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MAR 17 2017 *KL*

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-O-14877-YDR
)	
MICHAEL ROSS LEWIS,)	DECISION
)	
A Member of the State Bar, No. 247934.)	
_____)	

Introduction¹

Respondent Michael Ross Lewis (Respondent) is charged with six counts of failing to obey a court order in a single matter. The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.² Respondent has stipulated to all of the misconduct alleged. Based on the stipulated facts and the evidence admitted at trial, this court finds by clear and convincing evidence, that Respondent is culpable of the misconduct alleged in all six counts and recommends that Respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of one year subject to a 30-day actual suspension.

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.

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

On August 30, 2016, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case number 15-O-14877. Respondent filed a response to the NDC on October 12, 2016. The parties filed a Stipulation as to Facts and Admission of Documents on December 20, 2016.

A one-day trial was held on December 20, 2016. OCTC was represented by Deputy Trial Counsel Shataka Shores-Brooks. Respondent represented himself. The case was submitted for decision on December 20, 2016. OCTC filed its closing brief on January 11, 2017. Respondent filed his closing brief on January 13, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 21, 2006, and has been a member of the State Bar of California at all times since that date.

The following findings of fact and conclusions of law are based on the December 20, 2016 stipulation and the evidence admitted at trial.

Case No. 15-O-14877 – Crocker Matter

Facts

Respondent represented the defendant, Greg Crocker, in Solano County Superior Court case number FCM143289. A Case Management Conference (CMC) was set for April 24, 2015. Respondent received notice of the CMC. Respondent did not file a case management conference statement and did not appear at the April 24, 2015 CMC.

On April 24, 2015, Respondent was ordered to appear on June 12, 2015, to show cause why the superior court should not impose monetary sanctions for his failure to appear at the April 24, 2015 CMC and to file a case management conference statement. The court also set the matter for a CMC on June 12, 2015. The June 12, 2015 Order to Show Cause (OSC) and Notice

of Hearing was filed and served on Respondent at his membership records address on April 24, 2015. Respondent received notice of the OSC, but he did not file a response to it or file a case management conference statement. Respondent did not appear at the June 12, 2015 OSC and CMC.

On June 12, 2015, the court imposed \$300 in sanctions against Respondent for failing to appear at the June 12, 2015 OSC and CMC, and for failing to file a case management conference statement. Respondent was ordered to pay the sanctions by June 27, 2015. The court also ordered Respondent to appear on July 31, 2015, to show cause why additional monetary sanctions should not be imposed for Respondent's failure to appear at the CMC and to file the case management conference statement. The court also set a CMC for July 31, 2015.

Respondent received the June 12, 2015 sanctions order and notice of OSC and CMC.

Respondent did not pay the June 12, 2015 sanctions by June 27, 2015, and did not file a response to the OSC or a case management conference statement. He did not appear for the July 31, 2015 OSC and CMC hearing.

On July 31, 2015, the court imposed an additional \$300 in sanctions against Respondent for failing to appear at the June 12, 2015 OSC and CMC, and failing to file a case management conference statement. Respondent was ordered to pay a total of \$600 in sanctions by August 9, 2015. The court also ordered Respondent to appear on September 14, 2015, to show cause why the court should not impose an additional \$500 in sanctions against Respondent for failing to: 1) appear at the July 31, 2015 CMC hearing; 2) respond to the July 31, 2015 OSC; 3) file a case management conference statement; and 4) defend the civil matter on behalf of his client.

The September 14, 2015 OSC and Notice of Hearing was filed and served on Respondent at his membership records address on August 3, 2015. Respondent received the sanctions order

and notice of OSC mailed August 3, 2015. Respondent did not pay the \$600 in sanctions by August 9, 2015.

Thereafter, Respondent did not file a response to the OSC and did not appear at the September 14, 2015 OSC hearing. On September 14, 2015, the court imposed an additional \$500 in sanctions against Respondent for failing to: 1) appear at the July 31, 2015 OSC; 2) respond to the July 31, 2015 OSC; 3) file a case management conference statement; and 4) defend the civil matter on behalf of his client. Respondent was ordered to pay a total of \$1,100 by September 29, 2015. The September 14, 2015 sanctions order was filed and served on Respondent at his membership records address on September 14, 2015. Respondent received the court's order.

Respondent did not pay the sanctions by September 29, 2015. He paid all three sanctions orders totaling \$1,100 on March 28, 2016.

Conclusions

Count One - (§ 6103 [Failure to Obey a Court Order])³

OCTC charged Respondent with willfully violating section 6103 by failing to comply with the superior court's April 24, 2015 OSC. Respondent admitted that he is culpable of violating section 6103.

