

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **12-O-16030-RAP**
) (12-O-17421; 13-O-12744)
GEORGE LEE BAUGH III,)
) **DECISION AND ORDER OF**
Member No. 97407,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

Introduction¹

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charges respondent George Lee Baugh III (respondent) with a total of thirteen counts of misconduct stemming from three separate matters. The charges include failing to inform a client of significant developments (two counts); failing to render an appropriate accounting (two counts); failing to perform legal services with competence (two counts); failing to refund unearned fees (two counts); failing to obey a court order (three counts); and failing to report judicial sanctions to the State Bar (two counts).

The court finds respondent culpable on all thirteen counts and, after considering the facts and the law, recommends, among other things, that respondent be disbarred.

Significant Procedural History

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.

The State Bar filed the Notice of Disciplinary Charges (NDC) against respondent on December 2, 2013. Respondent filed a response to the NDC on January 8, 2014.

A two-day trial began on April 1, 2014. The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Respondent was represented by attorney David A. Clare. The court took this matter under submission for decision on April 2, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on May 29, 1981, and has been a member of the State Bar of California since that date.

Case Number 12-O-17421 – The Rodriguez Matter

Facts

Respondent was retained on June 22, 2011, by Ernestine Rodriguez (Rodriguez) to assist in converting a pending Chapter 13 bankruptcy petition to a Chapter 11 proceeding. The parties' retainer agreement² also anticipated litigation challenging the enforceability of mortgages on Rodriguez's properties. The exact terms of this additional engagement were not determined in the retainer agreement, but Rodriguez understood that respondent was to file a lawsuit against her bank for fraud.

Rodriguez spoke with respondent's employees Nicole Herring (Nicole) and Michael Fisher (Michael) when she retained respondent. Nicole suggested that Rodriguez convert the bankruptcy proceeding from a Chapter 13 petition to a Chapter 11 petition. Nicole told Rodriguez that respondent would handle the bankruptcy conversion.

On June 23, 2011, Rodriguez paid \$5,000 in fees to respondent. On July 11, 2011, Rodriguez paid respondent an additional \$2,500 by cashier's check.

² Rodriguez signed two separate retainer agreements with respondent. The first retainer was signed, but undated by Rodriguez prior to June 22, 2012. It appears that respondent signed the first retainer agreement.

On July 1, 2011, Rodriguez appeared at the scheduled court hearing in bankruptcy court. Rodriguez had been told by Nicole that respondent would also appear for the hearing. When respondent did not appear at the hearing, Rodriguez called Nicole who told Rodriguez that another attorney would appear for respondent at the hearing. Neither respondent nor any other attorney appeared at the hearing.³ Consequently, Rodriguez was unrepresented and unsure what was happening in court that day. An order dismissing Rodriguez's bankruptcy was issued by the bankruptcy court. As a result of this dismissal order, the pending adversary proceeding within the Chapter 13 proceeding against Rodriguez's lenders and others was closed.

After the hearing, Rodriguez called Nicole and asked why no one had appeared for the hearing. Rodriguez was told that she would have to speak with respondent. Rodriguez finally was able to speak with respondent and was told that Nicole and Michael no longer worked for respondent.

On July 11, 2011, Rodriguez met with respondent. Respondent never explained why he did not appear at the July 1, 2011 hearing, but told Rodriguez to forget about the bankruptcy case and to go forward with the litigation challenging the enforceability of mortgages on Rodriguez's properties (the mortgage litigation matter). Respondent explained that the bankruptcy and mortgage litigation matters both involved the same banks. The \$5,000 attorney fee for the bankruptcy case was to be used as attorney fees for the mortgage litigation matter.

Respondent filed a verified complaint for quiet title/mortgage foreclosure on behalf of Rodriguez in the Los Angeles Superior Court on July 22, 2011. The complaint named the identical parties as defendants as were listed in the bankruptcy adversary proceeding.

