

FILED

JUN 29 2016

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 15-O-15636-PEM
)	
RAYMOND ROY MILLER,)	
)	DECISION
Member No. 144398,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary proceeding, respondent **Raymond Roy Miller** is charged with violating his probation conditions imposed by the California Supreme Court. The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. Based on the nature and extent of culpability, as well as the aggravating factors, this court recommends, among other things, that respondent be suspended from the practice of law for one year, stayed, with one year's probation, and 90 days' actual suspension.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on December 15, 2015. On January 4, 2016, respondent filed a response to the NDC.

Trial was held on April 14, 2016. Deputy Trial Counsel Heather E. Abelson represented the State Bar. Respondent represented himself. At the end of trial, the court took this matter under submission.



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

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 12, 1989, and has been a member of the State Bar of California at all times since that date.

Facts

The following findings of fact are based on the evidence and testimony admitted at trial.

A. Supreme Court Order

On July 10, 2013, the California Supreme Court ordered, among other things, in Supreme Court case No. S210427, that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for 30 days, as recommended by the Hearing Department of the State Bar Court in its decision filed February 25, 2013 (State Bar Court case No. 11-O-16029); and
2. Respondent comply, among other things, with the following probation conditions:
 - a. During the period of probation, respondent is required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
 - b. During the period of probation, respondent must pay the \$7,750 balance owed in sanctions to the trustee or its successor in interest pursuant to the Judgment and

Supplemental Memorandum re Motion for Sanctions filed on December 17, 2009, in *In re Peterson and Erb, Inc., dba Comptech*, United States Bankruptcy Court, Eastern District of California, case No. 07-23766-C-7, and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles with quarterly reports as any payments are made but, in no case later than the date the final report is due (August 9, 2015).

The Supreme Court order became effective on August 9, 2013, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.²

On August 8, 2013, the Office of Probation sent a letter to respondent detailing the conditions of his probation, including a provision that if respondent was even one day late on filing his quarterly reports, he would not be in compliance with his probation conditions.

B. October 30, 2013 Order Extending Time to Pay Costs

On September 6, 2013, respondent filed a petition for relief from the Supreme Court order assessing costs against him or, in the alternative, for an extension of time to pay costs. On October 30, 2013, this court granted his petition with an order extending time to pay costs. He was ordered to pay one-fourth of the costs with his membership fees for each of the years 2015, 2016, 2017, and 2018.

²Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

C. Quarterly Reports

1. October 10, 2013 Quarterly Report

Respondent's first quarterly report was due on October 10, 2013. Respondent sent it on October 8, 2013, and it was received by the Office of Probation on October 10, 2013. Sometime between October 10 and October 25, respondent was informed that although he had filled in the blank before the compliance section, he had not put an "x" before that section and, therefore, he would have to file an amended quarterly report. On October 25, 2013, respondent mailed an amended quarterly report, and it was filed on October 28, 2013.

Since respondent's original report was received by the Office of Probation on October 10, albeit defective, it does not reflect his willful failure to timely file the report when he filed the amended report on October 28.

2. April 10, 2014 Quarterly Report

Respondent's quarterly report due April 10, 2014, was five days late. Respondent mailed it on April 13, and it was received by the Office of Probation on April 15, 2014.

3. October 10, 2014 Quarterly Report

Again, respondent's quarterly report due October 10, 2014, was late. He sent it on October 10, 2014, by priority mail, and it was received by the Office of Probation on October 14, 2014. Respondent again forgot to put an "x" in front of the compliance section, so he was told that he would have to file an amended October 10, 2014 report. On October 28, respondent mailed his amended October 10, 2014 report, and it was received and filed by the Office of Probation on October 31, 2014. However his compliance is measured, it was untimely.

4. January 10, 2015 Quarterly Report

Respondent mailed his January 10, 2015 report on January 13, 2015, by priority mail, and it was received and filed by the Office of Probation on January 14, 2015. As such, it was four days late.

5. July 10, 2015 Quarterly Report

Respondent mailed his July 10, 2015 report on July 14, 2015. It was received and filed by the Office of Probation on July 16, 2015. Therefore, the report was six days late.

