PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 15-O-15428-YDR
	)	
THOMAS PATRICK BROWN IV,	)	DECISION
	)	
A Member of the State Bar, No. 97315.	)	
	)	

Introduction[1]

Respondent Thomas Patrick Brown IV (Respondent) is charged with three counts of misconduct in a single matter. He is charged with the unauthorized practice of law (UPL), committing acts involving moral turpitude, and failing to comply with probation conditions. 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] Based on the stipulated facts, the trial testimony and the evidence admitted at trial, this court finds by clear and convincing evidence, that Respondent is culpable of a single count of misconduct and recommends that Respondent be suspended from the practice of law in California for one year, that execution of that period of

[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.)

suspension be stayed, and that he be placed on probation for a period of one year subject to a 30-day actual suspension.

Significant Procedural History

On August 22, 2016, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case number 15-O-15428. Respondent filed a response to the NDC on September 8, 2016. On October 5, 2016, the court ordered the trial in this matter to commence on December 6, 2016. On November 2, 2016, OCTC filed a motion to amend the NDC with a First Amended NDC attached. On November 22, 2016, Respondent filed a response to OCTC's motion. On December 6, 2016, the court granted the motion to amend; ordered Respondent to file a response to the First Amended NDC; and continued the trial.

On December 9, 2016, Respondent filed a response to the First Amended NDC that was attached to the November 2, 2016 motion. The parties filed a Stipulation as to Facts and Admission of Documents on December 9, 2016. On December 15, 2016, OCTC filed the First Amended NDC.

A one-day trial was held on December 15, 2016. OCTC was represented by Senior Trial Counsel Charles T. Calix. Respondent was represented by Ellen A. Pansky of Pansky Markle Ham LLP. The case was submitted for decision on December 15, 2016. OCTC and Respondent filed their respective closing briefs on January 13, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 21, 1981, and has been a member of the State Bar of California at all times since that date.

These findings of fact and conclusions of law are based on trial testimony, evidence admitted at trial, and facts set forth by the parties in their stipulation.

Case No. 15-O-15428 – The Suspension Matter

Facts

On October 3, 2014, OCTC transmitted a record of Respondent's driving under the influence (DUI) conviction to the State Bar Court (case No. 14-C-01206). On January 8, 2015, OCTC transmitted another record of conviction involving a second DUI conviction (case No. 14-C-01224). On April 8, 2015, Respondent entered into a Stipulation as to Facts, Conclusion of Law and Disposition in the two DUI conviction matters. Respondent stipulated to an actual suspension from the practice of law for 30 days.

Upon agreeing to stipulate to the misconduct and discipline regarding his DUI convictions, Respondent tried to ascertain when his suspension would commence. He asked Deputy Trial Counsel Sherell McFarlane, who was assigned to his matter, and George Scott, Judge Pro Tem of the State Bar Court, when his discipline would begin. They were unable to provide him with an exact date. Respondent believed he understood the terms of his discipline before he stipulated to the misconduct in his conviction matters, and acknowledged that he received a copy of the stipulation as to facts and disposition that provided the effective date of the Supreme Court order is "***normally 30 days after the file date.***" (Italics added.)

On September 11, 2015, the Supreme Court issued its disciplinary order (case No. S226855).[3] Pursuant to California Rules of Court, rule 9.18, the Court's order became "final 30 days after filing." Thus, the effective date of Respondent's suspension was October 11, 2015, and Respondent was suspended from that date through November 9, 2015. Respondent was served with and received a copy of the Supreme Court disciplinary order.

The date of Respondent's actual suspension was important to him. In October and November 2015, Respondent operated a three-person law firm consisting of himself, his law

[3] Supreme Court disciplinary orders do not provide a specific effective date for the order.

partner and an associate, Lawrence Yang. He knew his suspension would have an effect on the firm and his clients because he performed most of the trial work in the firm, making the effective date of his suspension essential to scheduling his caseload.

