

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

In the Matter of	)	Case No.: <b>09-H-19303-DFM</b>
	)	
<b>WALTER CORTRIGHT APPLING,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 53078,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

In this reproof violation proceeding, Respondent **Walter Cortright Appling** (Respondent) is charged with failing to comply with conditions attached to a private reproof previously imposed on him by the State Bar Court in June 2009 (case number 08-O-13363). Respondent was served with the Notice of Disciplinary Charges (NDC) in the instant proceeding, attended the initial status conference, and then failed to file a response to the NDC or otherwise participate in this disciplinary proceeding.

Because the matter is being handled on a default basis, the court finds Respondent culpable as charged. In view of Respondent’s misconduct, the aggravating circumstances, and the lack of any mitigating circumstances, the court recommends, among other things, that Respondent be suspended from the practice of law in California for two years; that execution of that period of suspension be stayed; and that Respondent be actually suspended from the practice of law for a minimum of 90 days and remain suspended until (1) the State Bar Court grants a

motion to terminate his suspension pursuant to former rule 205 of the Rules of Procedure of the State Bar of California<sup>1</sup> and (2) he pays the restitution previously ordered as a condition of reproof.

### **PERTINENT PROCEDURAL HISTORY**

This proceeding was initiated by the filing of the NDC on July 26, 2010. (Rules Proc. of State Bar, rule 60.)<sup>2</sup> A copy of the NDC was properly served on Respondent on July 26, 2010.

An in-person status conference was held on September 13, 2010. This conference was attended by Respondent. During that conference, the court noted that Respondent had failed to file a response to the NDC and orally ordered him to do so. On that same date, the court signed a written Order Re: Trial Date, Pretrial Conference, Trial Preparation Requirements, which, *inter alia*, ordered that “Respondent must file a response to the Notice of Disciplinary Charges on or before September 27, 2010. . . .” On September 16, 2010, Respondent was properly served with a copy of that order.

Respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure) or by this court’s order. As a

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<sup>1</sup> Effective, January 1, 2011, the Rules of Procedure of the State Bar of California were substantially amended. Those new rules must be applied to all pending and future matters filed in this court unless one of three specified exceptions applies. These exceptions include (1) proceedings in which the offering of evidence at trial had commenced before January 1, 2011; and (2) proceedings where an injustice would result if the former rules of procedure were not applied. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.)

This default proceeding was initiated by the filing of a Notice of Disciplinary Charges pursuant to former rule 101 of Rules of Procedure, and Respondent’s default was entered under former rule 200. All evidence submitted to the court was received prior to the effective date of the new rules. All notices provided to Respondent, setting forth the consequences that would ensue if Respondent defaulted, referenced the consequences set forth under the former rules.

As a result, this court finds that the above stated exceptions apply and that an injustice would result if this case were to proceed under the new rules. Accordingly, the court orders that the former Rules of Procedure, which were in effect at the time Respondent was served with the Notice of Disciplinary Charges and the Order of Entry of Default in this matter, will apply to this proceeding.

<sup>2</sup>All references to the Rules of Procedure are to former rules of procedure which were in effect prior to January 1, 2011, unless otherwise stated.

result, on September 29, 2010, the State Bar filed and properly served a motion for the entry of Respondent's default.

On October 15, 2010, after Respondent failed to file a written response to the motion, this court filed an Order of Entry of Default (Rule 200 – Failure to File Timely Response), Order Enrolling Inactive and Further Orders. A copy of said order was properly served on Respondent on October 15, 2010, by certified mail, return receipt requested, addressed to Respondent at his official membership records address.

On November 3, 2010, the State Bar filed a brief on the issues of culpability and discipline and waived its right to request a hearing in this matter. The matter was submitted for decision on November 4, 2010.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

All factual allegations of the NDC 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).)

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 14, 1972, and has been a member at all times since that date.

#### **Case No. 09-O-19303**

On April 28, 2009, Respondent executed and entered a Stipulation Re Facts, Conclusions of Law and Disposition (Stipulation) in State Bar case no. 08-O-13363.

On May 19, 2009, this court filed an order approving the Stipulation and imposing upon Respondent a private reproof with conditions (the Order). On May 19, 2009, the Order was properly served by first-class mail upon Respondent and was subsequently received by him. The Order became effective on June 9, 2009.

Pursuant to the Order, Respondent was required to comply with certain terms and conditions attached to the private reproof for a period of one year. These conditions included the following:

1. Contact the Office of Probation within 30 days of the effective date of the reproof and schedule a meeting with the assigned probation deputy to discuss the terms and conditions of Respondent's reproof;
2. Submit written quarterly reports to the Office of Probation on or before October 10, 2009, January 10, 2010, and April 10, 2010; and submit a final report on or before June 9, 2010;
3. Pay restitution in the amount of \$1,000 plus interest of 10% per annum from February 28, 2008, to First Fire Systems, Inc., and submit proof of such payment to the Office of Probation within 10 months from the effective date of the reproof; and
4. Provide proof of attendance at a session of the Ethics School and passage of the test given at the end of that session to the Office of Probation within one year of the effective date of the reproof.

