

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 07-O-11521-LMA; 08-O-13770
)	(09-O-17930); 10-O-00325
ROY CHESTER DICKSON,)	(Cons.)
)	
Member No. 105583,)	DECISION AND ORDER
)	OF INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
_____)	

Introduction¹

This is respondent Roy Chester Dickson’s fifth disciplinary proceeding. In this contested case, respondent is charged with multiple acts of misconduct in four client matters. The charged misconduct includes: (1) failing to perform services competently; (2) committing acts of moral turpitude; (3) misleading the court; (4) failing to communicate with client; (5) maintaining an unjust action; (6) improperly withdrawing from employment; and (7) failing to return unearned fees.

This court finds, by clear and convincing evidence, that respondent is culpable of most of the alleged misconduct. Based upon the serious nature and extent of culpability and the applicable aggravating circumstances, particularly his four prior impositions of discipline, the

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.

court recommends that respondent be disbarred from the practice of law and ordered to make restitution.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed three Notices of Disciplinary Charges (NDCs) against respondent on June 24, August 12, and November 7, 2011, respectively. Respondent filed responses to the NDCs.

A six-day hearing was held on November 21, 2011, and June 18-22, 2012. Senior Trial Counsel Agustin Hernandez represented the State Bar. Respondent represented himself. On July 9, 2012, following the filing of closing briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar of California at all times since that date.

The court finds respondent's testimony to be not entirely credible. In his attempt to minimize and justify his misconduct, respondent conjured up defenses that are without merit. In the Robinson matter, respondent altered the original date of a docket sheet and made an original date of "03/17/00" to appear as "7/00." But he claimed that it was FedEx Kinko's way of binding together a document that made it look like a document was altered.

In the Biggers matter, respondent failed to respond to various discovery requests. He claimed that opposing counsel agreed that he need not respond to those discovery requests.

In the Ysiano matter, the client employed him to represent her in a marital dissolution matter. He claimed that she hired him just to do a document review of her case.

Therefore, the court finds that respondent lacked candor and credibility in these proceedings.

Case No. 07-O-11521 – Robinson Matter

Facts

In August 1999, Dr. Harrell E. Robinson ("Robinson") employed respondent to represent him in two matters:

- (1) As a defendant in a RICO² action entitled *Connecticut General Life Insurance Co. et al. v. New Images of Beverly Hills et al.*,³ United States District Court, Central District of California, case No. 2:99-CV-99-08197-TJH-VBK, filed on August 12, 1999 (the "RICO action"); and
- (2) As a debtor in a chapter 11 bankruptcy matter in *In re Robinson*, United States Bankruptcy Court, case No. 8:99-bk-18290-ES, filed on August 17, 1999 (the "bankruptcy case").⁴

Five days after the insurance companies sued him, Robinson filed for bankruptcy. The RICO action was automatically stayed when his bankruptcy petition was filed. (11 U.S.C. § 362(a).)

The Bankruptcy Case

Respondent filed a bankruptcy petition to save Robinson's home from foreclosure while Robinson negotiated a new loan with Merrill Lynch. In fact, respondent had no bona fide intent to reorganize under chapter 11.

² Racketeer Influenced and Corrupt Organizations Act

³ The plaintiffs, medical insurance companies, brought a RICO action against Robinson and other surgeons and surgery clinics, alleging that the defendants operated a fraudulent billing scheme.

⁴ The bankruptcy case was the third bankruptcy that Robinson or his medical corporation had filed since 1996. Respondent represented Robinson in his two prior bankruptcy cases.

On October 29, 1999, the U.S. trustee filed a motion for the appointment of a chapter 11 trustee in the bankruptcy case.⁵

Once Robinson's home was saved, respondent filed a motion to dismiss the chapter 11 petition on November 30, 1999.

On December 1, 1999, the bankruptcy court granted the U.S. trustee's motion and appointed Weneta M.A. Kosmala as the chapter 11 trustee.

Because a debtor in a chapter 11 case does not have an absolute right to have the case dismissed upon request, Robinson, through respondent, amended its motion to dismiss on December 31, 1999, with two false documents. Attached to the motion were two letters from Dr. Charles M. Zeigler, who represented the landlord of Robinson's office suites. The letters purported to threaten eviction against Robinson for his failure to pay rent.

In fact, there really was no threat of eviction. Respondent and Robinson caused Dr. Ziegler to fabricate these two letters and the threat of eviction in support of the motion to dismiss the chapter 11 petition. By alleging that there was no lease in place, the estate would have virtually no assets, which would make it more likely that the bankruptcy petition would be dismissed. Respondent was the mastermind of this idea. However, it was Robinson who asked Dr. Ziegler to write the letters as a favor.

