



PUBLIC MATTER

FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 15-O-10406-YDR
)	
LEO JOSEPH MORIARTY, JR.,)	DECISION
)	
Member No. 140093,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

This is Leo Joseph Moriarty, Jr.(Respondent)'s third disciplinary proceeding. In this matter, Respondent is charged with ten counts of misconduct. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) has the burden of proving these charges by clear and convincing evidence.² This court finds that there is clear and convincing evidence demonstrating that Respondent is culpable of two charges involving moral turpitude: (1) failing to correct a misrepresentation made on his behalf to an administrative tribunal; and (2) intentionally making a false representation to an administrative tribunal. The court recommends that Respondent be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that Respondent be placed on probation for a period of four years, subject to an 18-month actual suspension.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct, and all references to sections refer to the Business and Professions Code.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case number 15-O-10406 on October 13, 2015. Respondent filed a response to the NDC on November 6, 2015. The parties filed a Stipulation as to Facts and Admission of Documents on January 26, 2016, and filed a Supplemental Stipulation as to Facts on February 3, 2016.

Trial took place on February 2 and February 3, 2016. The State Bar was represented by Deputy Trial Counsel Shane C. Morrison. Respondent represented himself. The State Bar filed a closing brief on February 24, 2016, and Respondent filed his closing brief on March 2, 2016. The matter was submitted for decision on February 24, 2016.

Background – Office of Administrative Hearings

In 1961, Government Code sections 11370.1 et seq. were enacted, creating the Office of Administrative Procedure. The name was changed to the Office of Administrative Hearings (OAH) in 1971. (Gov. Code, § 11370.2.) OAH conducts hearings to resolve disputes concerning actions taken by a government agency against an individual or business. (Office Admin. Hearings, Cal. Dept. General Services, Meet the Office of Administrative Hearings Brochure (2016).)

OAH is a division of the Department of General Services. (Gov. Code, § 11370.2.) It is under the direction and control of a director, who is an executive officer appointed by the Governor. (*Ibid.*) The director appoints and maintains a staff of full-time, and may appoint pro tem, part-time, administrative law judges. (Gov. Code, §§ 11370.3, 11502, subd. (b).) Administrative law judges must be admitted to practice law in California for at least five years and satisfy any qualifications prescribed by the State Personnel Board. (Gov. Code, § 11502, subd. (b).)

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California at all times since that date.

Teresa Jacobo and George Mirabal were ex-council members for the City of Bell. At all times relevant to this matter, Respondent represented Jacobo in OAH case number 2014030511 (*In the Matter of the Final Compensation and Rescission of Additional Retirement Service Credit of: Teresa Jacobo*) (Jacobo matter) involving a dispute between Jacobo, the City of Bell, and the California Public Employees' Retirement System (CalPERS). The dispute concerned the reduction of Jacobo's retirement benefits. Respondent also represented George Mirabal in OAH case number 2014030479 (*In the Matter of the Final Compensation and Rescission of Additional Retirement Service Credit of: George Mirabal*) (Mirabal matter) involving a dispute between Mirabal, the City of Bell, and CalPERS, concerning the reduction of Mirabal's retirement benefits. In each case, Stephen Onstot represented the City of Bell and Wesley Kennedy represented CalPERS.

Case No. 15-O-10406 – The Jacobo Matter

Facts

A hearing was set in the Jacobo matter for September 12, 2014. On September 11, the night before the hearing, Respondent was not feeling well. He believed he was having a heart attack, due to his prior history of such attacks. Respondent had no insurance, so he self-treated his symptoms with nitro-glycerin and aspirin tablets. The evening he experienced heart issues, Respondent's fiancé spoke to his assistant, Laz Machado.³ She explained that Respondent may be having a heart attack and he may need to go to the hospital. Respondent then instructed

³ Machado is a former attorney who resigned from the California Bar with charges pending in November 2004. The charges pending against him involved office mismanagement. He had a prior discipline record involving misrepresentations to doctors and client trust account violations.

Machado to seek a continuance of the next day's OAH hearing.