To establish a violation of section 6103, OCTC must prove by clear and convincing evidence that the attorney wilfully disobeyed a court order and that the order required the attorney to do or forbear an act in the course of his profession "which he ought in good faith to have done or not done." (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) In addition, the attorney must have knowledge of the court order. (See *In*

³ 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.

the Matter of Hindin (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 666 [Review Department adopted hearing judge's finding that attorney's failure to obey court order did not violate section 6103 because attorney did not receive notice of the order in time to comply with it]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868 [Review Department agreed with hearing judge that, because attorney clearly knew of the relevant court order, the only issue regarding the charged violation of section 6103 was whether attorney had a reasonable time to comply with the order].)

Respondent received notice of the superior court's April 24, 2015 order directing him to appear at a June 24, 2015 OSC hearing, but Respondent did not attend. Thus, Respondent is culpable of willfully violating section 6103.

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

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

In Count Two, OCTC charged Respondent with willfully violating section 6103 by failing to comply with the superior court's June 12, 2015 order to pay \$300 in sanctions. In Count Three, OCTC charged Respondent with willfully violating section 6103 by failing to comply with the court's June 12, 2015 OSC when Respondent failed to appear at the July 31, 2015 OSC hearing. Respondent admitted that he is culpable of willfully violating section 6103 as alleged in both counts.⁴

Respondent received notice of the superior court's June 12, 2015 order to pay \$300 in sanctions and to appear at a July 31, 2015 OSC hearing. Respondent failed to pay the sanctions

⁴ The superior court's June 12, 2015 order directed Respondent to pay a total of \$300 in sanctions and to appear at a July 31 OSC hearing. The court's rulings were issued in a single order, not two separate orders. Thus, although Respondent is culpable of Counts One and Two, this court considers that Respondent violated a single court order for the discipline determination.

by the June 27, 2015 deadline, and he did not appear at the OSC as ordered. As such, Respondent is culpable of willfully violating section 6103.

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

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

In Count Four, Respondent is charged with willfully violating section 6103 by failing to comply with the superior court's July 31, 2015 order to pay \$600 in sanctions. In Count Two, Respondent is charged with willfully violating section 6103 by disobeying the court's August 3, 2015 order to appear at a September 14, 2015 OSC hearing.⁵ Respondent admitted that he is culpable of both ethical violations.

Respondent received the court's order directing him to pay a total of \$600 in sanctions by August 9, 2015, and to appear at an OSC scheduled for September 14, 2015. Respondent failed to pay the sanctions by August 9 and failed to attend the September 14 OSC hearing. Thus, Respondent is culpable of willfully violating section 6103.⁶

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

Respondent is charged with willfully violating section 6103 by failing to comply with the superior court's September 14, 2015 order to pay \$1,100 sanctions. Respondent admitted that he is culpable of violating section 6103. The superior court ordered Respondent to pay \$1,100 in sanctions by September 29, 2015. Respondent did not pay the sanctions until March 28, 2016. As such, Respondent is culpable of willfully violating section 6103.

⁵ The court held a hearing on July 31, 2015, where Respondent was ordered to pay a total of \$600 in sanctions and to appear at a September 14 OSC hearing. The court's order was filed and served on Respondent on August 3, 2015.

⁶ The order filed on August 3, 2015, directed Respondent to pay \$600 in sanctions and to appear at a September 14, 2015 OSC hearing. The court's rulings were issued in a single order, not two separate orders. Thus, although Respondent is culpable of Counts Four and Five, this court considers that Respondent violated a single court order for the discipline determination.

Aggravation⁷

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.

Multiple Acts (Std. 1.5(b).)

Respondent did not comply with four court orders that arose from one matter. He did not appear at three hearings and failed to timely pay the sanctions that were imposed for repeatedly failing to appear as ordered. Because this misconduct was repeated, but limited in scope, this factor is afforded moderate aggravating weight.

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.

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

Respondent practiced law almost nine years before he committed the misconduct in this matter. When an attorney has practiced for many years without misconduct, the absence of a prior disciplinary record is a mitigating circumstance. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.) Respondent's lack of a prior record is afforded moderate mitigating weight.

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

Respondent demonstrated cooperation with the State Bar by entering into a stipulation as to facts and admission of documents. The stipulated facts established Respondent's culpability. Moreover, in his response to the NDC, Respondent admitted he was culpable of all six counts as alleged. Respondent's cooperation is a significant mitigating factor. (*Silva-Vidor v. State Bar*

⁷ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into stipulation as to facts and culpability].)

Good Character (Std. 1.6(f).)