On January 3, 2000, Robinson, through respondent, filed a second amended motion to dismiss the chapter 11 petition and declarations of Robinson and respondent which repeated the same purported threat of eviction contained in Dr. Zeigler's letters.

⁵ The U.S. trustee stated in its motion that "when the conduct of the Debtor [Robinson] and his counsel [respondent] is taken as a whole . . . it becomes rather apparent that the Debtor and his counsel have engaged in a pattern of conduct that rises to the level of gross mismanagement and/or incompetence at best, or more probably fraud on the bankruptcy system and creditors."

On May 12, 2000, the Creditors, Connecticut General Life Insurance Company, Equitable Life Assurance Society of the United States, CIGNA Employee Benefits Services, Inc., United Healthcare Corporation, Humana, Inc., Aetna Life Insurance Company and Aetna U.S. Healthcare, Inc. (the "Creditors"), filed a Motion for Sanctions Against Debtor [Robinson] and His Counsel [respondent] in the bankruptcy case.

On June 23, 2000, the bankruptcy court held a hearing on the Creditors' motion for sanctions and held evidentiary hearings in July and August 2000.

On September 14, 2000, the bankruptcy court made several findings of fact and conclusions of law, including the following: (1) Respondent filed a bankruptcy petition knowing that the debtor could not obtain a discharge; (2) Respondent did not list the major unsecured Creditors despite having notice of their claims in relation to the bankruptcy case; (3) Respondent did not disclose assets in relation to the bankruptcy case; and (4) Respondent filed a motion to dismiss the bankruptcy petition in bad faith.

Consequently, on September 19, 2000, the bankruptcy court imposed sanctions, jointly and severally, against Robinson and respondent in the amount of \$88,421.17.

In March 2000, while the bankruptcy case was pending, respondent, on behalf of Robinson, filed a stipulation for relief from the automatic stay to allow the RICO action to proceed. On March 17, 2000, the bankruptcy court granted the stipulation and ordered the automatic stay terminated to allow the parties to prosecute the RICO action to conclusion for all purposes.

The RICO Action

Since the stay was lifted, the district court in the RICO action issued an order compelling discovery on all defendants within 30 days from April 14, 2000.

On February 6, 2002, the district court granted the plaintiffs' motion for terminating sanctions against the defendants, including Robinson, for failing to comply with discovery requests.

As a result of Robinson's continued evasion of discovery obligations, on April 6, 2004, the district court filed its final judgment against Robinson and other defendants and ordered compensatory damages in the amount of \$678,318.17 and \$2,034,954.51 under RICO (Fed. Rules Civ. Proc., rule 37, 28 U.S.C.).

Robinson appealed the case-dispositive sanction and judgment in the RICO action, *Connecticut General Life Insurance Co. et al. v. New Images of Beverly Hills et al.*, United States Court of Appeals for the Ninth Circuit, case No. 04-55859, filed on May 18, 2004 (the "Appeal"). Respondent represented Robinson during the appeal.

On November 5, 2004, respondent filed Appellants' Opening Brief. Respondent represented, among other things, that "Robinson was in Bankruptcy until July of 2000" and therefore the April 14, 2000 order compelling discovery did not apply to Robinson. Respondent also represented that Robinson "did not obtain relief from the Automatic Stay until July of 2000, approximately 90 days after the April 14, 2000 Order." In other word, respondent was arguing that the bankruptcy stay protected him from the order to compel. This was absolutely false since the automatic stay ended on March 17, 2000, and not July 2000. The April 14, 2000 discovery order was thus applicable.

To compound the fraud, respondent, in the Appellants' Opening Brief, made false statements and attached an altered document purporting to support July 2000 as the date the bankruptcy stay ended in the RICO action. Respondent reproduced a docket sheet that was not a true and accurate copy. The original docket's dates had been altered – photocopies purporting to

represent the docket were incomplete at the left margin, making references to days of the month appeared to be references to months of the year. An original date of “03/17/00” became “7/00.”

On December 1, 2004, counsel for *Connecticut General Life Insurance Company et al.* clarified in its brief to the Ninth Circuit that the actual termination date for the automatic stay was March 17, 2000.

On April 24, 2006, the Ninth Circuit ordered that the matter be submitted on the briefs and record without oral argument on May 3, 2006.

On March 30, 2007, the Ninth Circuit filed a published opinion, affirming the district court's judgment. The circuit court held that the district court properly entered a default judgment terminating the RICO case where defendants, including Robinson, engaged in years of evasion of discovery obligations through lies and noncompliance. The Court of Appeals found the statements and the document to constitute “yet another fraud on the court” committed by respondent. The circuit court stated:

“Dickson’s ‘pattern of deception and discovery abuse made it impossible for the district court to conduct another trial with any reasonable assurance that the truth would be available. It is appropriate to reject lesser sanctions where the court anticipates continued deceptive misconduct.’ [Citation.]