On the morning of September 12, 2014, Machado called Onstot, Kennedy, and OAH and separately informed each of them that Respondent was experiencing heart problems and could not attend the hearing. Machado informed them that Respondent had been taken to the hospital. OAH treated the call as a request for a continuance, and on September 12, 2014, filed an order granting Respondent's request for a continuance. In its order granting the continuance, OAH indicated that it had received a telephone message from Machado on the morning of the hearing. The order also provided that, "Machado reported that he was informed by [Respondent's] wife that [Respondent] was having heart issues and, therefore, would be unable to attend the hearing [that] morning, and that [Respondent's] wife had taken [Respondent] to the hospital." OAH further ordered Respondent to file with OAH and serve on Onstot and Kennedy no later than September 26, 2014, documentation to substantiate the medical emergency that made Respondent unavailable for the September 12 hearing. Respondent received the continuance order that OAH served on him.

Respondent was not hospitalized and did not obtain any professional medical treatment in connection with his request for a continuance of the September 12, 2014 hearing.

Respondent did not file with OAH or serve on Onstot and Kennedy any documentation in connection with OAH's September 12, 2014 order. The City of Bell and CalPERS filed separate motions for sanctions against Respondent because Respondent failed to provide the documentation required by OAH's order. The City of Bell filed and served its motion on September 30, 2014, and CalPERS filed and served its motion on October 3, 2014. Additionally, the City of Bell and CalPERS each filed a notice of hearing on their sanctions motions, notifying Respondent that a hearing was set for October 17, 2014. The City of Bell served its notice of hearing on October 1, 2014, while CalPERS served its notice on October 3, 2014. Respondent

received each sanctions motion and notice of hearing filed and served by the City of Bell and CalPERS.

Respondent did not attend the October 17, 2014 sanctions hearing. A special appearance attorney, Dustin Saiidi, appeared on Respondent's behalf. When the hearing began, Saiidi made an oral motion to continue the hearing on the grounds that Respondent was suffering "health issues" and needed an additional 30 days to file and serve the medical documentation required by OAH's September 12, 2014 order. OAH denied the oral motion for a continuance.

On October 21, 2014, OAH filed separate orders granting the City of Bell's and CalPERS' motions for sanctions against Respondent. In each order, OAH determined Respondent's actions in requesting a continuance and subsequently not providing the required medical documentation constituted bad faith actions or tactics that were frivolous and solely intended to cause unnecessary delay. OAH ordered Respondent to pay a monetary sanction in the amount of \$1,419.06 to the City of Bell and \$2,966.75 to CalPERS within 30 days of the date of each sanctions order. OAH served both orders on Respondent, which he received.

Respondent was required to pay the monetary sanctions owed to the City of Bell no later than November 20, 2014, but he failed to meet the payment deadline. Respondent's failure to pay prompted the City of Bell to pursue a small claims action against Respondent in Orange County Superior Court. On January 17, 2015, the court entered a judgment requiring Respondent to pay the City of Bell \$1,419.06 in principal and \$91.86 in costs. On April 20, 2015, the clerk of the court served a Notice of Entry of Judgment on Respondent, which Respondent received.

Respondent was also required to pay the monetary sanctions owed to CalPERS no later than November 20, 2014, but Respondent did not pay the sanctions by the deadline. Respondent has not paid the sanctions owed to CalPERS.

Respondent did not report to the State Bar the monetary sanctions imposed by OAH within 30 days of the time Respondent had knowledge of the imposition of the sanctions. To date, Respondent has not reported either sanction, in writing or otherwise, to the State Bar.

Conclusions

Count One - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])⁴
Count Two - (§ 6106 [Moral Turpitude - Misrepresentation])⁵

The State Bar charged Respondent with violating section 6106 by making a misrepresentation or causing a misrepresentation to be made to OAH, and by failing to rectify that misrepresentation. The State Bar charged Respondent with violating section 6068, subdivision (d) based on the same facts alleged in the section 6106 charge. Respondent is culpable of the charged misconduct.