After reviewing the Supreme Court order and stipulation in September 2015, Respondent was unable to determine when his actual suspension would begin. Respondent asked his law partner, Cynthia Gitt, to assist him with ascertaining the commencement date of his actual suspension. Gitt reviewed the Business and Professions Code and Rules of Professional Conduct, but she did not find any information in the statute or rules.

During the last week of September 2015 or the first week of October 2015, Gitt called Deputy Trial Counsel McFarlane. McFarlane was not available, but Gitt spoke to another individual who explained that he could not discuss Respondent's case with her. Gitt was then referred to the Office of Probation. Gitt called the State Bar's San Francisco office for assistance. The State Bar operator transferred her to an unknown individual who advised Gitt that Respondent would receive a letter regarding his suspension date.

Gitt reported her findings to Respondent and advised him that a letter with his suspension date was forthcoming. Gitt also reviewed Respondent's member profile on the State Bar website. The website indicated that Respondent's status was "active." After her initial search in late September or early October, Gitt did not repeatedly check the State Bar website to determine when Respondent's suspension would begin because she understood Respondent would receive a letter providing him with the suspension date.

On October 7, 2015, Respondent sent an email to Probation Deputy Maricruz Farfan inquiring, "Do you have any idea when my suspension is likely to begin?" He was seeking a projected date to help "reduce the stress level . . . ." On Friday, October 9, 2015, Farfan responded that "the Office of Probation cannot give you any legal advice." On the same date,

Respondent replied, "Thanks for the reply. I don't wan [sic] legal advice. I simply want to know when the suspension is likely to commence."

The morning of Tuesday, October 13, 2015, the State Bar's Membership Records Department updated Respondent's membership record to reflect that that he had been suspended. Thereafter, Respondent's member profile on the State Bar website reflected that he was not entitled to practice law.

On October 13, 2015 at 12:45 p.m., Farfan responded to Respondent's email of October 9, 2015, as follows:

> The Office of Probation has received copies of your disciplinary orders and will be mailing you a letter to remind you of the terms and conditions pursuant to your Supreme Court order filed September 11, 2015. Please note that the Office of Probation is preparing this letter and documents as a courtesy to you; however, you are ultimately responsible for timely fulfilling all of your requirements whether or not the Office of Probation has sent you a letter or contacted you. Do NOT wait until you receive the Office of Probation's reminder letter to comply with your requirements. Please read your Orders and if you have any condition due, you are to comply timely.

Farfan invited Respondent to email his availability for the required meeting with his probation deputy, and Farfan attached a link to Respondent's stipulation posted on the State Bar's website. Respondent received the email, and replied with his available dates for a meeting. Farfan knew that she could have instructed Respondent to review his profile on the State Bar website to obtain the date of his suspension, but she sent a link to his stipulation instead.

On October 14, 2015, Respondent sent an email in response to Farfan stating that "Pursuant to your instructions, I have read the State Bar's papers. That may have been too late. I was expecting, perhaps incorrectly, a Notice from the Bar following the 9/11 Sup Ct Order. Was I supposed to file a Probation Report on 10/10? If so, I missed it. Should I file one now?" Respondent sent a second email to Farfan stating "I was unable to find a Probation Report on the website. I was told by the operator that only you could provide me the form." On October 19,

2015, Farfan responded to Respondent's October 14 email, stating that she could not yet meet with Respondent until he received the Office of Probation's reminder letter and attachments, which the Office of Probation had mailed to Respondent that same day. Farfan's October 19, 2015 letter to Respondent set forth the conditions of his probation.

On October 20, 2015, Respondent sent Farfan an email advising her that he had "been in depos" the previous two days. On October 21, 2015, Farfan advised Respondent that in her October 13, 2015 email she provided him with a link to his profile on the State Bar website and that his profile "notes that the effective date of your actual suspension as October 11, 2015."[4] In response to Respondent's statement that he had been in depositions, Farfan suggested that Respondent self-report his UPL to the Intake Department. October 21, 2015, was the date Respondent learned of his suspension.