Respondent is entitled to mitigation for good character. Respondent presented eight letters from individuals who wrote about his good character. The individuals included three attorneys, a board certified ophthalmologist and anaplastologist, office clerk, and three friends. Respondent was described as “a man of integrity” with “high ethical and moral standards” who has a “good heart.” One individual expressed that Respondent’s character is beyond reproach and that he is dedicated to his clients. Those who wrote letters who were not attorneys have known Respondent over 30 years, and all but one person knew about the charges against Respondent.

All three attorneys have known Respondent 15 years, and each of them indicated that Respondent is a “competent” lawyer who has made special appearances for them in the past. They stated that they would not hesitate to ask him to make appearances for them in the future. Serious consideration is given to the testimony of attorneys because they have a “strong interest in maintaining the honest administration of justice.” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) Respondent’s good character is a significant mitigating factor.

Overall, while not compelling, Respondent’s mitigating circumstances outweigh the aggravating factors.

Discussion

OCTC contends that Respondent’s misconduct warrants a 30-day actual suspension. Respondent requests that the court impose a period of stayed suspension for his wrongdoing.

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.) 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 Silvertown* (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.)

Respondent disobeyed four superior court orders; thus, standard 2.12(a) is applicable to Respondent’s misconduct. The standard provides that the presumed sanction for “disobedience or violation of a court order related to the . . . practice of law” is disbarment or actual suspension. (Std. 2.12(a).)

In addition to the standards, the court considers decisional law relevant to Respondent’s misconduct to determine the appropriate level of discipline. The court is guided by *In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. 592; and *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. 862. In *In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. 592, the attorney received a private reproof for violating section 6103. Respondent X deliberately violated the confidentiality provision of a court order enforcing a settlement agreement. (*Id.* at pp. 595, 603.) The attorney had practiced law for 18 years without discipline, held a sincere and principled belief that he acted in support of sound public policy by revealing the confidential information, and was under great pressure from his client and co-counsel who disagreed with his approach to the settlement and confidential terms. (*Id.* at p. 605.) The court found that actual suspension or disbarment was “not mandated.” (*Ibid.*)

In *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. 862, the attorney received a private reproof with conditions for violating section 6103 because he did not obey a court order to pay sanctions imposed as a result of his bad faith tactics and actions while defending a civil action. In addition, the attorney violated section 6068, subdivision (o)(3), by failing to timely report the sanctions to the State Bar. The attorney had no prior disciplinary record and there was no evidence in aggravation. In determining the degree of discipline to impose, the Review Department did not apply former standard 2.6(a), but instead focused on “the narrow violation before [it].” (*Id.* at p. 869.)

Respondent’s misconduct warrants greater discipline than in *In the Matter of Respondent X* and *In the Matter of Respondent Y*. Far from considering the present misconduct as a “narrow violation,” this case involves disobedience of four court orders. “Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney.” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Unlike the attorneys in *In the Matter of Respondent X* and *In the Matter of Respondent Y* who violated a single court order, Respondent did not appear at three court-ordered hearings and failed to timely pay three sanctions orders imposed for his nonappearances. Moreover, there were no aggravating factors present in *In the Matter of Respondent Y*. Although Respondent’s mitigating circumstances outweigh the aggravating factors, they are not significant enough to depart from the presumed sanction outlined in standard 2.12(a). Therefore, guided by the standards, case law, and the facts and circumstances of this case, this court concludes that Respondent should be actually suspended for 30 days.

Recommendations

It is recommended that Respondent Michael Ross Lewis, State Bar Number 247934, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation⁸ for a period of one year subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 30 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.
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.
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.

⁸ 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.)

7. Within one year after the effective date of the discipline herein, he 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 he shall 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.

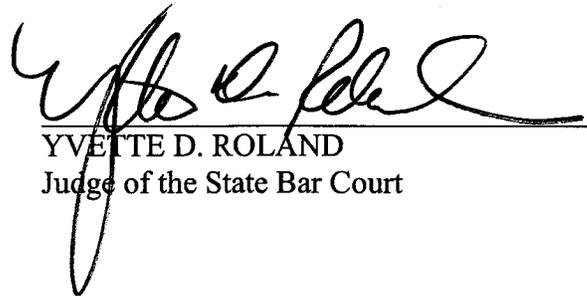
Multistate Professional Responsibility Examination

We further recommend that Michael Ross Lewis be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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: March 17, 2017


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 March 17, 2017, 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:

MICHAEL R. LEWIS
LEWIS & HAM, LLP
1425 W FOOTHILL BLVD STE 235
UPLAND, CA 91786

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

Shataka A. Shores-Brooks, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 17, 2017.



Angela Carpenter
Case Administrator
State Bar Court