

# PUBLIC MATTER

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

**FILED**  
JUN 29 2017 *P.B.*  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of ) Case No.: 16-O-10953-CV  
KEVIN ALAN BOVE, ) DECISION  
A Member of the State Bar, No. 149675. )  
\_\_\_\_\_ )



### Introduction<sup>1</sup>

In this contested disciplinary matter, respondent Kevin Alan Bove is charged with two counts of misconduct involving a matter before the United States Department of Justice Board of Immigration Appeals. The alleged misconduct includes seeking to mislead a judge and committing moral turpitude by making a misrepresentation to a judge.

Having considered the facts and the law, the court finds respondent culpable on one of the two counts, and recommends, among other things, that he be suspended from the practice of law for 30 days.

### 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) against respondent on December 13, 2016. Respondent filed his response to the NDC on December 29, 2016.

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<sup>1</sup> 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.

On March 28, 2017, the parties filed a Stipulation as to Facts and Admission of Documents. On April 5, 2017, a one-day trial was held. On April 21, 2017, the matter was submitted.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 5, 1990, and has been a member of the State Bar of California at all times since that date.

#### **Findings of Fact**

Facing removal from the United States in 1998, Jose Leonardo Ramirez-Perez (Ramirez-Perez) hired respondent to represent him in then-pending immigration proceedings. The final administrative decision was issued in 2002, and Ramirez-Perez was ultimately removed from the United States and deported to Mexico. Eleven years later, in the final months of 2013, Ramirez-Perez hired attorney Anna Hysell (Hysell) to file a motion to reopen his immigration case based upon an allegation of respondent's ineffective assistance of counsel. Such a motion is commonly known and referred to by immigration law practitioners as a "Lozada motion."

On or about November 19, 2013, Hysell requested Ramirez-Perez's file from respondent. The following year, on June 30, 2014, Hysell sent respondent an email stating that she intended to file a Lozada motion. Attached to Hysell's June 30, 2014 email was a copy of a "bar complaint letter." The bar complaint letter was dated March 15, 2014. Notwithstanding the March 15, 2014 date on the bar complaint letter, no such letter had been submitted to the State Bar as of the June 30, 2014 email from Hysell to respondent.

In Hysell's June 30, 2014 email to respondent, Hysell stated, "Please feel free to forward to me any response." Hysell did not advise respondent that she intended to file the Lozada motion the next day.

On July 1, 2014, Hysell filed the Lozada motion with the Board of Immigration Appeals (BIA). Hysell's Lozada motion represented that the bar complaint letter dated March 15, 2014 against respondent had been submitted to the State Bar, when, in fact, it had not. Hysell did not inform respondent that she had filed the Lozada motion and did not provide him with a copy of the filed motion.

On July 3, 2014, unaware that the Lozada motion had been filed, respondent responded to Hysell's email with his own email stating that he denied "[her] allegation of ineffective assistance of counsel." Respondent further stated that he would "respond (if necessary) after [Ramirez-Perez's] complaint has been filed with the appropriate disciplinary authorities."

On July 7, 2014, the bar complaint letter dated March 15, 2014, was mailed to the State Bar.

That same day, respondent filed with the BIA a document he entitled "Response of Attorney Kevin Bove to Allegations of Ineffective Assistance of Counsel" (Response). On the cover page of the Response, respondent placed Hysell's name and contact information in the designated area for the filing party identification. Respondent did not identify himself or his firm name on the envelope containing the Response.<sup>2</sup> Respondent did not inform the BIA that he, and not Hysell, was the one filing the Response. Nor did respondent serve Hysell or Ramirez-Perez with a copy of the Response.

Respondent filed his Response without telling Hysell. He believed Hysell was acting in bad faith and did not trust her to file the Response on his behalf. Because the rules preclude the filing of pleadings in the case by anyone other than the parties, and not wanting to risk the BIA clerk's office rejection of his Response, respondent deemed it necessary to hide the fact that it

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<sup>2</sup> The return address on the envelope listed respondent's official membership records address. But instead of including respondent's name in the return address, it stated only "Attorney At Law."

was he, and not Hysell, who was the filing party. Respondent admits that he put Attorney Hysell's name and contact information on the cover page of his Response because he knew that if he put his own name and contact information on the cover page, the Response would have been rejected.<sup>3</sup>

On October 10, 2014, the BIA denied Hysell's motion to reopen. On January 27, 2015, the BIA denied Hysell's motion for reconsideration. In November 2015, Hysell first became aware of respondent's July 7, 2014 Response when she reviewed the certified administrative record in preparation for litigation of Ramirez-Perez's case in the Ninth Circuit Court of Appeals. As a result of respondent's failure to serve his Response on Hysell or Ramirez-Perez, they were denied the opportunity to file a reply to the Response before the BIA ruled on the motion to reopen.

### **Conclusions**

#### ***Count One – § 6068, subd. (d) [Duty to Employ Means Consistent with Truth]***

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. Section 6068, subdivision (d) "requires an attorney to refrain from misleading and deceptive acts without qualification. [Citation.] It does not admit

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<sup>3</sup> At trial, the parties presented conflicting testimony as to whether the motion to reopen that Hysell filed in Ramirez-Perez's immigration case complied with the requirements for a motion to reopen under *Lozada*. Whether the motion that Hysell filed complied with *Lozada* is irrelevant in this disciplinary proceeding because the court finds that respondent honestly believed that it did not. Moreover, the court finds that Respondent honestly believed that Hysell was untrustworthy and dishonest. While respondent's honest beliefs might "explain" his misconduct, they do not justify or ameliorate it. (Cf. *Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090 ["we have repeatedly rejected petitioner's assertion that his conduct is less culpable because he was motivated primarily by a desire to protect a client"]; *Codiga v. State Bar* (1978) 20 Cal.3d 788, 793 ["deceit by an attorney is reprehensible misconduct whether or not harm results and without regard to any motive or personal gain"]; *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438 ["Zealous representation of clients does not include practicing deceit on the client's behalf."].)

of any exceptions.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315.) It is beyond dispute that “deceit by an attorney is reprehensible misconduct whether or not harm results and without regard to any motive or personal gain. (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 793.)

