

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **13-O-15020-LMA**
) **13-O-16492 (Cons.)**
ANDREW FRANCIS LINEHAN,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 194350,) **ENROLLMENT**
)
A Member of the State Bar.)

Introduction¹

In this contested original proceeding, respondent Andrew Francis Linehan, was found culpable of misconduct including noncompliance with probation conditions and a court order and moral turpitude. After considering the misconduct, aggravating factors including three prior disciplinary records and the absence of mitigating circumstances, the court recommends that respondent be disbarred, among other things.

Significant Procedural History

On March 21 and May 13, 2014, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed notices of disciplinary charges (NDC) to which respondent filed responses on April 10 and June 9, 2014. On August 11, 2014, the court granted the State Bar's unopposed motion to amend the NDCs, which were filed on that date.

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.

Trial was conducted on August 26 – 28, 2014. After the State Bar rested, respondent was allowed six weeks to prepare his case. Trial resumed on October 7, 2014. The matter was taken under submission on October 15, 2014.

The State Bar was represented by Charles T. Calix. Respondent represented himself.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on February 5, 1995 and has been a member of the State Bar of California at all times since that date.

Credibility Findings

In general, the court did not find respondent to be a credible witness, particularly when he averred that he did not receive documents from the State Bar or court orders in the mail or when he testified that his client Bradley told him that Bradley had paid sanctions to the Mattimoes, as more fully explained below.

Case No. 13-O-15020-The Probation Violations Matter

Facts

On December 20, 2010, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case nos. 09-O-10369 (09-O-14216; 10-O-06989), recommending discipline consisting of 18 months' stayed suspension and two years' probation, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date at his then-State Bar membership records address by first-class mail, postage prepaid.

On April 27, 2011, the California Supreme Court filed an order, S190452, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, among other things. The Supreme Court order became

effective on May 27, 2011, 30 days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.²

In S190652, respondent was ordered to and did not comply with the following conditions attached his disciplinary probation:

(1) Contact the Office of Probation to schedule a meeting within 30 days of the effective date of the discipline, that is, by June 26, 2011. He did not do so until May 31, 2012;

(2) 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 conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. Also, a final report containing the same information is due no earlier than 20 days before the last day of probation and no later than the last day of probation.

Respondent did not submit six quarterly reports by the tenth of July and October 2011; January and April 10, 2012 and January and April 2013; and the final report by May 27, 2013.

On May 25, 2012, respondent attempted to submit the four quarterly reports due in July and October 2011 and January and April 2012, but the Office of Probation did not accept them because they did not unequivocally state compliance with the State Bar Act, Rules of

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

Professional Conduct and all conditions of probation. These reports were filed untimely on May 31, 2012.

The quarterly report due by January 10, 2013 was received on that date but was not filed by the Office of Probation because it failed to unequivocally state compliance with the State Bar Act, Rules of Professional Conduct and all conditions of probation.

The quarterly report due by April 10, 2013 and the final report were filed late on May 28, 2013.

(3) Within one year of the effective date of the discipline, that is, by May 27, 2012, provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School and Client Trust Accounting School (CTA School), and passage of the tests given at each session. Respondent attended Ethics School and CTA School on August 23 and 24, 2012, respectively, and provided proof of same in August 2012.

Moreover, respondent made misrepresentations under penalty of perjury to the Office of Probation in his quarterly reports regarding his compliance with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter and whether there were any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding.

On December 20, 2012, the State Bar filed and served on respondent an NDC in State Bar Court case nos. 12-O-14553, 12-O-15590, and 12-O-15954 to which respondent filed a response on January 14, 2013. On April 19, 2013, he executed a stipulation regarding the case that, among other things, admitted the acts of misconduct in the NDC. On July 16, 2013, the State Bar Court Hearing Department issued its decision, including a discipline recommendation. Respondent did not disclose any of the misconduct that he committed or the disciplinary

proceeding pending against him in any of his quarterly reports to the Office of Probation, which were submitted under penalty of perjury.

The Office of Probation wrote to respondent on June 13 and August 25, 2011, to remind him about his responsibilities regarding the probation conditions ordered.

Conclusions

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

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By not complying with the aforementioned probation conditions, respondent willfully violated section 6068, subdivision (k).

Count Two- (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

By not disclosing his misconduct or the pendency of a disciplinary matter against him in certain quarterly reports as described above, respondent willfully violated section 6106.

Case No. 13-O-16492-The Mattimoe Matter

Facts

On January 14, 2009, respondent filed a lawsuit against Robert and Amanda Mattimoe on behalf of his client J.A. Bradley Construction in the San Diego superior court.

On March 19, 2010, the Mattimoes' attorney filed a motion for terminating sanctions because Bradley did not appear for a deposition. The hearing on the motion was set for April 16, 2010; however, respondent did not oppose the motion or appear for the hearing. Accordingly, the court granted the motion, dismissed the complaint, struck J.A. Bradley's answer to the cross-complaint, entered J.A. Bradley's default, and ordered J.A. Bradley to pay monetary sanctions of \$4,600 to the Mattimoes' attorney within 15 days.

On July 30, 2010, the court entered judgment for the Mattimoes for, among other things, economic damages of \$29,037.01, sanctions of \$6,240, and costs of \$5,348.

On October 6, 2010, respondent filed a motion to set aside the defaults and default judgments in which he admitted that the default and default judgments were taken against his client because he “effectively abandoned his client,” and stated that “[he] would pay whatever sanctions the Court imposed.”