Section 6106 applies to the misrepresentation and concealment of material facts. (*In the Matter of Crane and Depew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154–155; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 576.) The evidence clearly and convincingly demonstrates that Machado misrepresented to OAH that Respondent was taken to the hospital for his heart problems. A review of the OAH order from the administrative law judge indicates that the misrepresentation was material because the grant of the continuance was predicated on Respondent's medical emergency. Respondent received the OAH order indicating that the administrative law judge believed Respondent was unable to attend the hearing because Respondent had gone to the hospital. Although there is a lack of clear and convincing evidence that Respondent directed Machado to make that misrepresentation, Respondent is culpable of

⁴ Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

⁵ Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

committing an act of moral turpitude because he later ratified Machado's misrepresentation and took no steps to correct the OAH record. (See e.g., *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 101 [attorney's ratification of assistant's letter to client that amounted to extortion constituted moral turpitude where attorney did nothing to retract letter].)

The ratification of Machado's misrepresentations also violated section 6068, subdivision (d). But we dismiss this charge as duplicative of the section 6106 charge because the same misconduct underlies both violations. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissal of § 6068, subd. (d), charge proper where underlying misconduct covered by § 6106 charge supporting identical or greater discipline].)⁶

Counts Three, Four and Five - (§ 6103 [Failure to Obey a Court Order])⁷

The State Bar charged Respondent with violating a court order by failing to file with OAH and serve opposing counsel with documentation to substantiate Respondent's September 12, 2014 medical emergency, as ordered by OAH. The State Bar also charged Respondent with violating a court order by failing to pay \$1,419.06 in sanctions to the City of Bell and \$2,966.75 to CalPERS, in Counts Four and Five, respectively. Respondent contends that he is not culpable because OAH is not a "court" under section 6103. The court does not find Respondent culpable of the 6103 violations.

Respondent argues that OAH is not a court because "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of

⁶ Respondent has made no argument that an OAH administrative law judge is not a "judge" or "judicial officer" under section 6068, subdivision (d).

⁷ 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.

record.” (Cal. Const., art VI, § 1.) The OAH website describes OAH as a “quasi-judicial tribunal that hears administrative disputes.” The State Bar disagrees with Respondent’s arguments and maintains that because OAH administrative proceedings are undertaken in a judicial capacity, an OAH order is a “court” order under section 6103.

The State Bar relies on *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126 to support its position that each OAH order is considered “an order of the court” under section 6103. In *Lantz*, the Review Department held that an “order of the workers’ compensation judge is an order of a court within the meaning of section 6103.” (*Id.* at p. 134.) However, unlike OAH, the Workers’ Compensation Appeals Board (WCAB) had its powers conferred upon it not just by statutes, but by the Constitution. (*Fremont Indemnity Co. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 970; *In the Matter of Lantz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 134 [“the California Constitution expressly vests the Legislature with plenary power to create and enforce a complete system of workers’ compensation”].) Moreover, California courts have designated the WCAB a “ ‘constitutional court’ ” whose “ ‘decisions have res judicata effect. [Citations.]’ ” (*In the Matter of Lantz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 134.)⁸ Conversely, Presiding Judge Susan Lois Formaker testified that she considers OAH an “administrative tribunal.”

The State Bar has failed to provide, and this court has found no precedent declaring OAH a “court” within the meaning of section 6103. Thus, this court does not find Respondent culpable of violating section 6103 and dismisses counts Three, Four and Five with prejudice.

⁸ Another characteristic that distinguishes OAH from the WCAB is that the administrative agency involved in a case heard by OAH may order reconsideration of a case, “either on its own motion or on the motion of a party, and may reconsider the case itself or assign it to an administrative law judge.” (9 Witkin, Cal. Procedure (5th ed. 2008) Administrative Proceedings, § 118, p. 1244; see also Gov. Code, § 11521.) In worker’s compensation cases, it is the WCAB who reconsiders a final order, decision or award made by the appeals board or worker’s compensation judge. (Lab. Code, § 5900, subd. (a).)

Counts Six and Seven - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])⁹

In Counts Six and Seven, the State Bar charged Respondent with violating section 6068, subdivision (o)(3), by failing to report to the State Bar of California the monetary sanctions imposed by OAH. Respondent contends that he is not culpable of the misconduct alleged in Counts Six and Seven because OAH is not a judicial body as recognized by the California Constitution, and therefore, it is incapable of imposing “judicial” sanctions. The court finds Respondent is not culpable of violating section 6068, subdivision (o)(3).