³ Respondent testified that he was not aware of the hearing or that Nicole had assured Rodriguez that another attorney would appear at the hearing.

On November 23, 2011, respondent's filing of the verified complaint was cancelled because respondent's filing fee check bounced and he failed to timely remedy the situation. Although respondent knew the case had been dismissed, he decided not to tell Rodriguez until he had the money to fix the problem.

In December 2011, Rodriguez's son went to the courthouse to check on the status of the civil complaint and discovered that it had been dismissed due to a bounced check. Rodriguez contacted respondent. On December 20, 2011, respondent acknowledged the initial status conference set for that day did not go forward due to the dismissal of the action. Respondent advised Rodriguez that he would have to re-file the matter.

On December 28, 2011, Rodriguez deposited \$420 into respondent's account to pay for the filing fees. That same day, respondent filed the same verified complaint in the Los Angeles Superior Court. Respondent sent a copy of the refiled complaint to Rodriguez. Rodriguez did not receive anything else from respondent and believed respondent was working on the case.

On March 5, 2012, the court issued an order to show cause (OSC) regarding respondent's failure to file the appropriate proof of service with the summons and complaint. This hearing was continued from April 2 to May 8, 2012, to coincide with the case management conference. Respondent failed to inform Rodriguez that the court had issued the OSC or that the hearing had been rescheduled.

On April 25, 2012, Rodriguez paid respondent an additional \$300 in attorney's fees.

In order to avoid a hearing on the defendant's demurrer set for April 30, 2012, respondent filed a first amended complaint on April 27, 2012. Respondent failed to inform Rodriguez that a demurrer had been filed by a defendant in her case. Respondent also did not inform Rodriguez that he filed a first amended complaint in her case.

On May 8, 2012, respondent failed to appear at the case management conference/OSC hearing. Due to the filing of the first amended complaint, the court discharged the OSC, continued the case management conference to July 24, 2012, and invited the defendants to renew their demurrer and set an additional OSC re sanctions directed to respondent for failing to attend the case management conference. The court threatened dismissal should respondent fail to appear.

On May 31, 2012, the defendants filed a demurrer to the first amended complaint. Respondent again failed to inform Rodriguez that the defendants had filed a demurrer.

Respondent did not file an opposition to the demurrer. He also failed to respond to the OSC and failed to appear for the July 24, 2012 case management conference. Consequently, the court ordered the demurrer sustained without leave to amend, and dismissed the action with prejudice. The court set aside the OSC re sanctions.

Judgment of the dismissal of Rodriguez's action was filed August 7, 2012. Notice of entry of judgment of dismissal was filed August 9, 2012. Respondent was properly served with a copy of the dismissal order, but failed to inform Rodriguez that her case had been dismissed with prejudice.

By email dated December 4, 2012, Rodriguez advised respondent that she wanted her entire file returned together with an accounting. More than four months later, on March 20, 2013, respondent's counsel provided an accounting reflecting respondent's services and billings performed in Rodriguez's matter.⁴ Rodriguez's entire file was not returned until March 27, 2013.

⁴ The accounting showed respondent owing Rodriguez \$800. Respondent has not refunded any of the fees in this matter.

The court is not aware of any services of value that respondent provided to Rodriguez in her bankruptcy and mortgage litigation matters. Due to her frustration with respondent's performance, Rodriguez retained new counsel in 2013 at additional cost and expense. Rodriguez's successor counsel, however, was unable to seek relief from the August 7, 2012 dismissal order since the time to seek relief had long expired.

Rodriguez did not file another bankruptcy petition or civil lawsuit. Instead, she submitted a loan modification request to her lender and, as of the date of the hearing in this matter, was still residing in her home.

Respondent admitted during his testimony that he was embarrassed by the filing fee check bouncing and recognized that he should have told Rodriguez what happened. Respondent further acknowledged that he could not think of anything to do in opposition to the second demurrer and should have explained this to Rodriguez. Finally, respondent also conceded that he should have responded to Rodriguez's communication.