D. Final Report and Proof of Payment

Respondent did not file a final report or provide proof of the \$7,750 sanction payment by the August 9, 2015 deadline. On August 19, 2015, the Office of Probation sent a letter to respondent notifying him of his noncompliance with his probation conditions.

At that time, however, respondent disagreed with the Office of Probation as to the termination date of his probation period and the due date of the final report. On August 19, 2015, respondent wrote to his probation deputy, indicating that he thought that his deadline to file a final report had been extended to 2018, based on his understanding of the October 30, 2013 order extending time to pay costs.

On August 21, 2015, his probation deputy explained to respondent that the final report differed from quarterly reports and that the October 30, 2013 order did not modify the condition requiring the time within which he was to pay sanctions. Thereafter, the probation deputy sent additional responsive emails, reiterating the same.

Still disagreeing with the Office of Probation's explanation of the October 30, 2013 order, respondent filed a Petition to Modify Order Extending Time to Pay Costs to Include Extension of Time to Pay Sanctions on September 14, 2015, and a supplemental petition on October 1, 2015.

On October 26, 2015, this court, in its order denying modification of probation conditions and costs, made it clear that: (1) respondent's probation had terminated in August 2015; (2) the Supreme Court had ordered respondent to pay the \$7,750 sanctions by the end of his probation; and (3) the October 30, 2013 order had granted him an extension of time to pay disciplinary costs in four installments in the years 2015, 2016, 2017, and 2018. Accordingly, respondent was ordered to immediately pay the \$7,750 sanctions and file his final probation report.

On November 2, 2015, respondent filed his final report, in which he stated that he was unable to pay the \$7,750 sanctions yet.

On March 17, 2016, when respondent had the financial ability to pay the sanctions, he paid \$7,750 to Hughes Law Firm.³ At trial in this matter, on April 14, 2016, respondent provided proof of payment of the \$7,750 sanctions to Hughes Law Firm.

Conclusions

Count 1 - (§ 6068, subd. (k) [Failure to Comply with Probation Conditions])

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation.

There is no clear and convincing evidence that respondent failed to timely file the quarterly report due October 10, 2013. He mailed the report on October 8 and the Office of Probation received it on October 10. Because it was defective, he filed an amended report on October 28. Therefore, this is not a willful violation by respondent of his obligations imposed by the Supreme Court order.

However, there is clear and convincing evidence that respondent failed to comply with the other terms of his probation, in willful violation of section 6068, subdivision (k), as ordered by the Supreme Court in S210427: (1) by failing to timely file the April 10, 2014, October 10,

³ The trustee sold its right to the sanction award to Hughes Law Firm.

2014, January 10, 2015, and July 10, 2015 quarterly reports; (2) by failing to timely file a final report by August 9, 2015; and (3) by failing to pay and provide proof of payment of \$7,750 in sanctions by August 9, 2015.

Aggravation⁴

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

Respondent has a record of two prior disciplinary actions.

On July 10, 2013, the Supreme Court filed an order in case No. S210427 (State Bar Court case No. 11-O-16029), the underlying matter, suspending respondent from the practice of law for two years, stayed, with two years' probation, including a 30-day actual suspension. Respondent was found culpable of failing to maintain a just action, attempting to mislead the bankruptcy court with material omissions, and violating the court's sanction orders. In aggravation, his misconduct harmed the public and the administration of justice. In mitigation, respondent had no prior record of discipline in more than 17 years of practice, he was remorseful, and he was careless rather than malfeasant.

On March 26, 2014, the Supreme Court filed an order in case No. S216034 (State Bar Court case No. 12-O-15500), suspending respondent from the practice of law for two years, stayed, with two years' probation. Respondent was found culpable of commingling personal funds with his client trust account (depositing personal funds of \$700 in his client trust account and using that account to pay personal expenses totaling \$530). The aggravating force of respondent's prior record of discipline was reduced because he committed the misconduct in his second disciplinary matter before the misconduct in the first disciplinary matter. In mitigation, there was no client harm.

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to timely file four quarterly reports, failing to timely file the final report, and failing to timely pay court sanctions.

Mitigation

There is no clear and convincing evidence in mitigation. (Std. 1.6.)