Between October 12, 2015 and November 9, 2015, the following took place.

- On October 12, 2015, Respondent spent 0.5 re "telephone call with [name] re: settlement and costs going forward";
- On October 13, 2015, Respondent spent 0.3 hours re "study [attorney's] letter; send to client and [name] for input.";
- On October 14, 2015, Respondent spent 1.8 hours re "Finalize reply letter to [attorney]; related conference with [name]; related telephone call with clients";
- On October 14, 2015, Respondent's name and bar number were listed in the caption of a "Joint Report In Advance of Initial Status Conference" filed in *Alegria v. El Greco Wholesale Grocers, Inc.*, LASC case No. BC583779;

[4] Farfan incorrectly stated that she provided Respondent with a link to his State Bar profile. She had previously sent him a link to his stipulation, not his profile.

- On October 15, 2015, Respondent spent 0.9 hours re "Revise and circulate draft for comments from [name]";
- On October 15, 2015, Respondent's name and bar number were listed in the caption of a "Joint Report In Advance of Initial Status Conference" filed in *Reveles v. Blason Industries*, Inc., LASC case No. BC586099;
- On October 19, 2015, Respondent spent 8 hours re "Depose [name]" in the matter titled *Dennis G. Torres v. MEDG, Inc. dba Fashion Cleaners*, LASC case No. BC506812;
- On October 19, 2015, Respondent spent 1.6 hours re "Study rough deposition of [name]";
- On October 19, 2015, Respondent spent 0.7 hours re "Study model report";
- On October 19, 2015, Respondent's name and bar number were listed in the caption of a "Stipulation and Order to Continue Initial Status Conference Date" filed in *Alegria v. El Greco Wholesale Grocers, Inc.*, LASC case No. BC583779;
- On October 20, 2015, Respondent spent 0.5 hours re "Study Second [name] Complaint; strategize re: same;
- On October 20, 2015, Respondent spent 8 hours re "Depose [name]" in the matter titled *Dennis G. Torres v. MEDG, Inc. dba Fashion Cleaners*, LASC case No. BC506812;
- On October 20, 2015, Respondent spent 0.3 hours re "Draft reply to [attorney]; related document review";
- On October 20, 2015, Respondent spent 0.1 hours re "Study mold report for incorporation into letter to [name]";

- On October 20, 2015, Respondent spent 0.7 hours re "Study [name] and [name's] laundry list for demand letter";
- On October 21, 2015, Respondent spent 1.3 hours re "Finalize issues and demand letter"; and
- On October 29, 2015, Respondent's name and bar number were listed on the caption in a "Notice of Intent to Appear by Telephone" filed in *Reveles v. Blason Industries, Inc.*, LASC case No. BC586099; and
- On November 9, 2015, Respondent's name and bar number were listed in the caption of the "Answer by Defendant El Greco Wholesale Grocers, Inc. ..." filed in *Alegria v. El Greco Wholesale Grocers, Inc.*, LASC case No. BC583779.

On or about October 27, 2015, Gitt sent notices to the firm's clients about Respondent's suspension. They informed them that Respondent would be suspended for 30 days and indicated that his suspension would conclude on November 20, 2015. The letter included a separate notice pursuant to rule 1-311 that Respondent would perform certain work on client matters.

In a letter to an OCTC investigator dated December 18, 2015, Respondent stated, in part, that "I understand that the answer to the commencement of my suspension was my responsibility to determine." He also stated that he was not taking any fees for the services provided between October 11 and October 20, 2015, and had self-imposed a suspension from October 21, 2015 to November 25, 2015.

Conclusions

Count One - (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction's Professional Regulations])

OCTC charged Respondent with holding himself out as entitled to practice law and of practicing law in California from October 12, 2015, through October 21, 2015, in willful violation of rule 1-300(B). Rule 1-300(B) provides that an attorney must "not practice law in a

jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." Respondent is not culpable of willfully violating rule 1-300(B) because the rule is inapplicable to this case.