Conclusions

Count One – Rule 3-110(A) [Failure to Perform Competently]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The court finds that there is clear and convincing evidence that respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by paying Rodriguez's filing fee with an NSF check; failing to appear at the July 1, 2011 bankruptcy court hearing; failing to respond to the OSC regarding respondent's failure to appear at the May 8, 2012 case management conference/OSC hearing; failing to oppose the demurrer to the first amended complaint; and failing to appear at the case management conference on July 24, 2012.

Count Two – § 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. The court finds that there is clear and convincing evidence that respondent failed to inform a client of significant developments, in willful violation of section 6068, subdivision (m), by failing to advise Rodriguez that the first verified complaint for quiet title/mortgage foreclosure was canceled due to respondent's failure to pay the filing fee, that he neither opposed nor appeared at the July 24, 2012 case management conference, and that her matter was dismissed with prejudice.

Count Three – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. The court finds that there is clear and convincing evidence that respondent failed to render an appropriate accounting of client funds to a client, in willful violation of rule 4-100(B)(3), by failing to provide Rodriguez with an accounting for over four months.

Count Four – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By providing no services of value to Rodriguez and not returning any portion of the \$8,220 in unearned fees, respondent failed to return unearned fees, in willful violation of rule 3-700(D)(2).

Case No. 12-O-16030 – The Duran Matter

Facts

Respondent was retained on or about April 20, 2011, by Fred and Sonia Duran and their company, West Coast Machining, Inc. (the Durans), to defend them in a lawsuit brought by Huntington National Bank (Huntington National), filed in the Los Angeles Superior Court on March 25, 2011.⁵ The Durans had financed the purchase of a piece of heavy duty machinery (machinery) through Huntington National in 2007 and found themselves approximately four months delinquent with their payments. The cost of the machinery was \$560,000 and the monthly payments were \$12,981.

The Durans wanted respondent to pinpoint the amount of the deficiency and then work something out with Huntington National. On April 20, 2011, the Durans paid respondent \$5,000 in advanced fees for these services.

The complaint sought various forms of relief including repossession of the equipment and enforcement of personal guarantees. The complaint also sought damages in the amount of \$563,134. On May 24, 2011, respondent answered the complaint on behalf of the Durans.

Prior to respondent's retention, Huntington National sought a prospective purchaser of the machinery pursuant to the terms of the lease and had agreed to sell the machinery to a third party. The Durans found a prospective purchaser and passed this information to Huntington National. Huntington National's attorney communicated the offer status to both respondent and Fred Duran and negotiated an inspection date for the purchaser to view the machinery.

Respondent worked with Huntington National's attorney, Pamela Cox (Cox), to allow Huntington National to inspect the machinery. A purchase price of \$400,000 was subsequently negotiated, entitling the Durans to a credit in that same amount. As such, the primary remaining

⁵ Respondent had previously represented the Durans in a similar lawsuit and they were satisfied with the way he handled that matter. Respondent had also represented the Durans in an employee injury matter.

issue between the Durans and Huntington National concerned the amount of the deficiency balance owed after the repossession and sale of the machinery.

After the sale of the machinery, Huntington National commenced formal discovery. On June 7, 2011, Huntington National propounded requests for production, form interrogatories, and requests for admissions.

Respondent sent the requested formal discovery to the Durans for their responses. The Durans and Carolina Beas (Beas), CFO of West Coast Machinery, prepared responses and forwarded the responses to respondent. Respondent, however, failed to serve responses to Huntington National's formal discovery on behalf of the Durans.⁶ Consequently, Huntington National filed motions to compel as to each discovery device on August 9, 2011.