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 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or, (3) the prior disciplinary matters

coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

Standard 2.10 provides that an actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and respondent's unwillingness or inability to comply with disciplinary orders.

The State Bar urges that respondent be actually suspended for six months with a two-year stayed suspension and a two-year probation.

Respondent argues that this case should be dismissed because the tardiness of his reports by a few days should be held to be de minimis, the final report was filed at a later date due to his disagreement with the Office of Probation about its due date, and he was financially unable to timely pay the sanctions. The court rejects his arguments.

It is well settled that substantial compliance with a probation requirement is not a defense to violation of the requirement. (See *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536-537.) Thus, respondent's multiple tardiness, in filing four quarterly reports late by several days, in filing the final report late by four months, and in paying sanctions seven months late, is a clear violation of his probation requirements.

Yet, the extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Here, although respondent was late in complying with his probation conditions, he eventually did comply. As soon as he finally accepted that his probation period had ended, he filed the final report. And as soon as he was financially able to pay the sanctions, he did so.

The court finds some guidance in *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 and in *Conroy v. State Bar* (1990) 51 Cal.3d 799.⁵

In *Meyer*, the attorney, who had two prior records of discipline, was actually suspended for 90 days for failing to comply with the conditions attached to his private reproof in his second prior record of discipline. He had failed to file quarterly reports and complete continuing legal education courses. In his first discipline, he had been privately reproofed for failing to communicate with a client, improperly withdrawing from employment, and failing to return a client file in one client matter. In his second discipline, he was privately reproofed for not complying with the conditions attached to his first reproof (not filing or timely filing his probation report and untimely taking and completing the State Bar's Ethics School). In that second proceeding, his failures to comply had been concluded by the court to be mitigated by his extreme emotional difficulties and depression at that time. In his third disciplinary matter, because the case was decided after Meyer's default had been entered for failure to appear at trial, no mitigating factors were found. Instead, there was much evidence in aggravation, including the two prior records, multiple acts of wrongdoing, indifference towards rectification (Meyer had still not complied with the subject conditions at the time of trial), and Meyer's failure to appear for the trial. Nevertheless, the Review Department found that the nature and extent of his two prior records of discipline were not sufficiently severe to justify disbarment and that a 90 days' actual suspension was warranted, in light of the discipline in *Conroy v. State Bar* (1990) 51 Cal.3d 799.

In *Conroy*, the attorney, who defaulted at the disciplinary hearing, was actually suspended for 60 days for violating his probation condition attached to a private reproof. He

⁵ Under the current law, the attorneys in *In the Matter of Meyer* and *Conroy* would have been disbarred – not for their probation violations, but for their default. (Rules Proc. of State Bar, rule 5.82.)

belatedly complied with his condition three months after the deadline and took and passed the Professional Responsibility Examination.

Here, as in *Meyer*, this is respondent's third disciplinary matter. The gravamen of his misconduct is not his unwillingness to comply with the disciplinary order but his lack of timeliness in doing so. Like *Conroy*, respondent has belatedly complied with the conditions.

In light of the discussion and discipline in *Meyer* (90 days' actual suspension) and *Conroy* (60 days' actual suspension), respondent's sanction must be greater than the previously imposed sanction of 30 days' actual suspension in his first prior record. Therefore, based on respondent's misconduct, the case law, standard 2.10, the aggravating evidence of two prior records of discipline, and his efforts to comply with his probation conditions, the court concludes that a departure from the standard 1.8(b) is justified and that, placing respondent on an actual suspension for 90 days would be appropriate to protect the public and to preserve public confidence in the profession.

Recommendations

It is recommended that respondent Raymond Roy Miller, State Bar Number 144398, 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 probation⁶ for a period of one year subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 90 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 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

⁶ 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.)

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.

4. 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.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. 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 Exam

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: June 29, 2016



PAT McELROY
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 San Francisco, on June 29, 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 San Francisco, California, addressed as follows:

RAYMOND R. MILLER
LAW OFFICE OF RAYMOND R. MILLER
PO BOX 2177
CASTRO VALLEY, CA 94546

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 29, 2016.


George Hue
Case Administrator
State Bar Court