"In order to find culpability under this rule, we must necessarily determine whether a California attorney has violated professional regulations in a foreign jurisdiction. [Citation.]" (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 255.) Rule 1-300(B) was "designed to permit the California State Bar to discipline its members for making unauthorized appearances in courts other than California state courts." (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319 [declining to find Respondent culpable of violating former rule 3-101(B)[5] because Supreme Court had not held that the rule could be "used as a basis for disciplining members of the California State Bar who appear in California state courts while suspended or inactive"].)

OCTC cites *Porter v. State Bar* (1990) 52 Cal.3d 518 and *Phillips v. State Bar* (1989) 49 Cal.3d 944, to support its contention that rule 1-300(B) applies to this matter. In both cases, the attorney was disciplined for violating former rule 3-101(B), which "states that members of the State Bar shall not practice law in jurisdictions in which they are not entitled to do so under the regulations of that jurisdiction." (*In the Matter of Heiner*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 319.) But, each attorney stipulated that he violated rule 3-101(B). In *Porter*, the attorney stipulated to misconduct in 10 client matters but "[n]either the stipulation nor the findings of the hearing panel [specified] which specific rule of professional conduct was violated by the conduct in any particular matter." (*Porter v. State Bar*, *supra*, 52 Cal.3d at p. 524.) The appropriate level of discipline was the crux of the appeal and the Supreme Court made no affirmative finding that the attorney's practice of law in California while suspended violated former rule 3-101(B).

[5] Rule 3-101(B) is the predecessor to rule 1-300(B).

Moreover, in *Phillips*, the former rule 3-101(B) violation was found because the attorney stipulated to the violation, (*Phillips v. State Bar*, *supra*, 49 Cal.3d at p. 953), not because the Court determined that the attorney's representation of a client in California while suspended constituted a former rule 3-101(B) violation. Thus, the court finds that rule 1-300(B) does not apply to this case, and therefore Respondent is not culpable of willfully violating that rule. Count One is dismissed with prejudice.

Count Two - (§ 6106 [Moral Turpitude])

OCTC charged Respondent with willfully violating section 6106 by holding himself out as entitled to practice law; or permitted his law office to hold him out as entitled to practice law; and practiced law when he knew or was grossly negligent in not knowing that to do so violated the rules and laws governing attorney conduct in California. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Clear and convincing evidence exists establishing that Respondent practiced law or held himself out as entitled to practice while he was suspended. The following took place after the effective date of his suspension, which constitutes UPL.

- On October 14, 2015, Respondent had a telephone call with his clients regarding a draft reply letter addressed to an attorney;
- On October 14, 2015, October 15, 2015, and October 19, 2015, Respondent's name and bar number were listed in the caption on pleadings filed in Los Angeles County Superior Court; and

- On October 19, 2015, and October 20, 2015, Respondent deposed individuals in a Los Angeles County Superior Court case.[6]

Although Respondent engaged in UPL, the court does not find that his UPL violated section 6106. Not all UPL necessarily involves moral turpitude. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 905; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 239; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 494-495.) The Supreme Court has always required a certain level of intent, guilty knowledge or willfulness before placing the serious label of moral turpitude on the attorney's conduct. [Citations.] At the very least, gross negligence has been required. [Citations.]." (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.)