By intentionally and deceptively filing his Response under Hysell’s name, respondent sought to mislead the judge by an artifice or false statement of fact, in willful violation of section 6068, subdivision (d).

***Count Two – § 6106 [Moral Turpitude – Misrepresentation]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Since the same misconduct alleged in Count One is also alleged to be the basis for the moral turpitude violation in Count Two, the court declines to find culpability for both counts. The appropriate resolution of this case does not depend on how many rules of professional conduct or statutes proscribe the same conduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) The present misconduct is more aptly charged as an attempt to mislead a judge, in violation of section 6068, subdivision (d), as set forth above in Count One. Accordingly, Count Two is dismissed with prejudice.

**Aggravation<sup>4</sup>**

**Significant Harm (Std. 1.5(j).)**

The OCTC argues that respondent’s misconduct resulted in significant harm to Hysell, Ramirez-Perez, and to the administration of justice. As the OCTC concedes, beyond Hysell’s opinion testimony, there is no evidence to prove that respondent’s actions impacted the BIA’s decision to deny the relief sought by Ramirez-Perez. In fact, there is evidence suggesting that Ramirez-Perez’s case was unsuccessful for reasons unrelated to the filing of the Response by

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

respondent. Specifically, the BIA concluded that the motion to reopen failed to demonstrate due diligence, failed to establish exceptional circumstances, and was untimely.

Accordingly, there is insufficient evidence to support a finding that respondent's misconduct resulted in significant harm.

### **Lack of Insight**

Respondent demonstrated little insight or understanding of his own misconduct. He refuses to accept any responsibility for the aforementioned misconduct. Instead, he casts blame on the administrative procedures and Hysell. Respondent's lack of insight and understanding regarding the present misconduct warrants some consideration in aggravation.

### **Mitigation**

#### **No Prior Record of Discipline (Std. 1.6(a).)**

Respondent was admitted to practice law in California in December 1990, and has no prior record of discipline. His over 23 years of discipline-free conduct prior to the present misconduct warrant highly significant consideration in mitigation. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; 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). Second, the court looks to decisional law. (*Snyder v.*

*State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if 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. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction ranging from actual suspension to disbarment. Standard 2.12(a) provides that disbarment or actual suspension is the presumed sanction for a violation of section 6068, subdivision (d).

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The OCTC requested, among other things, that respondent be actually suspended for 60 days. Respondent, on the other hand, argued that this case should be dismissed. Turning to the applicable case law, the court finds some guidance in *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, and *Bach v. State Bar* (1987) 43 Cal.3d 848.

In *Jeffers*, discipline consisting of a one year stayed suspension, two years’ probation, and no actual suspension was imposed for violations of sections 6106; 6068, subdivisions (b) and (d); and rule 5-200. In this single client matter, the attorney failed to appear as ordered at a mandatory settlement conference (MSC); failed to fully disclose information to the other party

after representing to the MSC judge that he would do so; and intentionally misled the MSC judge regarding the status of a defendant. The attorney had no prior discipline in over 30 years of practice, and offered evidence of good character through his many civic and professional pro bono activities.

In *Bach*, the attorney intentionally misled a judge regarding whether he was ordered to produce his client at a mediation hearing. In aggravation, the attorney had a prior public reproof and demonstrated behavior that threatens the public and undermines its confidence in the legal profession. There were no mitigating factors. The attorney was suspended for one year, execution of the suspension was stayed, and he was placed on probation for three years, with a 60-day actual suspension.

In the present case, respondent willfully misled the BIA. Considering his lack of a prior record of discipline, the present matter more closely equates to *Jeffers*. This court notes, however, that both *Jeffers* and *Bach* were written well before the implementation of standard 2.12, which provides for a minimum discipline of actual suspension. Respondent's highly significant mitigation for his over 23 years of discipline-free conduct is somewhat offset by his lack of insight into the present misconduct.

Accordingly, this court concludes that there is insufficient justification for departure from the presumed sanction outlined in standard 2.12(a). That being said, discipline on the low-end of that prescribed in standard 2.12(a) is warranted. In view of respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, this court finds that, among other things, a 30-day period of suspension is appropriate, and provides adequate protection for the courts, the public, and the legal profession.



### **Recommendations**

It is recommended that respondent **Kevin Alan Bove**, State Bar Number 149675, 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<sup>5</sup> for a period of two years 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. 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.
5. 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.
6. 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.

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<sup>5</sup> 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, 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.)

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 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.

### **Costs**

It is recommended that costs be awarded to the State Bar of California 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, 2017

  
CYNTHIA VALENZUELA  
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 June 29, 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:

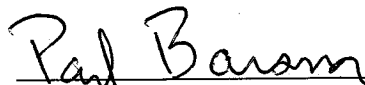
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KEVIN A. BOVE  
ATTORNEY AT LAW  
117 N BROADWAY  
ESCONDIDO, CA 92025**

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

**ABRAHIM M. BAGHERI, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 29, 2017.

  
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Paul Barona  
Case Administrator  
State Bar Court