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8 Respondent *In Propria Persona*

FILED
AUG 19 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

9 **STATE BAR COURT**
10 **HEARING DEPARTMENT - LOS ANGELES**

11 **In the Matter Of:**

12 **FREDDIE FLETCHER,**
13 No. 134734

14 A Member of the State Bar.

15 **Case No. 15-0-12822**

16 **RESPONSE TO NOTICE OF**
17 **DISCIPLINARY CHARGES.**

18 [Rule 5.43]

19 Assigned to: Hon. Yvette D. Roland
20 (Case Administrator: Ms. Angela Carpenter)

21 Respondent, Freddie Fletcher, whose address for service in these proceedings
22 is stated in the caption hereinabove, responds to the notice of disciplinary charges filed
23 herein alleging two counts of violating Business & Professions Code § 6103, as
24 follows:

25 1.

26 Respondent admits that he was admitted to the practice of law in the State of California
27 on June 14, 1988, was a member at all times pertinent to these charges, and is
28 currently a member of the State Bar of California.

COUNT ONE

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 by failing to comply with the October

1 2, 2013 minute order requiring respondent to pay \$3,500 in sanctions to the plaintiff in
2 Davis v. Daiges, Los Angeles County Superior Court case no. BC492159, within 90
3 days of the date of the order, in willful violation of Business and Professions Code,
4 section 6103.

5 **RESPONSE TO COUNT ONE**

6 2.

7 Respondent admits that the minute order dated October 2, 2013 which is the subject
8 of Count One contained the following order:

9 "[Discovery] Sanctions are awarded to Plaintiff and against Defendant
10 Myrine C. Daiges and Defendant's Counsel of Record Freddie L. Fletcher,
11 jointly and severally in the reduced amount of \$3,500.00 for the (4)
12 motions, payable within (90) days."

13 3.

14 Respondent denies that he disobeyed or violated the minute order by not paying
15 \$3,500 discovery sanctions within 90 days of October 2, 2013.

16 4.

17 Respondent denies that he ought to in good faith have paid \$3,500 discovery sanctions
18 within 90 days of October 2, 2013.

19 **AFFIRMATIVE DEFENSES TO COUNT ONE**

20 Respondent asserts the following facts as the basis of the affirmative defenses which
21 follow:

22 Respondent was not served with the October 2, 2013 minute order, but was
23 served with a notice of the court's October 2, 2013 ruling awarding \$3,500 discovery
24 sanctions to plaintiff. The ruling of which notice was given was void in that it awarded
25 sanctions which were not requested in plaintiff's moving papers.

26 Respondent and his client timely filed a motion to reconsider and set aside the
27 ruling as void. Respondent was discharged by his client on December 9, 2013 when
28 the motion by Respondent and his client to reconsider and set aside the October 2,
2013 ruling was pending .

1 On December 13, 2013, the court *sua sponte* and without notice to Respondent
2 advanced the hearing date on the motion to reconsider and set aside the October 2,
3 2013 ruling to January 3, 2014.

4 On December 19, 2013 and while Respondent was discharged as the attorney
5 for his client, the October 2, 2013 minute order was, for the first time, purportedly
6 served on Respondent improperly by e-mail.

7 On January 3, 2014, the court denied the motion by Respondent's client to
8 reconsider and set aside the October 2, 2013 ruling, but did not expressly rule on
9 Respondent's motion to reconsider and set aside the October 2, 2013 ruling, rendering
10 the issue unclear.

11 On March 21, 2014, Respondent's former client substituted Respondent back
12 into the case as her attorney. On July 18, 2014, Respondent's client substituted
13 another attorney in the place of Respondent.

14 On August 20, 2014, Respondent's former client and her new attorney gave
15 notice that the case had conditionally settled.

16 On September 19, 2014 Respondent's former client and plaintiff entered into a
17 settlement agreement and mutual release which released Respondent's former client
18 and Respondent from any obligation to pay the \$3,500 discovery sanctions.

19 On December 5, 2014, the court dismissed the action pursuant to California
20 Rules of Court 3.1385.

21 5.

22 **First Affirmative Defense to Count One**

23 Respondent did not know he was failing to comply with the October 2, 2013 minute
24 order by not paying \$3,500 in discovery sanctions within 90 days of October 2, 2013.

25 6.

26 **Second Affirmative Defense to Count One**

27 Respondent did not intend to violate the minute order by not paying \$3,500 in
28

1 discovery sanctions within 90 days of October 2, 2013.

2 7.

3 **Third Affirmative Defense to Count One**

4 The October 2, 2013 minute order was tentative and not final.

5 8.

6 **Fourth Affirmative Defense to Count One**

7 The October 2, 2013 minute order was not served on Respondent until after he had
8 been discharged by his client.

9 9.

10 **Fifth Affirmative Defense to Count One**

11 The October 2, 2013 minute order was never validly served on Respondent.

12 10.

13 **Sixth Affirmative Defense to Count One**

14 Respondent's former client and plaintiff entered into a settlement agreement and
15 mutual release which released Respondent from any obligation to pay the \$3,500
16 discovery sanctions before this Notice of Disciplinary Charge was filed.

17 11.

18 **Seventh Affirmative Defense to Count One**

19 Respondent did not wilfully violate the October 2, 2013 minute order because the law
20 was uncertain regarding Respondent's standing after discharge with respect to his
21 pending motion to reconsider and set aside the order stated in the notice of ruling.

22 12.

23 **Eighth Affirmative Defense to Count One**

24 Respondent did not wilfully violate the October 2, 2013 minute order in that the law was
25 uncertain regarding whether and which order was final and appealable given that the
26 order for which reconsideration was pending when Respondent was discharged and
27 the October 2, 2013 minute order were different orders.