Respondent did not oppose any of the requested relief. As a result, a court order was issued on September 9, 2011, deeming the requested admissions admitted and compelling responses to the production request and interrogatories. These responses were due no later than September 23, 2011. The court further ordered sanctions against the Durans in a total amount of \$645 and against respondent (personally) in an amount of \$215, all payable to Cox no later than October 10, 2011. Notice of the court's order was served on respondent and filed September 13, 2011. After receiving the court's order, respondent did not contact Cox or otherwise attempt to negotiate the deficiency judgment.

Respondent did not subsequently comply with the September 9, 2011 order to pay sanctions to Huntington National.

⁶ Respondent testified that the Durans' discovery responses were incomplete and that after reviewing their responses to the request for admissions, he determined there was no real defense to Huntington National's claim. The court, however, does not find these assertions to be credible. There is no indication that respondent made any efforts to obtain "complete" discovery responses or communicate to the Durans his purported belief that there was no real defense to Huntington National's claim. The court further notes that respondent did not seek an extension of time to respond to discovery.

On October 17, 2011, Huntington National filed a motion for terminating sanctions and other available relief based upon the Duran's failure to timely respond to the court's September 9, 2011 discovery order. By court order filed November 16, 2011, the requested relief, except for Huntington National's request for monetary sanctions, was granted. The Durans' answer was stricken and they were precluded from introducing any evidence in defense of this matter at trial.

On November 8, 2011, Huntington National filed a motion for summary judgment based in significant part upon the earlier secured deemed admissions ordered by the court. The motion was originally set to be heard January 25, 2012, but Huntington National took the matter off calendar upon their successful request for entry of default and court judgment entered December 1, 2011.

Respondent failed to inform the Durans of any of the developments occurring between August 2011 and February 2012. On February 1, 2012, judgment by default was filed awarding Huntington National a judgment in the amount of \$200,594.97. The Durans learned about the judgment shortly thereafter and emailed respondent to discuss it.

On May 10, 2012, Sonia Duran sent an email to respondent concerning an issue with Huntington National's accounting and the need to address this issue with the court. On May 12, 2012, respondent emailed the Durans stating that he would have to bring a motion to reopen the case and asked for an estimate of how much credit they should receive against the debt.

On May 11, 2012, Huntington National secured a writ of execution and commenced executing upon the Durans' personal bank accounts in satisfaction of the judgment. On June 1, 2012, Huntington National executed its writ on the Durans' personal bank account located at the Bank of America. The court heard testimony that between \$8,000 to \$10,000 and possibly up to

\$18,000⁷ was taken from the Durans' personal bank account. Huntington National was not able to execute its writ on West Coast Machinery's bank account due an incorrect bank address. Huntington National's seizure of the Durans' personal account affected payroll for the West Coast Machinery employees. It also seriously affected the Durans' personal and business finances, and they lost credibility with their lenders.

Fred Duran called respondent and informed him that Huntington National seized the funds in his personal account. Respondent stated he would fix it.

On June 5, 2012, the Durans emailed respondent terminating his employment, demanding an accounting and a full refund.⁸ On that same day, the Durans retained replacement counsel, Carlos Juelle (Juelle), who successfully negotiated with Cox to set aside the default and enter into a stipulated judgment in the amount of \$64,779.54, the terms of which the Durans have satisfactorily complied with to date. Juelle's negotiations with Huntington National were easily completed within weeks of his being retained.⁹

Respondent did not provide the Durans with an accounting.

Conclusions

Count Five - Rule 3-110(A) [Failure to Perform Competently]

The court finds that there is clear and convincing evidence that respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation

⁷ There is no exhibit in evidence in this matter correctly detailing the amount seized from the Durans' personal bank account on June 1, 2012.

⁸ The evidence demonstrates that respondent provided nominal services, but no services of value to the Durans.