‘Where a party so damages the integrity of the discovery process that there can never be assurance of proceeding on the true facts, a case dispositive sanction may be appropriate.’ [Citation.] This was just such a case.”

The Ninth Circuit thus affirmed the district court’s case-dispositive sanctions and imposed a default judgment for over \$2 million against Robinson and other defendants.

(Connecticut General Life Insurance Co. et al. v. New Images of Beverly Hills and Providence Ambulatory Surgery Center, Inc.; Harrell Robinson, M.D. (9th Cir. 2007) 482 F.3d 1091, 1097.)

Conclusions

Count One - (§ 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.

Respondent admitted that he was the mastermind of the idea that by falsely alleging that there was no lease in place, the estate would have virtually no net assets which would make it more likely that the bankruptcy petition would be dismissed. Respondent's "deception thus was not the result of mere carelessness; rather, [he] intentionally wove a tapestry of deception in [his] over-zealous efforts to effectuate a legal strategy. Taken as a whole, [respondent's] conduct reflects an indifferent disregard of [his] duty to adhere to the requirements of the law and [his] professional responsibilities as [an officer] of the court." (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786.)

Respondent had clearly committed fraud on the court by engaging in misconduct and bad faith in connection with the filing and prosecution of the bankruptcy petition. By: (1) filing a bankruptcy petition to circumvent the foreclosure of Robinson's home without a bona fide intent to reorganize; (2) filing a motion to dismiss the bankruptcy petition based on fabricated evidence (Dr. Ziegler's letters); and (3) manufacturing the threat of eviction in support of the motion to dismiss in the bankruptcy case, respondent clearly and convincingly committed acts involving moral turpitude in willful violation of section 6106.

Count Two - (§ 6068, subd. (c) [Maintaining an Unjust Action])

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

By filing the bankruptcy petition without a bona fide intent to reorganize, respondent failed to counsel or maintain such action only as appear to him legal or just.

But because the charge is based in large part on the same misconduct as found in count one (moral turpitude), count two is hereby dismissed as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056 [little, if any, purpose is served by duplicate misconduct allegations].)

Count Three - (§ 6068, subd. (d) [Seeking to Mislead a Judge])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

By filing the bankruptcy petition without a bona fide intent to reorganize, by failing to disclose assets, and by filing a motion to dismiss the bankruptcy based upon a false representation, respondent sought to mislead the judge.

As found in counts one (moral turpitude) and two (seeking to mislead a judge), the misconduct underlying the section 6068, subdivision (d), charge is the misconduct covered by the section 6106 charge, which supports identical or greater discipline. Thus, count three is also dismissed as duplicative of count one. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. 774, 786.)

Count Four - (§ 6106 [Moral Turpitude--Misrepresentation])

Respondent knew or should have known that the automatic stay in the RICO action was terminated on March 17, 2000, based on the stipulation executed by respondent himself and others. By misrepresenting to the Ninth Circuit that the automatic stay in the RICO action was not terminated until July 2000, respondent committed an act of moral turpitude in willful violation of section 6106.

Count Five - (§ 6068, subd. (d) [Seeking to Mislead a Judge])

By submitting a tricky photocopying of the docket sheet with his opening brief to the Ninth Circuit, respondent sought to mislead the court. Therefore, respondent clearly and convincingly violated section 6068, subdivision (d), by filing such an altered document.

Case No. 08-O-13770 – Biggers Matter

On May 5, 2007, Felicia Biggers ("Biggers") retained respondent to represent her in a breach of contract matter entitled *Moli Tua v. Charles Head, Felicia Biggers et al.*, Los Angeles County Superior Court case number NC039660, filed April 11, 2007 (the "Tua matter").

On May 11, 2007, Biggers paid respondent a \$1,500 flat fee to represent her in the Tua matter. Later, she paid respondent an additional \$2,000, totaling \$3,500 as advance fees.

On August 22, 2007, because respondent failed to file an answer on Biggers's behalf, the plaintiff filed a request for entry of default.

On September 10, 2007, the court granted the motion for entry of default and Biggers's default was entered. Respondent did not inform Biggers of the motion for entry of default or her default.

On September 28, 2007, judgment was entered against Biggers, but respondent did not inform her of the judgment.

On October 1, 2007, respondent filed a notice of motion to vacate default and judgment based on counsel's mistake, inadvertence, surprise or excusable neglect (Code Civ. Proc., § 473, subd. (b)). On November 6, 2007, the court granted the motion.

On November 14, 2007, the plaintiff propounded discovery on Biggers. Respondent did not respond.

On April 4, 2008, the plaintiff filed a motion to compel discovery responses. The hearing on the motion to compel was set for May 15, 2008.

