

PUBLIC MATTER

FILED

OCT 18 2016

**STATE BAR COURT
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LOS ANGELES**

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

In the Matter of)	Case No.: 15-O-13425
)	
JOSE ARTURO RODRIGUEZ,)	
)	DECISION
Member No. 116541,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary proceeding, Jose Arturo Rodriguez (Respondent) 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 in the amount of \$3,000.

The court finds, by clear and convincing evidence, that Respondent is culpable of the charged misconduct. Based on the misconduct and the evidence in mitigation and aggravation, Respondent is hereby publicly reproved for one year with attached conditions.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on March 28, 2016. On May 26, 2016, Respondent filed a response to the NDC. On July 11, 2016, the parties submitted a stipulation as to facts and admission of documents (Stipulation).

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 July 21, 2016. OCTC was represented by Senior Trial Counsel Sherell N. McFarlane and Deputy Trial Counsel Amanda Sanchez. Respondent represented himself. On July 21, 2016, 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 28, 1984, and has been a member of the State Bar of California at all times since that date.

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Facts

On April 15, 2014, the court in the matter of *Javier Miramontes et al. v. California Rural Legal Assistance, Inc., et al.*, Riverside County Superior Court, case number INC3102881 (*Miramontes* matter), filed a minute order imposing monetary sanctions solely on Respondent. The court determined that Respondent filed a third amended complaint for the improper purpose of harassing the opposing parties. The court's order required Respondent to pay sanctions of \$3,000 within 60 days of the order.

On June 10, 2014, Respondent appealed the court's April 15, 2014 order. Respondent appealed only on behalf of the *Miramontes* plaintiffs, and not on his own behalf. The Court of Appeal dismissed the appeal on July 16, 2014. Subsequently, on September 22, 2014, the Court of Appeal filed a remittitur certifying the finality of the order dismissing the appeal.

The April 15, 2014 sanctions order is final. To date, Respondent has not paid the \$3,000 in sanctions imposed on him in the *Miramontes* matter. Nor did Respondent report the April 15, 2014 sanctions order to the State Bar until August 12, 2014.

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 conceded that he has not paid any of the \$3,000 in sanctions he was ordered to pay in the *Miramontes* matter. Respondent argued that his failure to pay the sanctions was not willful but it was the result of his 2013 Chapter 7 bankruptcy and subsequent financial hardship. The court finds Respondent's financial hardship arguments to be credible. However, willfulness under section 6103 requires a showing 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.) 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.)

Here, although Respondent filed an appeal in the *Miramontes* matter on behalf of his clients, he neither appealed nor sought reconsideration of the sanctions order imposed against him. If Respondent disagreed with the order, he should have sought relief from it. In the alternative, knowing the frailty of his financial condition, Respondent should have sought relief on that basis.

Therefore, by failing to comply with the April 15, 2014 court order to pay \$3,000 in sanctions to the Riverside County Superior Court, Respondent disobeyed or violated an order of the court, 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 order to the State Bar within 30 days of its issuance. Respondent stipulated that he did not report the sanctions to the State Bar until August 12, 2014, almost four months after the sanctions order was issued and two months after the last date allowed for Respondent to have paid the sanctions. Under the circumstances, Respondent willfully violated section 6068, subdivision (o)(3), by not timely reporting the sanctions order.

Aggravation²

OCTC has the burden of establishing aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Indifference (Std. 1.5(k.))

Under these facts, it would appear that Respondent was indifferent to his obligation to pay the court-ordered sanctions. For example, while he appealed the April 15, 2014 order on behalf of the *Miramontes* plaintiffs, Respondent did not appeal or seek reconsideration of the sanctions ordered against him, which he may have done in light of his Chapter 7 bankruptcy and

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.

limited income due to his medical disability. Respondent's indifference and lack of insight into the nature and seriousness of his misconduct is demonstrated by his failure to challenge the sanctions order against him. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 404.)

Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.6.)

No Prior Record (Std. 1.6(a).)

Respondent's practice of law for over 30 years with no prior record of discipline at the time of his misconduct is a significant mitigating factor.

Cooperation (Std. 1.6(e).)

Respondent is entitled to mitigation credit for cooperating with OCTC by entering into a stipulation of facts and admission of documents, which assisted the OCTC in prosecution of this case. (Std. 1.6(e).) As the stipulated facts established Respondent's culpability, the court affords Respondent significant mitigation credit for the Stipulation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

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.

In this case, standards 2.12(a) and (b) provide a broad range of sanctions ranging from reproof to disbarment. Standard 2.12(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 Code section 6068, subdivisions (a), (b), (d), (e), (f) or (h). Standard 2.12(b) provides for reproof for violation of the duties required of an attorney under section 6068, subdivisions (i), (j), (l), or (o).

The Supreme Court has deemed a violation of a court order serious misconduct. "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.)

Respondent argues that his failure to pay the sanctions was not willful. Respondent contends he did not pay the sanctions due to financial hardship resulting from a medical disability and his Chapter 7 bankruptcy. However, even though an attorney lacks the ability to pay the court-ordered sanctions, such inability to pay is not a "defense" to the charged violation of section 6103. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868.

OCTC urges Respondent's actual suspension from the practice of law for 30 days, citing *In re Kelley* (1990) 52 Cal.3d 487, 495 and *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47. In *In the Matter of Riordan, supra*, 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.

In *In the Matter of Respondent Y, supra*, 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. The attorney also failed to timely report the sanctions to the State Bar. He was privately reprimanded with conditions. There were no aggravating factors.

Here, Respondent's misconduct is more analogous to *Respondent Y* than *Riordan*. Although *Respondent Y* had no aggravating factors and Respondent has a single aggravating

factor of indifference, Respondent's conduct is less extensive than in *Riordan*. Respondent was culpable of two counts of misconduct whereas *Riordan* committed three counts of misconduct. Moreover, on balance, Respondent's mitigating factors far outweigh his single aggravating factor. 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 Jose Arturo Rodriguez, State Bar Number 116541, is publicly reproofed for one year. 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 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:³

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)

³ 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.


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: October 18, 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 October 18, 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:

JOSE ARTURO RODRIGUEZ
ARTURO RODRIGUEZ
84426 N SIENNA CIR
COACHELLA, CA 92236

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

SHERELL MCFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 18, 2016.


Johnnie Lee Smith
Case Administrator
State Bar Court