Respondent contends that the monetary sanctions the OAH administrative law judge imposed are not “judicial sanctions” because “OAH is not a court of law or a judicial body as recognized in the California Constitution.” The court is mindful that OAH monetary sanctions differ from sanctions imposed by a court of record. A court order awarding sanctions is enforceable in the same way as any money judgment. A writ of execution may be issued by the court and levied on the property of the person sanctioned. (See Code Civ. Proc., §§ 680.230, 680.270, 699.510; *Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615.) An OAH administrative law judge may order sanctions “to pay reasonable expenses, including attorney’s fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Cal. Code Regs., tit.1, § 1040.) But, as OAH Presiding Administrative Judge Formaker testified, OAH has no power to enforce monetary sanctions.

In concluding that Respondent was not required to report the OAH sanctions to the California Bar, this court also considers that there is a lack of precedent establishing that sanctions issued by an OAH administrative law judge are considered “judicial sanctions” within

⁹ 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 meaning of section 6068, subdivision (o)(3). As such, Respondent is not culpable of violating that section, and Counts Six and Seven are dismissed with prejudice.

The Mirabal Matter

A hearing was set in the Mirabal matter for September 23, 2014. Prior to the hearing, Respondent was having health issues, and his fiancé insisted that he should go to the hospital. Respondent's fiancé contacted Machado to express her concerns, and during the conversation Machado also spoke to Respondent. Respondent instructed Machado to seek a continuance of the September 23 hearing. On September 22, 2014, Respondent's office, on Respondent's behalf, filed a motion requesting a continuance of the September 23 hearing because Respondent could not attend the hearing due to health issues. The motion stated "[Respondent] is today at the hospital, receiving an Angiogram and possibly another Angioplasty [sic] for a new stent implant." Within two days after filing the motion, Machado provided Respondent with a copy of the motion to continue. Respondent, however, was not hospitalized September 22 nor September 23, 2014.

On October 8, 2014, OAH filed a written order granting Respondent's request for a continuance. OAH ordered Respondent to file with OAH and serve on Onstot and Kennedy no later than October 17, 2014, documentation signed by a competent medical professional confirming Respondent's hospitalization on September 22, 2014, and his inability to proceed with the hearing on September 23. OAH served the order on Respondent, which he received.

Respondent did not file with OAH or serve on Onstot and Kennedy any of the documentation sought by the OAH's October 8, 2014 order. On October 27, 2014, CalPERS filed and served a motion for sanctions against Respondent because Respondent failed to provide the documentation required by OAH's October 8 order. The motion was served on Respondent, and Respondent received it.

A hearing on CalPERS' motion for sanctions in the Mirabal matter was set for November 10, 2014. On November 1, 2014, Respondent sent a letter to Kennedy, offering to pay the full amount of sanctions requested by CalPERS in its October 27 motion for sanctions. On November 13, 2014, CalPERS withdrew its motion for sanctions before OAH ruled on it because Respondent paid CalPERS the full amount requested by its motion.

Conclusions

Count Eight - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])
Count Nine - (§ 6106 [Moral Turpitude])

The State Bar charged Respondent with violating section 6106 by misrepresenting or causing to be misrepresented to OAH that Respondent received a medical procedure the day before a scheduled hearing, and Respondent failed to rectify that misrepresentation. The State Bar charged Respondent with violating section 6068, subdivision (d) based on the same facts alleged in the section 6106 charge. Respondent is culpable of the charged misconduct.

The evidence clearly and convincingly demonstrates that Machado misrepresented in writing that on the day before the September 23, 2014 hearing, Respondent went to the hospital and received an emergency medical procedure. Respondent and Machado both testified that Respondent never directed Machado to mislead the OAH administrative law judge by stating he went to the hospital. The court does not find Respondent's or Machado's testimony credible. The motion for a continuance was very specific and included detailed information regarding Respondent's condition which was the basis for the request to continue the OAH hearing. Thus, the court finds that Respondent directed Machado to make the material misrepresentation in the motion for a continuance, which was an act of moral turpitude. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 ["acts of moral turpitude include an attorney's false or misleading statements to a court or tribunal"].)

