

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No. **08-O-10265-RAH**  
)  
**PATRICK J. MANSHARDT,** )  
) **DECISION**  
)  
**Member No. 178085,** )  
)  
)  
A Member of the State Bar. )

**I. Introduction**

In this default disciplinary matter, respondent **Patrick J. Manshardt** is charged with three counts of professional misconduct in one client matter, including (1) failing to withdraw from employment when he was not entitled to practice law; (2) failing to pay court sanctions (totaling \$1,500); and (3) failing to cooperate with the State Bar.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law in California for two years, that execution of suspension be stayed, and that he be suspended for a minimum of 120 days and until the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, rule 205).

## **II. Pertinent Procedural History**

On November 24, 2008, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on March 4, 2009, and respondent was enrolled as an inactive member on March 7, 2008. The matter was submitted for decision on March 30, 2008, following the filing of State Bar's brief on culpability and discipline.

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

All factual allegations of the NDCs are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 1, 1995, and has since been a member of the State Bar of California.

### **A. The Ryan Matter**

On or before June 20, 2006, Norm Ryan employed respondent to file approximately six lawsuits against individuals who had made contributions to "Californians for Gray Davis Campaign."

On or about June 20, 2006, respondent filed in the San Mateo County Superior Court six separate "Complaint[s] for Damages and Injunctive Relief Pursuant to Government Code §91004 (Political Reform Act)" in the matters titled:

1. *Norm Ryan on Behalf of the People of the State of California v. Ken Goldman*, case No. CIV455724;
2. *Norm Ryan on Behalf of the People of the State of California v. Scott Cook*, case No. CIV455725;

3. *Norm Ryan on Behalf of the People of the State of California v. Stuart G. Moldaw*, case No. CIV455726;
4. *Norm Ryan on Behalf of the People of the State of California v. Alexander Edelstein*, case No. CIV455727;
5. *Norm Ryan on Behalf of the People of the State of California v. Durard, McKenna & Borg*, case No. CIV455728; and
6. *Norm Ryan on Behalf of the People of the State of California v. James A. Kohlberg*, case No. CIV455729.

These six cases are collectively referred to as the Ryan cases.

On or about June 20, 2006, the court filed and served on respondent six "Notice[s] of Case Management Conference" that were scheduled for October 27, 2006, in each of the Ryan cases. The notices ordered respondent to, inter alia:

- Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint; and
- File and serve a completed case management conference (CMC) statement at least 15 days before the case management conference. Failure to do so may result in monetary sanctions.

Respondent received the notices. He did not file the CMC statements for the CMCs scheduled in the Ryan cases for October 27, 2006.

On or about July 15, 2006, the Office of Certification sent respondent a "MCLE Non- Compliance Final Notice" (Final Notice) to his then State Bar official membership records address. Respondent received the Final Notice.

The Final Notice stated that as of August 14, 2006, respondent was not in compliance with the MCLE Rules and Regulations for the compliance period ending January 31, 2006; and if he failed to comply with the MCLE requirement by September 15, 2006, he would be "placed on Not Eligible to Practice status."

On or about September 25, 2006, the Office of Certification mailed a "MCLE Non-Compliance [¶] Notice of Enrollment on Not Eligible Status" to respondent ("Notice of Not Eligible Status"). Respondent received the Notice of Not Eligible Status.

The Notice of Not Eligible Status stated that respondent had been enrolled on not eligible status effective September 18, 2006, that he was not eligible to practice law as of that date and that he would not be reinstated to practice until he had been reinstated to active status.

On or about October 27, 2006, respondent did not appear for the CMCs in the Ryan cases. The court issued six orders imposing sanctions of \$250 per case (6 x \$250 = \$1,500) against respondent for failure to appear and file CMC statements. The court also issued six orders to show cause ("OSC") re dismissal for failure to prosecute in a timely manner scheduled for November 28, 2006, for the Ryan cases.

On or about October 27, 2006, the court served on respondent six "Clerk's Notice[s] - Case Management Conference[s]" scheduled for November 28, 2006, in each of the Ryan cases. The notices ordered, inter alia, that all attorneys of record and self-represented parties were required to attend this conference and that all parties must complete a case management questionnaire and file it with the clerk's office in Redwood City 15 days before the conference.

Respondent received the notices.

On or about October 31, 2006, the court served on respondent six "Notice[s] and Order[s] for Sanctions" in each of the Ryan cases, which ordered respondent to pay \$250 per case to the court no later than November 27, 2006. Respondent received the orders.