OCTC did not prove that Respondent acted with malice or dishonesty by practicing law while suspended or that he had actual notice of his suspension date when he engaged in UPL. The record demonstrates that Respondent took affirmative steps to determine the effective date of his actual suspension. During the relevant period, he was in constant contact with his assigned probation deputy, Farfan, to obtain the date that his suspension would commence and to make

[6] The drafting of legal documents and letters does not constitute UPL because a suspended attorney may research any point of law or draft any legal documents so long as it is done for the independent review of an active member of the State Bar in good standing. (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 494.) There is a lack of clear and convincing evidence establishing that the legal documents or letters Respondent prepared were filed or sent or that his signature was affixed to them. Moreover, after Respondent learned about his suspension, the pleadings that were filed with Respondent's name and State Bar member number in the caption were prepared and filed by his firm's associate or prepared by opposing counsel. Respondent's associate signed each pleading. There is a lack of clear and convincing evidence demonstrating that Respondent authorized, permitted or caused the pleadings to be filed. (Cf. *id.* at p. 493 [respondent committed UPL by knowingly permitting civil complaint bearing his name as counsel to be filed after the effective date of his suspension].)

sure he did not run afoul of his probation conditions.[7] Additionally, he enlisted the aid of his law partner to assist him with discovering the effective date of his actual suspension. She conducted research and contacted several State Bar departments but was not successful with obtaining the commencement date of Respondent's discipline.

The court has considered that the stipulation Respondent signed cites California Rules of Court, rule 9.18(a). The rule specifically states "[a]ll orders of the Supreme Court imposing discipline . . . become final 30 days after filing." A review of the rule would have provided Respondent with the actual date of his suspension, but Respondent's failure to review the rule, does not constitute moral turpitude. Respondent's lack of review amounted to mere negligence. His conduct thus does not establish the type or degree of carelessness that would warrant a finding of gross negligence amounting to moral turpitude. As such, Respondent is not culpable of willfully violating section 6106, and Count Two is dismissed with prejudice.

Count Three - (§ 6068, subd. (k) [Failure to Comply with Probation Conditions])

Respondent is charged with willfully violating section 6068, subdivision (k), by failing to comply with the conditions attached to his disciplinary probation in State Bar case Nos. 14-C-01206 and 14-C-01224. Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. Respondent is culpable of willfully violating the statute.

One of the conditions attached to Respondent's discipline required him to "comply with the provisions of the State Bar Act and Rules of Professional Conduct." Engaging in the unauthorized practice of law violates the State Bar Act. (See §§ 6068, subd. (a) and 6125.) As

[7] Farfan failed to provide adequate responses to Respondent's repeated inquiries. She avoided providing him with any information about his suspension date or referring him to the State Bar Ethics Hotline for guidance.

set forth above, Respondent practiced law while he was suspended. Thus, Respondent failed to comply with his probation conditions, in willful violation of section 6068, subdivision (k).

Aggravation[8]

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 one prior discipline record. On September 11, 2015, the Supreme Court ordered Respondent suspended for one year, stayed, with three years of probation subject to a 30-day actual suspension (order No. S226855). Respondent's discipline arose from two separate DUI convictions that occurred on September 10, 2012 (14-C-01224), and June 19, 2014 (14-C-01206). In State Bar case No. 14-C-01206, Respondent was driving erratically in a grocery store parking lot while intoxicated. He struck at least two parked vehicles while attempting to leave the parking lot. He left the scene without stopping to view the damage, and without leaving his contact information. When Respondent was stopped by Pasadena police officers, they found two wine bottles in his car – one was empty and the other was half-full. Respondent pled no contest to a violation of Vehicle Code section 23152, subdivision (b), (driving with blood alcohol content of .08% or more). Respondent received a suspended sentence and was placed on informal probation for three years. His probation included attendance at a first-time offender alcohol program. Respondent had two prior DUI convictions before the DUI he committed in case No. 14-O-01206.

In State Bar case No. 14-C-01224, Respondent was driving while intoxicated. He rear-ended two parked cars and drove into a telephone pole while attempting to drive out of a

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

restaurant parking lot. His blood alcohol level was .26 percent. He pled no contest to a violation of Vehicle Code section 23152, subdivision (b). Respondent received a suspended sentence and was placed on informal probation for five years with conditions. His probation conditions included incarceration in the county jail for 10 days and attendance and completion of the second-time offender alcohol program.