Because the same misconduct underlies the section 6106 and section 6068, subdivision (d) violations, the section 6068, subdivision (d) charge is dismissed with prejudice as duplicative of the section 6106 charge. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 786-787.)

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

The State Bar charged Respondent with violating a court order by failing to file with OAH and serve opposing counsel with documentation to substantiate Respondent's September 22, 2014 medical emergency, as ordered by OAH. As stated above, because OAH is not a "court" within the meaning of section 6103, Respondent is not culpable of violating that section. Count Ten is dismissed with prejudice.

Aggravation¹⁰

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

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

Respondent has two prior discipline records, which is a significant aggravating factor.

Moriarty I (Case No. 96-O-04531)

On January 13, 2000, the Supreme Court issued an order (S083255) suspending Respondent for one year, stayed, and placing him on probation for three years subject to conditions, including a 30-day actual suspension. In his first disciplinary proceeding, Respondent stipulated to three ethical violations in two matters. In 1996, Respondent represented to a Los Angeles Municipal Court judge that a defendant was represented by counsel

¹⁰ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

and represented that he was making special appearances on behalf of defendant's counsel. However, the defendant was not represented by counsel and Respondent's misrepresentations misled the judge. Respondent was culpable of seeking to mislead a judge and moral turpitude.

In a second matter, Respondent stipulated that he failed to communicate with his client and he allowed the dismissal of his client's case with prejudice. He was culpable of improperly withdrawing from employment. Respondent's misconduct did not involve any aggravating or mitigating circumstances.

Moriarty II (Case No. 07-O-14229)

On January 22, 2010, the Supreme Court issued an order (S178060) suspending Respondent for two years, stayed, and placing him on probation for one year subject to conditions, including a 45-day actual suspension. In this second disciplinary proceeding, Respondent stipulated to three ethical violations in a single client matter. In 2005, Respondent failed to perform legal services with competence by failing to make court appearances on three occasions, allowing the dismissal of his client's case, and failing to take any action to reinstate his client's case after its dismissal. Respondent was also culpable of failing to keep his client informed of significant developments and failing to promptly respond to his client's reasonable status inquiries. Respondent's prior record, client harm and multiple acts of misconduct were aggravating circumstances. His cooperation with the State Bar and good character were mitigating factors.

No Aggravation for Multiple Acts (Std. 1.5(b))

Respondent's misconduct is not aggravated by multiple acts of wrongdoing. He is culpable of two acts of moral turpitude, which do not constitute multiple acts. (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177 [no aggravation for multiple acts of wrongdoing when Respondent culpable of three ethical violations].)

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

The record clearly establishes that Respondent's misconduct harmed the administration of justice. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217.) In its October 21, 2014 sanctions orders, OAH determined that Respondent did not experience a medical emergency that prevented him from appearing at the September 12, 2014 hearing. OAH found that Respondent's "last minute continuance request due to a medical emergency was without merit, frivolous and solely intended to cause unnecessary delay." OAH granted continuances that delayed the resolution of the Jacobo and Mirabal matters in reliance on Respondent's misrepresentations, and one of the misrepresentations was intentional. Such actions by an attorney undermine the ability of a tribunal to rely on an attorney's word. (*Id.* at p. 220.) The harm to the administration of justice is a significant aggravating factor.

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

Respondent fails to appreciate the wrongfulness of his misconduct. During the instant disciplinary hearing, Respondent stated multiple times that there was no need to correct the record or clarify the actual circumstances surrounding his continuance requests since he had already obtained the continuance. Respondent's attitude of "the end justifies the means" demonstrates a lack of understanding of his ethical responsibilities as an attorney. Significant weight is assigned to this factor because Respondent's lack of insight makes him an ongoing danger to the public and legal profession. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].)