On or about October 31, 2006, the court served on respondent six "Order[s] to Show Cause re: Dismissal" in each of the Ryan cases, ordering respondent to appear and show cause on November 28, 2006, why this matter should not be dismissed for lack of prosecution. Again, respondent received the orders.

Respondent did not pay the sanctions of \$250 per case (totaling \$1,500), seek to set aside the sanctions, or otherwise communicate with the court regarding the imposition of the sanctions. He did file the CMC statements on behalf of Ryan for the November 28, 2006 CMCs.<sup>1</sup>

On or about November 28, 2006, respondent did not appear on behalf of Ryan for the OSCs in the Ryan cases. The court dismissed each of the cases.

On or about December 29, 2006, the court served on respondent six invoices that requested payment of \$250 per case for sanctions and attached copies of the six "Notice[s] and Order[s] for Sanctions." Respondent received the invoices but did not pay the sanctions.

On or about March 14, 2007, respondent provided proof of compliance with the MCLE Rules and Regulations to the State Bar's Office of Certification, and was reinstated to the practice of law.

On or about January 9, 2008, the State Bar opened an investigation, pursuant to a complaint filed by the Superior Court (the "Superior Court matter").<sup>2</sup>

On or about February 20, 2008, the State Bar Investigator wrote to respondent regarding the Superior Court matter and requested that he provide a written response to the allegations of misconduct. Respondent received the letter.

On or about March 5, 2008, respondent faxed a letter to the State Bar, stating that he had allegedly been discharged by Ryan prior to the imposition of the sanctions in the Ryan cases and

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<sup>1</sup> The State Bar alleged in the NDC: "Respondent did cause CMC Statements to be filed ... in **any** of the six Ryan cases." (Emphasis added.) Based on the meaning of the factual allegation as a whole, the court has determined that the State Bar erroneously omitted the "not" and meant to allege that "Respondent did **not** cause CMC Statements to be filed." Otherwise, if he had filed the statements, he would be charged with unauthorized practice of law. Instead, he was charged with failure to withdraw from employment when he should have done so.

<sup>2</sup> The NDC incorrectly alleged that in count 3 the investigation was for case No. 07-O-10914. The case number should have been 08-O-10265, the instant matter. The "07" case was respondent's prior record of discipline.

that he was “aware of no rule of professional responsibility that is violated for failing to pay sanctions imposed by a court for failing to appear at a case management conference.”

On or about May 7, 2008, the State Bar wrote to respondent regarding the Superior Court matter, requesting that respondent provide a copy of the executed Substitution of Attorney filed with the court which released him from all Ryan matters.

Respondent received the letter but he did not provide a written or oral response to the State Bar.

***Count 1: Mandatory Withdrawal From Employment (Rules Prof. Conduct, Rule 3-700(B)(2))***

Rule 3-700(B)(2) provides that a member representing a client must withdraw from employment if he knows or should know that continued employment will result in violation of the Rules of Professional Conduct or of the State Bar Act.

Here, respondent was not entitled to practice law due to his noncompliance with the MCLE requirements. A suspended attorney’s duty is to stop practicing law until he is returned to good standing. (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.) Respondent knew or should have known that he was not entitled to represent Ryan in the six matters, that continued employment would result in ethical violations and that he was required to withdraw. Yet, he failed to withdraw from the representation of Ryan in the Ryan cases after receiving the Notices of Not Eligible Status and the court's orders.

Accordingly, respondent willfully failed to withdraw from employment when he knew or should have known that continued employment would result in violation of the Rules of Professional Conduct or of the State Bar Act, in willful violation of rule 3-700(B)(2).

***Count 2: Failure to Obey Court Orders (Bus. & Prof. Code, § 6103)***<sup>3</sup>

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

Respondent received the six court orders imposing sanctions (totaling \$1,500) for failing to appear at the CMCs and file CMC statements. He was ordered to pay by November 27, 2006. Although respondent was ineligible to practice law on the day he was ordered to appear in court on behalf of Ryan, this did not relieve him of his obligation to appear as ordered. At a minimum, he should have been physically present in court and provided accurate information about his eligibility to practice, which would not have constituted the practice of law. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.)

Instead, he neither explained to the court about his ineligibility to practice law nor pay the court ordered sanctions. Respondent stated in his faxed letter to the State Bar that he had been discharged by the client before the sanctions were ordered. But absent respondent's participation in this proceeding, there is no evidence that he had indeed been discharged by the client. He did not provide a copy of a substitution of attorney, as requested by the State Bar in May 2008.

Since respondent knew about the sanctions orders and much more than a year had elapsed from the time of the order during which he failed to comply, respondent's failure to comply with the sanctions orders in more than one year from the time of the orders constituted a violation of section 6103. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868.)