⁹ Respondent acknowledged at trial, he should have called Cox and tried to resolve the matter, just as Juelle did. Respondent also admitted that he did not adequately communicate with his clients about events in litigation in their case.

of rule 3-110(A), by failing to perform the services for which he was retained, failing to respond to discovery requests, and failing to oppose or respond to motions to compel discovery.¹⁰

¹⁰ The State Bar also alleged that respondent's failure to communicate various significant developments constituted a violation of rule 3-110(A). The court finds, however, that this conduct is more appropriately addressed in Count Nine.

Count Six – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By providing no services of value to the Durans and not returning any portion of the \$5,000 in unearned fees, respondent failed to return unearned fees, in willful violation of rule 3-700(D)(2).

Count Seven – Rule 4-100(B)(3) [Failure to Account]

The court finds that there is clear and convincing evidence that respondent failed to render an appropriate accounting of client funds to a client, in willful violation of rule 4-100(B)(3), by failing to provide the Durans with an accounting.

Count Eight – § 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the September 9, 2011 order to pay sanctions to Huntington National.

Count Nine – § 6068, subd. (m) [Failure to Communicate]

The court finds that there is clear and convincing evidence that respondent failed to inform a client of a significant development, in willful violation of section 6068, subdivision (m), by failing to inform the Durans that he did not respond to discovery demands resulting in motions to compel which respondent then did not oppose, and that the Durans' default had been entered and judgment was entered against them.

Case No. 13-O-12744 – The *Runyon v. Mortgage Electronic Matter*

Facts

Respondent represented plaintiffs in a quiet title action filed in the Riverside Superior Court, styled *Runyon v. Mortgage Electronic, et al.*

On June 8, 2011, the court issued an OSC why sanctions of \$150 should not be ordered for respondent's failure to timely file a proof of service as to the second amended complaint. The OSC was set for hearing on July 27, 2011, concurrent with a scheduled case management conference.

On July 27, 2011, respondent failed to appear at the OSC hearing/case management conference. The court issued a second and third OSC why sanctions of \$300 should not be ordered for respondent's failure to appear at the case management conference and another \$300 for his failure to submit the subject proof of service. Both OSCs were set for a hearing on August 26, 2011, and respondent was required to submit a declaration unless the OSCs were vacated. The court additionally sanctioned respondent on July 27, 2011, \$150 payable to the clerk of the court before August 29, 2011, for his failure to respond to the initial OSC issued June 8, 2011. Respondent satisfied this sanction on August 5, 2011.

Respondent failed to appear on August 26, 2011, and submitted no declaration pursuant to the court's order of July 27, 2011. Accordingly, the court sanctioned respondent \$300 for his failure to appear at the case management conference payable to the clerk before September 16, 2011. The court also sanctioned respondent \$300 for his failure to submit the requested proof of service.

The court then issued additional OSCs re dismissal as to unserved parties, for sanctions of \$1,000 directed to respondent for his continuing failure to submit the required proof of service, and for sanctions of \$1,000 for his failure to appear at the case management conference.

The court set the hearing on these orders for September 9, 2011. Again, respondent was also ordered to submit a declaration prior to the upcoming hearing.

On September 7, 2011, respondent satisfied one sanction in the amount of \$300. Respondent, however, failed to appear on September 9, 2011, and did not submit a declaration pursuant to the court's order of August 26, 2011. As a result, the court dismissed the entire action, and sanctioned respondent \$1,000 for his failure to file the required proof of service, and \$1,000 for his failure to appear at the case management conference. Both of these sanctions were ordered to be paid on or before October 7, 2011.

Neither of the \$1,000 sanctions has been paid in compliance with the court order. Respondent had knowledge of these sanctions, but failed to report them to the State Bar.

Conclusions

Count Ten – § 6103 [Failure to Obey a Court Order]

The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with OSCs directed to respondent that issued June 8, July 27, and August 26, 2011, in the *Runyon v. Mortgage Electronic* matter. As such, respondent disobeyed or violated court orders requiring him to do or to forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103.