Respondent, however, did not satisfy any of the following conditions: He did not contact the Office of Probation and schedule a meeting with his assigned probation deputy; he did not submit the quarterly reports due on or before October 10, 2009, January 10, 2010, and April 10, 2010; he did not submit the final report due by June 9, 2010; he did not pay restitution in the amount of \$1,000 to First Fire Systems, Inc., plus interest of 10% per annum from February 28, 2008, and submit proof of such payment to the Office of Probation by April 9, 2010; and he did not submit proof of attendance at a session of the Ethics School and passage of the test given at the end of that session to the Office of Probation by June 9, 2010.

**Count 1 - Rule 1-110, Rules of Professional Conduct [Failure to Comply with Conditions of Reapproval]**

Rule 1-110 of the Rules of Professional Conduct of the State Bar of California requires an attorney to comply with the conditions attached to a reapproval. Respondent's failure to perform the conditions of reapproval, itemized above, constituted willful violations by him of his obligations under rule 1-110.

**LEVEL OF DISCIPLINE**

**Aggravating Circumstances**

The State Bar bears the burden of establishing aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>3</sup> The court finds the following aggravating factors:

**Prior Record of Discipline**

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Effective June 9, 2009, Respondent was privately reprovved with conditions for one year in State Bar Court case no. 08-O-13363 for failure to perform services competently in willful violation of rule 3-110(A) of the Rules of Professional Conduct and failure to respond promptly to requests for status reports in willful violation of Business and Professions Code section 6068, subdivision (m).

**Multiple Acts of Misconduct**

Respondent engaged in multiple acts of misconduct by violating numerous conditions of his reapproval. (Standard 1.2(b)(ii).)

**Lack of Cooperation and Participation in Disciplinary Proceeding**

Respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is an aggravating circumstance. (Standard 1.2(b)(vi).)

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<sup>3</sup> All further references to standard(s) are to this source.

## Mitigating Circumstances

As Respondent's default was entered in this matter, no evidence in mitigation was presented and none is apparent from the record. (Std. 1.2(e).)

## **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors, including aggravation and mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

In looking to the standards, the court finds that standard 2.9 provides that an attorney's willful violation of rule 1-110 must result in suspension. Further, standard 1.6(b) adds that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions. Finally, standard 1.7(a) provides that if an attorney, who has been found culpable of professional misconduct in a disciplinary proceeding, has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense minimal in severity.

Respondent has been found culpable of failing to comply with almost all of the conditions attached to his earlier private reproof. There are additional aggravating circumstances present and no mitigating circumstances. Of particular concern to this court are Respondent's failure to participate in this disciplinary proceeding after the initial status conference and his failure to pay the restitution obligation that was previously made a condition of reproof. Such indifference by Respondent to complying with his professional obligations and to remedying the harm that his past misconduct has caused provides a strong indication that substantially greater disciplinary steps must now be taken by this court to protect the public and the profession from any future misconduct by Respondent.

Accordingly, the court recommends, *inter alia*, that Respondent be suspended from the practice of law in California for two years; that execution of that period of suspension be stayed; and that Respondent be actually suspended from the practice of law for a minimum of 90 days and until (1) the State Bar Court grants a motion to terminate his suspension under former rule 205 and (2) Respondent pays the restitution previously ordered by this court as a condition of reproof in case no. 08-O-13363.

## **RECOMMENDATION**

### **Discipline**

The court recommends that Respondent **Walter Cortright Appling** be suspended from the practice of law in California for two years and that execution of that period of suspension be stayed, subject to the following conditions:

1. That Respondent be actually suspended from the practice of law for a minimum of 90 days and that he remain suspended until the following requirements are satisfied:

a. The State Bar Court grants a motion to terminate his suspension pursuant to former rule 205 of the Rules of Procedure of the State Bar;

b. Respondent makes restitution to First Fire Systems, Inc., in the amount of \$1,000, plus 10% interest per annum from February 28, 2008 (or to the Client Security Fund to the extent of any payment from the fund to First Fire Systems, Inc, plus interest and costs, in accordance with section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation; and

c. If Respondent remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. It is also recommended that Respondent be ordered to comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.

### **Multistate Professional Responsibility Exam**

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order

imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order.<sup>4</sup>

**Costs**

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

Dated: January \_\_\_\_\_, 2011

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>4</sup> Respondent must file a rule 9.20(c) affidavit even if he has no clients on the date of the Supreme Court order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d); see also *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)