***Count 3: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

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<sup>3</sup> References to sections are to the provisions of the Business and Professions Code.

By failing to provide a response to State Bar's May 7, 2008 letter regarding the allegations in the Superior Court matter or otherwise cooperate in the investigation of the Superior Court matter, respondent willfully violated section 6068, subdivision (i).

#### **IV. Mitigating and Aggravating Circumstances**

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> stds. 1.2(e) and (b).)

##### **A. Mitigation**

No mitigation was submitted into evidence. (Std. 1.2(e).)

##### **B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On February 28, 2009, the Supreme Court suspended respondent for a minimum of 60 days, with a two-year stayed suspension and a two-year probation for unauthorized practice of law in one client matter which occurred in February and March 2007, and which respondent stipulated to. (Supreme Court order No. S168787.) However, because the current misconduct took place at the same time period as the prior misconduct, the weight given to aggravation is diminished. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

Respondent committed multiple acts of wrongdoing by failing to withdraw from employment when he was not entitled to practice law and by failing to pay court ordered sanctions. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly his client. (Std. 1.2(b)(iv).) He failed to take all steps necessary to avoid foreseeable prejudice to the client, short of practicing law, to

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<sup>4</sup> Future references to standard(s) or std. are to this source.



protect his client's interests, including withdrawing and thus giving his client an opportunity to hire a substituting attorney. Instead, respondent ignored the matter and allowed the court to dismiss the actions due to lack of prosecution.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He had not yet paid the sanctions.

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## **V. 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. 1.3.)

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 standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(b), 2.3, 2.4, 2.6, and 2.10 apply in this matter.

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 Silverton* (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 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges a minimum of 120 days of actual suspension to run consecutively to the period of actual suspension previously imposed in Supreme Court order No. S168787, citing several cases in support of its recommended level of discipline, including *King v. State Bar* (1990) 52 Cal.3d 307 and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

However, these cases are distinguishable in that those attorneys were actually suspended for 90 days for their failure to perform services competently, not for unauthorized practice of law, failure to withdraw or failure to obey court orders.

The court finds these cases to be of some guidance.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, an attorney violated a court order by failing to pay a judicial sanctions order of \$1,000 and failed to report the sanctions order to the State Bar. The Review Department disciplined the attorney with a private reproof with conditions in light of his lack of prior discipline and narrow violations.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney had engaged in the unauthorized practice of law by giving legal advice and preparing legal papers for a client during the period of time he was suspended for nonpayment of membership fees. In addition, he willfully deceived that client and another, avoided their efforts to communicate with him and eventually abandoned their cases. He also had a prior record of discipline for abandonment of clients' interests in four separate matters and lacked insight into the impropriety of his actions. As a result, he was actually suspended for six months with a two years' stayed suspension and two years' probation.

Here, although respondent's misconduct was not as serious as that of *Farnham*, respondent failed to participate in this disciplinary proceeding. His failure to cooperate with the State Bar "reflects a disdain and contempt for the orderly process and rule of law on the part of an attorney who has sworn to uphold the law." (*Baca v. State Bar* (1990) 52 Cal.3d 294, 305.) Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

Moreover, the court considers "the totality of the findings in the two cases [prior record and current matter] to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." (*In the Matter of Sklar, supra*, 2 Cal.State Bar Ct. Rptr. 602, 619.) The misconduct found in both cases involved two client matters and occurred during his suspension from September 2006 to March 2007.

Accordingly, in recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Balancing all relevant factors – respondent's misconduct, the standards, the case law, the aggravating evidence and his prior discipline of 60 days of actual suspension, the court

concludes that placing respondent on a suspension for a minimum of 120 days would be appropriate to protect the public and to preserve public confidence in the profession.<sup>5</sup>

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court hereby recommends that respondent **Patrick J. Manshardt** be suspended from the practice of law in California for two years, that said suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 120 days. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent remains suspended for two years or more as a result of not satisfying the preceding conditions, he will remain suspended until he has shown proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Standard 1.4(c)(ii) and Rules Proc. of State Bar, rule 205.)

### **B. Multistate Professional Responsibility Exam**

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in S168787.

### **C. California Rules of Court, Rule 9.20**

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within

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<sup>5</sup> Respondent has been suspended for more than 60 days beginning February 28, 2009, and is still on inactive status due to his default in this matter. Thus, there is no need to recommend this discipline to run consecutively to the discipline previously imposed.

30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>6</sup>

**D. Costs**

It is further 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 \_\_\_\_\_, 2009

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**RICHARD A. HONN**  
Judge of the State Bar Court

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<sup>6</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)