Count Eleven – § 6103 [Failure to Obey a Court Order]

The court finds that there is clear and convincing evidence that respondent failed to comply with a September 9, 2011 court sanction order directed to respondent in the *Runyon v. Mortgage Electronic* matter. As such, respondent disobeyed or violated a court order requiring him to do or to forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103.

Count Twelve – § 6068, subd. (o)(3) [Failure to Report Sanctions]

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery. The court finds that there is clear and convincing evidence that respondent willfully violated section 6068, subdivision (o)(3), by failing to report to the State Bar in writing within 30 days of the time respondent had knowledge of the imposition of non-discovery judicial sanctions in the total amount of \$2,000, imposed upon respondent in the *Runyon v. Mortgage Electronic* matter on September 9, 2011.

Case No. 13-O-12744 – The *Betzsold v. Munro* Matter¹¹

Facts

Respondent represented plaintiffs in a personal injury matter filed November 29, 2010, in the Orange County Superior Court, styled *Betzsold v. Munro*. Respondent failed to appear at the initial case management conference set for April 28, 2011, resulting in the issuance of an OSC re dismissal set for May 24, 2011. The OSC was thereafter continued to June 23, 2011, and again continued to June 30, 2011.

Respondent failed to appear on June 30, 2011, and the court ordered the action dismissed without prejudice. Respondent resurrected the matter with a successful motion premised upon California Code of Civil Procedure section 473(b), which was granted on January 27, 2012.

In conjunction with granting the requested relief, the court sanctioned respondent \$1,000, payable to the State Bar Client Security Fund no later than March 15, 2012.

¹¹ Although this matter has the same case number as the *Runyon v. Mortgage Electric* matter, the court addresses it separately for the purpose of clarity.

On March 15, 2012, respondent complied with the court's order and paid the sanctions. Respondent, however, paid the clerk of the court and not the Client Security Fund. Respondent also failed to report the sanction to the State Bar.

Conclusions

Count Thirteen – § 6068, subd. (o)(3) [Failure to Report Sanctions]

The court finds that there is clear and convincing evidence that respondent failed to report judicial sanctions to the State Bar, in violation of section 6068, subdivision (o)(3), by failing to report to the State Bar, in writing within 30 days of the time respondent had knowledge of the imposition of a non-discovery judicial sanction in the amount of \$1,000 imposed upon him in the *Betzsold v. Munro* matter.

Aggravation¹²

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.5.)

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

The respondent has a record of two prior disciplinary actions.

On October 8, 1992, the Supreme Court issued order nos. S017569/S017571 (State Bar Court case nos. 89-O-11387, et al.) suspending respondent from the practice of law for a period of five years, execution of this suspension was stayed with probation for a period of five years on the condition that respondent be actually suspended for 15 months. In this case, respondent stipulated to misconduct in ten separate matters, including misappropriating client funds (two counts), failing to promptly pay out client funds (three counts), failing to communicate (five counts), failing to perform legal services with competence (six counts), improperly withdrawing

¹² All references to standards (Stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

from representation (four counts), failing to refund unearned fees (four counts), failing to account, and receiving three separate criminal convictions for driving under the influence of alcohol. In mitigation, during the time of his misconduct respondent was responsible for the care and additional expense of his injured mother, his first marriage was dissolving, and he was suffering from the effects of alcoholism. In aggravation, respondent's misconduct caused significant harm to his clients, evidenced multiple acts of wrongdoing and demonstrated a pattern of misconduct, and involved trust funds and the refusal or inability to account to the client for his improper conduct towards the funds. In addition, respondent demonstrated indifference and violated criminal court orders not to drive with a measurable amount of alcohol in his system.