Respondent's misconduct was aggravated by multiple acts of misconduct. The mitigating factors were the lack of a prior discipline during 31 years of practice, recognition of wrongdoing, and a pretrial stipulation. The aggravating weight of Respondent's prior is significant.

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct does not involve multiple acts of wrongdoing. He is culpable of a single violation of section 6068, subdivision (k), and his misconduct involved three counts of misconduct arising from his inability to determine the effective date of his 30-day suspension. Under these circumstances, aggravation for multiple acts is not warranted. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [no aggravation for multiple acts where Respondent culpable of two counts of misconduct arising from one transaction involving modification of a contingent fee agreement].)

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.

Lack of Harm (Std. 1.6(c).)

Respondent is entitled to moderate mitigation for lack of harm. No clients were harmed by Respondent's UPL, and once he discovered the effective date of his suspension, he did not collect fees from those clients for whom he performed work from October 11 through October 20, 2015.

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

Respondent entered into a stipulation as to facts and admission of documents which saved OCTC time and resources. The court assigns moderate mitigation credit for Respondent's cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 ["more extensive weight in mitigation is accorded those who . . . willingly admit their culpability as well as the facts"].)

Good Character (Std. 1.6(f).)

Respondent is entitled to mitigation for good character. Respondent presented 17 declarations from individuals who attested to his good character. The declarants included 10 attorneys, a CPA, the manager and chief operating officer of an oil field maintenance company, a legal secretary, former client, loan officer, a sober living manager, and a teacher and real estate agent. Respondent was described as an honest, hard-working, ethical person with a "heart of gold." The individuals were aware of the disciplinary charges against Respondent and could not believe Respondent knowingly practiced law while suspended. They concluded that it was an "error made by any honest and competent attorney" or an "honest error." The sober living manager's conclusion was based on Respondent's attitude toward his alcohol rehabilitation and his "willingness to comply with the terms of his criminal probation."

The attorneys described Respondent as a "skilled attorney with high moral standards" and as "trustworthy and reliable." One attorney provided that Respondent's DUI convictions and present charges "do not outshine the positive attributes of [Respondent's] character." Another attorney stated that he was aware of Respondent's substance abuse but views Respondent as a "good lawyer and valuable member of the Bar, and . . . a good person in general." Several attorneys have referred numerous clients to Respondent, and each client was satisfied with Respondent's advice and representation. 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.) Although Respondent's good character evidence is laudable, the weight of this factor is diminished by Respondent's DUI convictions. Respondent has had four DUI convictions, the most recent occurring in 2014, and there is no clear and convincing evidence of Respondent's rehabilitation. Thus, the court affords moderate weight for Respondent's good character.

Remorse/Recognition of Wrongdoing (Std. 1.6(g).)

Respondent demonstrated remorse and recognition of his misconduct. On October 21, 2015, Respondent imposed a 30-day suspension on himself. The record establishes that upon learning about his suspension, Respondent's law partner, Gitt, sent notices to the firm's clients, advising them that Respondent would be suspended from the practice of law for 30 days and that his suspension would terminate on November 20, 2015. Also, he did not collect fees during the time he practiced law while suspended.[9] The remorse and recognition of wrongdoing is a significant mitigating factor.

In sum, Respondent's mitigating circumstances, while not compelling, far outweigh the aggravating circumstances.

Discussion

OCTC argues that a 90-day actual suspension is the appropriate level of discipline for Respondent's misconduct. Respondent contends that his misconduct warrants a formal admonition, or if the court imposes discipline, it should not include a period of actual suspension.

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

[9] Although collecting fees for the time period Respondent engaged in UPL would violate rule 4-200(A) (charging and collecting an illegal fee), by not collecting those fees, Respondent took "prompt objective steps, demonstrating spontaneous . . . recognition of the wrongdoing." (Std. 1.6(g).)

maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].)

Respondent committed a probation violation that arose out of UPL. Standards 2.10 and 2.14 are both instructive to determine the appropriate level of discipline. Standard 2.10 provides for disbarment or actual suspension "when a member engages in the practice of law . . . when he or she is on actual suspension for disciplinary reasons . . . . The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law." Standard 2.14 provides that "[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders." (Std. 2.14.)