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent entered into a stipulation of facts that expedited the trial, but many of the admissions were easily proved. Thus, Respondent is afforded limited mitigating weight for his cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

No Other Mitigating Circumstances

Respondent has not presented clear and convincing evidence that his heart problems mitigate his misconduct. (Std. 1.6(d).) The “Patient Plan” Respondent submitted to prove his physical problems was from a December 2015 office visit, over a year after the misrepresentations were made to OAH. Respondent has failed to provide clear and convincing evidence that he suffered any medical problems that were directly responsible for his misconduct. (*Ibid.*)

Additionally, Respondent’s single character witness failed to establish any mitigation for good character because one witness does not constitute “a wide range of references in the legal and general communities. (See std. 1.6(f); *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 290 [no mitigating credit for testimony from two character witnesses].)

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The State Bar contends that Respondent should be disbarred, while Respondent argues that the State Bar has failed to establish that he is culpable of any ethical violations and that all of the charges should be dismissed.

In determining the 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). While they are guidelines for discipline and are not mandatory, they are given great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Moreover, the Supreme Court has instructed that the standards should be followed “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

Standard 2.11 provides for disbarment or actual suspension for intentional or grossly negligent misrepresentation. Standard 1.8(b) is more relevant; however, because Respondent has two prior discipline records and it provides for more severe discipline. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) In part, standard 1.8(b) provides that unless the most compelling mitigating circumstances clearly predominate “or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct,” disbarment is appropriate where: (1) actual suspension was ordered as a prior discipline; (2) the prior disciplines, coupled with the current matter, demonstrate a pattern of misconduct; or (3) the prior discipline together with the current misconduct “demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.”

In his two prior disciplines, Respondent was actually suspended, but the suspensions were 30 and 45 days; and although his priors and current disciplinary proceedings do not demonstrate a pattern, they do demonstrate Respondent’s unwillingness or inability to conform to his ethical responsibilities. However, disbarment is not mandatory in every case of two or more prior disciplines, even when the criteria of standard 1.8(b) is met and no exception applies. (See, e.g. *Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year suspension; analysis under former std. 1.7(b)]; *Blair v. State Bar* (1989) 49 Cal.3d 762 [two-year suspension; analysis under former std. 1.7(b)].) Instead, the standard is applied “with an eye to the nature and extent of the prior record. [Citations.]” (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

In his first prior, Respondent made false statements to a judge in 1996 and abandoned a client in 1997. Nine years later in 2005, Respondent abandoned a single client. Both of these priors involve serious misconduct. (See *Farnham v. State Bar* (1988) 47 Cal.3d 429, 446 [neglecting a client is “serious misconduct that constitutes a breach of the fiduciary duty owed by an attorney to the client]; *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147 [honesty is “a fundamental rule of ethics. . . without which the profession is worse than valueless in the place it holds in the administration of justice].) Another nine years passed, and although not a pattern, Respondent engaged in the deception of a tribunal for a second time. In sum, Respondent has been found culpable of two instances of client abandonment and making misrepresentations to two different tribunals. This misconduct is serious, but based on the timing of his misconduct, disbarment is not justified.

Respondent is not an attorney who has engaged in repeated acts of misconduct over lengthy periods of time – his misconduct has occurred during three distinct periods and was not prolonged. (Cf. *Gary v. State Bar* (1988) 44 Cal.3d 820 [attorney with three priors disbarred where he was culpable of misconduct occurring in 10 of his first 13 years of practice]; *Morgan v. State Bar* (1990) 51 Cal.3d 598 [Supreme Court disbarred attorney with four priors where during 31 years of practice attorney was under suspension for a total of two years and on probation for eleven].)¹¹ Moreover, Respondent does not have a history of failing to participate in State Bar Court proceedings or a poor probation performance. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104 [attorney with three priors demonstrated an inability to comply with probation conditions and had defaults entered in two disciplinary proceedings].) The court concludes that the nature and extent of Respondent’s prior disciplines do not justify disbarment. (*In the Matter of Buckley*

¹¹ During Respondent’s 25 years of practice, he has been suspended for 75 days and on probation for four years.

(Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201, 205, fn. 2 [even on third discipline, disbarment not proper if manifestly disproportionate to cumulative misconduct].)