On March 4, 1997, the Supreme Court issued order nos. S017569/S017571 (State Bar Court case no. 96-PM-01393) revoking respondent's probation, lifting the previous stay of suspension, and ordering respondent suspended from the practice of law for five years, that execution of suspension be stayed, and he placed on probation for two years on the condition that he comply with the conditions of probation. In this matter, respondent stipulated to violating the terms of his State Bar probation. In mitigation, respondent's misconduct did not result in harm to a client, respondent was candid and cooperative with the State Bar, and respondent made a substantial effort to comply with the terms of his State Bar probation. In aggravation, respondent had one prior record of discipline.

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent is culpable of multiple acts of misconduct in three separate matters.

Harm to Client/Public/Administration of Justice (Std. 1.5(f))

Respondent caused significant harm to his clients. Despite respondent's failure to provide any services of value to Rodriguez and the Durans, he has not issued any refunds and continues to hold his clients' unearned fees. Also, in the Rodriguez and the Duran matters, the

clients had to retain new counsel at an additional expense to perform the work respondent was hired and paid to perform. Further, in the Rodriguez matter, the client's cause of action was dismissed and could not be restored. And in the Duran matter, the clients' bank account was unexpectedly seized, resulting in harm to the Durans' personal and business finances. Consequently, respondent's significant harm to his clients warrants consideration in aggravation.

Failure to Make Restitution (Std. 1.5(i).)

Despite failing to perform in the Rodriguez and Duran matters, respondent did not refund any unearned fees and has not subsequently provided any restitution to the clients. Respondent's failure to make restitution warrants some consideration in aggravation.

Mitigation

Respondent has proven, by clear and convincing evidence, the following factors in mitigation. (Std. 1.6.)

Financial Difficulties

Respondent testified that at the time of his misconduct in this matter he was suffering from severe financial conditions that caused him to close one of his offices and be evicted from his only other office for failing to pay rent. Respondent testified that he put an inheritance of \$140,000 into his law practice and lost all the funds due to the economic downturn.

Respondent's financial difficulties warrant some consideration in mitigation, but the weight of this mitigation is diminished because respondent only presented his own testimony on this subject.

Cooperation with the State Bar (Std. 1.6(e).)

Respondent entered into an extensive stipulation as to facts, conclusions of law in Counts Ten through Thirteen, and the admission of documents at trial. This stipulation saved court resources and warrants significant consideration in 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 aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2(b); 2.5(b); 2.8(a); and 2.15.) The most severe sanction is found at standard 2.8(a) which provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current suspension: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters

coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities.¹³

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State 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 State Bar recommended that respondent be disbarred from the practice of law. Respondent, on the other hand, argued for discipline with a period of actual suspension not exceeding one year.

The Supreme Court and Review Department have not historically applied standard 1.8(b) in a rigid fashion.¹⁴ Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts are more inclined to find disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

While an extended period of time has passed since respondent's prior two disciplines, the court is concerned by the extent of the present misconduct and the scope and egregious nature of

¹³ Standard 1.8(b) does not distinguish between remote and recent priors.

¹⁴ Standard 1.8(b) was previously identified as standard 1.7(b). Standard 1.8(b) is more limited than former standard 1.7(b), but is applicable here.

respondent's first misconduct. And although the present misconduct does not involve misappropriation, many similarities exist between the present misconduct and respondent's first misconduct, most notably respondent's failings to communicate, refund unearned fees, and perform legal services with competence. Further, respondent's present failure to obey multiple court orders and his prior discipline for not complying with probationary conditions causes the court to question the wisdom of placing respondent on another term of disciplinary probation. Moreover, the lack of compelling mitigating circumstances coupled with the significant factors in aggravation give the court little justification to recommend a level of discipline short of disbarment.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent **George Lee Baugh III**, State Bar Number 97407, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Ernestine Rodriguez in the amount of \$8,220, plus 10% interest per annum from August 7, 2012; and
- (2) Fred and Sonia Duran in the amount of \$5,000, plus 10% interest per annum from June 5, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May 8, 2014

RICHARD A. PLATEL
Judge of the State Bar Court