Respondent was present at the hearing on his motion on November 19, 2010, and heard the court order him to pay sanctions of \$3,775 to the Mattimoes’ attorney within 15 days. After the hearing, the court issued a minute order memorializing the oral order.

Respondent did not pay the sanctions, and has taken the position that he had no duty to do so because he never received a written order from the court.³

Conclusions

Count One- (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in relevant 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. Although he knew of the court’s sanctions order, respondent did not comply with it and so willfully violated section 6103.

Count Two- (§ 6068, subd. (b) [Attorney’s Duty to Maintain Respect Due to Courts and Judicial Officers])

Section 6068, subdivision (b), provides that attorneys have a duty to maintain respect due to the courts of justice and judicial officers. This count is dismissed with prejudice as it is based on the same facts as the violation of section 6103. Accordingly, it is duplicative.

³ Respondent’ testimony in this regard is not credible. In any event, whether or not he received a written order, he was present during the proceedings and heard the court order him to pay the sanctions. He had actual knowledge of the court’s order.

Aggravation⁴

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

Respondent's three prior disciplinary records are a significant aggravating factor. (Std. 1.5(a).)

In Supreme Court case no. S213617 (State Bar Court case nos. 12-O-14553(12-O-15590; 12-O-15954)), filed December 9, 2013, respondent was found culpable of violating section 6103 for nonpayment of court-ordered sanctions in two client matters and section 6068, subdivision (i) for not cooperating with the State Bar in three disciplinary investigations, as well as engaging in the unauthorized practice of law in one matter. In aggravation, the court considered his prior disciplinary record and multiple acts of misconduct. Candor and cooperation were mitigating factors.

In Supreme Court case no. S190652 (State Bar Court case nos. 09-O-10369; 10-O-06989), filed April 27, 2011, discipline was imposed consisting of 18 months' stayed suspension and two years' probation for misconduct occurring between December 2007 and July 2010 in two client matters and a client trust accounting matter which violated rules 3-110(A) and 4-100(A) (one count each) and 3-700(D)(1) (two counts). The parties stipulated to no aggravating factors and to no prior discipline and candor and cooperation as mitigating factors. In Supreme Court case no. S198815 (State Bar Court case nos. 10-O-10931(11-O-12235), filed May 17, 2012, discipline was imposed consisting of two years' stayed suspension and two years' probation for misconduct occurring in September 2010 in one client matter for nonpayment of sanctions (one count) in violation of section 6103. The parties stipulated to one prior disciplinary record in aggravation and to candor and cooperation in mitigation.

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

Multiple Acts (Std. 1.5(b).)

Respondent has been found culpable of multiple acts of misconduct in the present proceeding.

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

Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more much difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent has not demonstrated insight or remorse about his misconduct, although he says that he is remorseful. He continued to claim that, although he heard the court order him to pay the sanctions, he did not have written notice and, therefore, did not have to pay them. He also blamed the Office of Probation for his noncompliance with probation conditions.

Mitigation

Good Character (Std. 1. 6(f).)

Respondent offered the testimony of one attorney who testified that respondent was competent and should be allowed to practice. This does not constitute testimony of his extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of his misconduct as required by standard 1.6(f). Accordingly, the court does not afford this factor mitigating weight.

No other mitigation was established by clear and convincing evidence.

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.)

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.8(a) prescribes the most severe of the standards applicable to respondent's misconduct. It suggests disbarment or actual suspension for disobedience or violation of a court order related to an attorney's practice of law, the attorney's oath, or the duties required of an attorney under section 6068, subdivisions (a)-(h).⁵

However, the instant proceeding is respondent's fourth disciplinary matter. Accordingly, standard 1.8(b) also, applies. In relevant part, it calls for disbarment if an attorney has two or more prior disciplinary records unless the most compelling mitigating circumstances clearly predominate and actual suspension was ordered in any one of the prior disciplinary matters or the prior disciplinary matters coupled with the current record demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. (Std. 1.8(b)(1) and (3).)

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; std. 1.1.) Although the standards are not mandatory, they may be deviated from when there is a

⁵ Standard 2.8(b) indicates that a reproof is appropriate for violations of sections 6068, subdivision (i), (j), (l) or (o).

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; std. 1.1.)

This case involved violations of several probation conditions as well as noncompliance with a court order and making a misrepresentation by omission in several quarterly reports. There were serious aggravating factors, including three prior disciplinary records, lack of insight and remorse, harm and multiple acts of misconduct. There were no mitigating factors.

The State Bar recommends disbarment. Respondent seeks three years' stayed suspension and probation.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.)

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s noncompliance with the requirement to timely and honestly file quarterly and client funds reports and proof of Ethics School and Client Trust Account School attendance warrants significant discipline. In addition, his noncompliance with a court order, the significant aggravating factors and the absence of mitigation all compel this court to find that respondent is not a candidate for probation or for discipline less than disbarment.

The prior disciplinary order “provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so.” (*Arden v. State Bar*

(1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and absence of mitigating circumstances, the court recommends disbarment. He is not a good candidate for further probation during which time he would have the opportunity of demonstrating that he is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. Under these circumstances, the court recommends disbarment. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Recommendations

It is recommended that respondent ANDREW FRANCIS LINEHAN, State Bar Number 194350, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

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.

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

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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: January _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court