Respondent's probation violation involved UPL, which is a violation of the State Bar Act. Practicing law while suspended is serious, but the facts and circumstances surrounding Respondent's misconduct do not demonstrate his unwillingness or inability to comply with disciplinary orders. Respondent took affirmative steps to determine his suspension date and engaged in UPL unknowingly. Once he discovered his suspension date and that he engaged in UPL, he imposed a 30-day suspension on himself. Thus, the sanction for Respondent's misconduct should be at the low end of the discipline range.

Since Respondent has a prior discipline record, standard 1.8(a) is also considered to determine the appropriate level of discipline. Standard 1.8(a) provides "[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed

sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Respondent's prior misconduct does not fall within the exception of standard 1.8(a). His prior discipline occurred less than two years ago and the DUI convictions that comprised his prior were serious. However, standard 1.8(a) is not always rigidly applied. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534 [30-day actual suspension despite prior five-month suspension].) "The standards are not to be followed in a talismanic fashion [citation], particularly where there is not a common thread or course of conduct through the past and present misconduct to justify increased discipline. [Citation.]" (*Ibid.*) But, any deviation from the standards must be clearly articulated. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent is culpable of a single ethical violation that was not nearly as extensive, serious, or of the same character as his prior wrongdoing. He made several efforts to discover the effective date of his suspension, and his engagement in UPL for a 10-day period was unknowing. In addition, he self-imposed a 30-day suspension once he became aware of his suspension date and did not collect any fees for the time period he engaged in UPL. Finally, the net effect of the mitigating and aggravating circumstances demonstrates that it is "appropriate to impose . . . a lesser sanction than what is otherwise specified in" standard 1.8(a). (Std. 1.7(c).) Thus, a departure from standard 1.8(a) is warranted.

In addition to the standards, case law also supports discipline at the lower end of the discipline range. When conditions of disciplinary probation are violated, the greatest amount of discipline is warranted for probation violations closely related to the misconduct for which probation was given. *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653; see *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent's UPL was wholly unrelated to his prior involving DUI convictions and property damage. Moreover, cases involving UPL generally range from 30 days to six months suspension where there has been prior misconduct. (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. 229 [attorney with three prior disciplines received 30-day suspension for single charge of UPL due to compelling mitigation and no misconduct for six years after UPL]; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 [90-day suspension for UPL, aggravated by moral turpitude and one prior 75-day suspension]; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 [six month suspension for holding oneself out as entitled to practice law while suspended in violation of 6106, aggravated by prior three and one-half year suspension arising from convictions for receipt of stolen property and recording a conversation without consent].)

Even though Respondent's probation deputy provided him with inadequate responses to his repeated inquiries about the effective date of his suspension, Respondent never blamed the deputy. He understood and acknowledged that it was his responsibility to determine the commencement date of his suspension. Respondent's unknowing engagement in UPL did not involve moral turpitude and did not last for an extended period. While not compelling, Respondent's mitigating factors (lack of harm, cooperation, good character and self-imposed suspension) far outweigh the single aggravating factor of Respondent's prior discipline record. Based on the standards, case law and circumstances of this case, the court concludes that a 30-day actual suspension will serve the purpose of protecting the public, the courts and the legal profession.

Recommendations

It is recommended that respondent Thomas Patrick Brown IV, State Bar Number 97315, 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 probation[10] for a period of one year subject to the following conditions:

1. Respondent Thomas Patrick Brown IV 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.

It is not recommended that Respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on September 11, 2015, by the Supreme Court in case No. S226855.

[10] 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.)

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on September 11, 2015, by the Supreme Court in case No. S226855.

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 7, 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 8, 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:

ELLEN ANNE PANSKY
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 8, 2017.

Angela Carpenter
Case Administrator
State Bar Court