Although a disbarment recommendation is not warranted, Respondent's misconduct calls for a lengthy period of suspension. First, Respondent has been dishonest with a tribunal. When an attorney files pleadings with misrepresentations and half-truths, it "not only undermines the ability of the [tribunal] to rely on the accuracy" of the information provided, "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.) Second, it is particularly concerning that Respondent lacks insight into his misconduct. He fails to comprehend that integrity is a quality required of all who wish to practice law in California.

In determining the appropriate level of discipline, the court considers *Conroy v. State Bar, supra*, 53 Cal.3d 495. In *Conroy*, the Supreme Court suspended an attorney with two prior discipline records for one year. The attorney's misconduct included the improper withdrawal from employment, failing to communicate with a client, failing to perform legal services with competence, making affirmative misrepresentations to a client and failing to cooperate with the State Bar. The attorney's prior record was an aggravating factor. The attorney had received a private reproof for misconduct in three matters. In one matter, he failed to communicate with his clients or opposing counsel and failed to provide his clients' file to their new attorney. In another matter, the attorney, acting as an executor, failed to timely file the inventory of estate property or an accounting before the disposition of funds. In the third matter, the attorney abandoned a client which resulted in the issuance of an arrest warrant for the client. Thereafter, the attorney failed to assist in having the warrant withdrawn. In his second prior, the attorney received a 60-day suspension for failing to comply with probation conditions. The attorney's

failure to cooperate with the State Bar was a second aggravating factor. No evidence in mitigation was presented.

Like the attorney in *Conroy, supra*, 53 Cal.3d 495, Respondent has two prior records of discipline and has engaged in serious misconduct that was similar to his first prior. Additionally, Respondent's mitigation is scant. However, Respondent should be subject to greater discipline than in *Conroy* due to his failure to recognize that as an attorney, he has the ethical obligation to be honest. Thus, the imposition of an 18-month suspension is necessary to protect the public, the courts, and the legal profession.

Recommendations

It is recommended that Respondent Leo Joseph Moriarty, Jr., State Bar Number 140093, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that Respondent be placed on probation¹² for a period of four years subject to the following conditions:

1. Respondent Leo Joseph Moriarty, Jr., is suspended from the practice of law for the first 18 months 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.
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.

¹² The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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 (MPRE) during the period of Respondent's actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

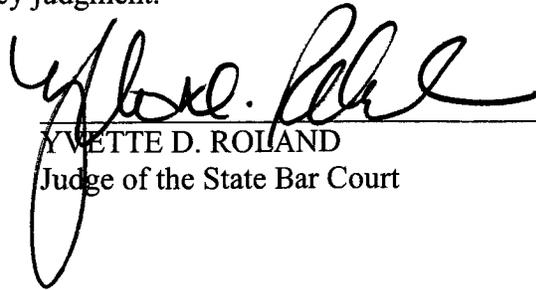
California Rules of Court, Rule 9.20

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 23, 2016



YVETTE D. ROLAND
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 Los Angeles, on May 23, 2016, I deposited a true copy of the following document(s):

DECISION

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

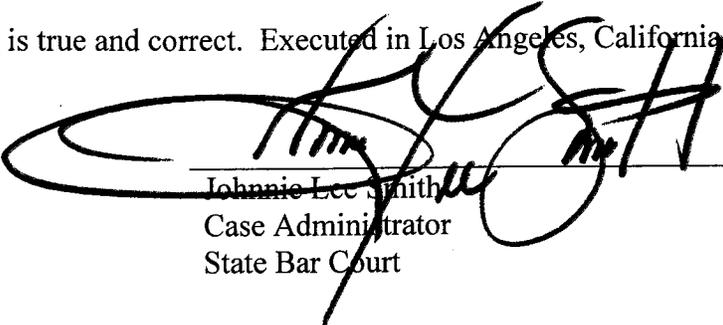
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LEO J. MORIARTY JR
LAW OFFICE OF LEO J. MORIARTY
3020 OLD RANCH PKWY STE 300
SEAL BEACH, CA 90740**

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

SHANE MORRISON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 23, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court