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Ninth Affirmative Defense to Count One

Respondent did not wilfully violate the October 2, 2013 minute order in that he reasonably believed in good faith that the order was not final in that it was factually uncertain when the order became final.

Tenth Affirmative Defense to Count One

Respondent did not wilfully violate the October 2, 2013 minute order in that he had no ability to pay the sanctions awarded.

COUNT TWO

Respondent disobeyed or violated an order of the court requiring Respondent to do forbear an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do or forbear by failing to comply with the July 11, 2014 notice of ruling requiring respondent to pay \$1,980 in sanctions to the plaintiff in Davis v. Daiges, Los Angeles County Superior Court case no. BC492159, within 10 days of the date of the order, in willful violation of Business and Professions Code, section 6103.

RESPONSE TO COUNT TWO

14.

Respondent is uncertain regarding a notice of ruling dated July 11, 2014, but admits a ruling by the court on July 10, 2014 which stated:

Plaintiff request for sanctions against Defendant Nova Group Home, Inc. and its counsel of record is GRANTED in the reduced total amount of \$1,980 for all three discovery motions for 4.5 hours at \$200/hour, 3 hours at \$300/hour and \$180 in filing fees. See Declaration of Zachary D. Schorr, ¶¶ 14-20. Sanctions are to be paid to Plaintiff's counsel within 10 days.

and admits that this ruling is the ruling referred to in Count Two which shall be referred to as the July 11, 2014 notice of ruling.

15.

Respondent denies that he disobeyed or violated the July 10, 2014 notice of ruling by

1 not paying the discovery sanctions within 10 days of July 11, 2014.

2 16.

3 Respondent denies that he ought to in good faith have paid \$1,980.

4 **AFFIRMATIVE DEFENSES TO COUNT TWO**

5 Respondent asserts the following facts as the basis of the affirmative defenses which
6 follow:

7 Respondent's client was a corporation which, unknown to Respondent, was
8 suspended by the California Secretary of State. The corporate client was not a named
9 defendant in the underlying court action.

10 Respondent erroneously filed without leave of court on behalf of his corporate
11 client a cross-complaint against the plaintiff in the action. Plaintiff in the action
12 demurred on the ground the ground the corporate powers of Respondent's client were
13 suspended. Plaintiff then propounded discovery.

14 Learning that his client's corporate powers were suspended, Responded
15 dismissed the client's cross-complaint without prejudice. Respondent's client was no
16 longer a party to the action upon dismissal of its cross-complaint.

17 After the dismissal, the plaintiff filed a motion to compel the discovery he had
18 previously propounded. The court granted plaintiff's motion in the July 10, 2014 ruling
19 which is the subject of Count Two.

20 On July 18, 2014, Respondent's client substituted another attorney in the place
21 of Respondent.

22 On August 20, 2014, Respondent's former client and her new attorney gave
23 notice that the case had conditionally settled.

24 On September 19, 2014 Respondent's former client and plaintiff entered into a
25 settlement agreement and mutual release which released Respondent's former client
26 and Respondent from any obligation to pay the \$1,980 discovery sanctions.

27 On December 5, 2014, the court dismissed the action pursuant to California
28

1 Rules of Court 3.1385.

2 17.

3 **First Affirmative Defense to Count Two**

4 Respondent did not know he was failing to comply with the July 11, 2014 notice of
5 ruling by not paying \$1,950 in discovery sanctions within 10 days.

6 18.

7 **Second Affirmative Defense to Count Two**

8 Respondent did not intend to violate the July 11, 2014 notice of ruling by not paying
9 \$1,950 in discovery sanctions within 10 days.

10 19.

11 **Third Affirmative Defense to Count Two**

12 The order to pay \$1,980 discovery sanctions is void on the face of its record for the trial
13 court's lack of subject matter and personal jurisdiction. The court had no jurisdiction
14 to entertain a motion filed against a nonparty to the action or the attorney for a
15 nonparty in that the cross-action of Respondent's client was dismissed when the
16 motion for discovery sanctions was filed, and Respondent's client was not otherwise
17 a party to the action at that time.

18 20.

19 **Fourth Affirmative Defense to Count Two**

20 Respondent did not wilfully violate the order to pay \$1,980 discovery sanctions in that
21 Respondent reasonably believed in good faith that the order was not binding because
22 it was invalid on the face of its record.

23 21.

24 **Fifth Affirmative Defense to Count Two**

25 Respondent did not wilfully violate the order to pay \$1,980 discovery sanctions
26 because Respondent reasonably and in good faith believed the order was not final in
27 that he reasonably and in good faith believed the attorney who substituted in his place

28

1 had filed a motion requesting the court to reconsider and set aside the order.

2 22.

3 **Sixth Affirmative Defense to Count Two**

4 Respondent did not wilfully violate the order to pay \$1,980 discovery sanctions
5 because Respondent reasonably and in good faith believed he was relieved of any
6 obligation to pay the sanctions by the settlement of the case.

7 Dated: August 19, 2016

8

9 Respectfully submitted,

10

11 /s/
12 Freddie Fletcher
Respondent

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1 **Proof of Service**

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3 I declare as follows:

4 1. I am over the age of 18, and not a party to this action.

5 2. My address is Law Office of Freddie Fletcher, 3183 Wilshire Blvd., No. 196-
6 K8, Los Angeles, CA 90010.

7 3. On August 19, 2016, I served:

8 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**

9 on the following person(s):

10
11 State Bar of California
12 Attn: William Todd, Senior Trial Attorney
13 845 South Figueroa Street
14 Los Angeles, California 90017-2515

15 by personally delivering a copy to the address above.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on August 19, 2016 at Los Angeles, California.

18
19 _____
Lesia Redwine