and random alcohol and drug testing.

Recommendations

Discipline

It is recommended that respondent Deron Adam Karton, State Bar Number 155925, 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 probation⁵ for a period of three years subject to the following conditions:

1. Respondent Deron Adam Karton is suspended from the practice of law for the first 60 days of probation.
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.

⁵ 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.)

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. 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.
5. 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.
6. 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.)
7. Respondent must abstain from using alcoholic beverages and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
8. Respondent must promptly select an abstinence based drug abuse recovery program approved by the Office of Probation. During each of the first 12 weeks of his probation, respondent must attend at least five separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. During each of the remaining 40 weeks of his first year of probation, respondent must attend at least four separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. During each week of the last two years of his probation, respondent must attend at least three separate meetings which are at least 50 minutes long that are held and sponsored by his approved drug abuse recovery program. Respondent must provide to the Office of Probation satisfactory proof of his weekly attendance with each of his quarterly reports.

9. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must arrange to have the laboratory perform, on a monthly basis and at respondent's expense, an ethyl glucuronide (EtG) test and a ten-panel drug test which will test for amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by a laboratory pursuant to Department of Transportation guidelines and testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens. Respondent must be tested within the first three days of each month of the probation period and must cause the laboratory to provide to the Office of Probation, within one week of testing and at respondent's expense, the results or screening reports from such tests.

Respondent must maintain with the Office of Probation a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning substance testing within 12 hours. For good cause, the Office of Probation may require respondent to have additional tests as described above performed by the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires additional testing or additional screening reports.

10. At the Office of Probation's request, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.
11. 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 not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he has previously been ordered to do so in S224720.

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: 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:

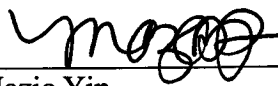
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DERON A. KARTOON
LAW OFFICES OF DERON A. KARTOON
3 SIR FRANCIS DRAKE BLVD
PO BOX 1403
ROSS, CA 94957

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

HEATHER ABELSON, Enforcement, San Francisco

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