Respondent did not appear at the hearing. The court granted the motion to compel discovery responses, ordering Biggers to provide further discovery responses by June 4, 2008. Respondent and Biggers were ordered to pay sanctions to Tua in the amount of \$290 on or before June 16, 2008. Respondent received the order. At no time did respondent inform Biggers that the motion to compel discovery responses was granted or that sanctions were imposed.

On June 12, 2008, Tua filed an ex parte application for order shortening time for hearing on motion and an order for terminating sanctions, striking Biggers's answer, entering default judgment, and imposing monetary sanctions. A hearing was set for July 10, 2008. Respondent received notice of the hearing, but did not inform Biggers.

Neither did he notify her that he was in Orange County jail from June 25 until September 6, 2008. Biggers learned of respondent's incarceration through a local newspaper.

Consequently, respondent did not attend the July 10, 2008 hearing. But, he did not arrange for anyone to appear on Biggers's behalf at the hearing. On July 10, 2008, Biggers's default was entered and her answer was stricken, of which respondent did not inform Biggers.

In August or September 2008, Biggers retained attorney Miguel Manzo to substitute in for respondent.

On September 5, 2008, when respondent appeared in court for his own criminal hearing, attorney Manzo had to go there to obtain respondent's signature on the substitution of attorney form. On September 6, 2008, respondent was released from jail.

Subsequently, on September 26, 2008, attorney Manzo filed a motion for relief from judgment and terminating sanctions on behalf of Biggers. Manzo attached a declaration signed under penalty of perjury by respondent attesting that his failure to appear at the July 10, 2008 hearing was because he was in Orange County jail.

At the October 14, 2008 hearing, Biggers's default was vacated and set aside, and her answer was deemed filed as of that date.

On November 17, 2008, the court dismissed the Tua matter for Tua's failure to prosecute.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By failing to file an answer on Biggers's behalf, failing to respond timely to discovery requests, and failing to appear at the May 15, 2008 and July 10, 2008 hearings,⁶ respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Two - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

By failing to inform Biggers that he was in jail and was unavailable to appear at the July 10 hearing and by failing to find another attorney to substitute in his place, respondent had

⁶ Even though respondent was incarcerated at the time of the July hearing, he had an obligation to make sure that his client was represented in court.

effectively terminated his representation of Biggers. As a result of his failure to appear at the hearing, a default judgment was entered into against Biggers. Thus, by abandoning her case, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to Biggers in willful violation of rule 3-700(A)(2).

Count Three - (§ 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.

Respondent did not inform Biggers of the: (1) August 22, 2007 request for entry of default; (2) September 10, 2007 entry of default; (3) September 28, 2007 entry of judgment; (4) May 15, 2008 order to compel discovery responses and sanctions; (5) July 10, 2008 entry of default judgment; and (6) respondent's incarceration.

By failing to inform Biggers of the multiple significant developments in the Tua matter and of his unavailability due to his incarceration, respondent willfully violated section 6068, subdivision (m).

Case No. 09-O-17930 – Palmer Matter

At the State Bar's request, the court dismissed counts 4 (§ 6068, subd. (d)) and 5 (§ 6106) in the Palmer matter in the interest of justice.

Case No. 10-O-00325 – Ysiano Matter

On September 1, 2005, Daniel Ysiano ("Daniel") filed a petition for marital dissolution in *Daniel Ysiano v. Martha Ysiano* (the "Ysiano matter"), Riverside County Superior Court, case No. IND085907. From October 2005 through July 2009, Martha Ysiano ("Ysiano") was represented by attorney Mark Gershenson ("Gershenson").

On May 3, 2009, Daniel filed a request for entry of default judgment against Ysiano because a formal response to Daniel's petition for dissolution had never been filed. On May 13, 2009, the court entered default against Ysiano.

In May 2009, Ysiano was referred to respondent by Cheri Davis ("Davis"), a non-attorney. On May 26, 2009, Ysiano employed respondent to represent her in the Ysiano matter and paid him \$3,500.

Respondent did not take any steps to ensure that a motion to set aside Ysiano's default was filed or to seek a stipulation from opposing counsel to set aside the default.

On July 1, 2009, attorney Gershenson filed a motion to withdraw as counsel and a stipulation to set aside the default. The court scheduled a hearing date for the motion to withdraw and the stipulation for July 31, 2009.

On July 31, 2009, the court granted the motion to withdraw and set aside Ysiano's default. Ysiano was present in court. Thereafter, opposing counsel and attorney Gershenson served directly upon Ysiano the stipulation and order to set aside default. The order required Ysiano to file a response to the petition for dissolution within 10 days or by August 10, 2009. Within a few days, Ysiano informed respondent that the court had set aside the default and granted her 10 days to file a response. At no time did respondent file a response to the marital dissolution matter on behalf of Ysiano.

Subsequent to the order to set aside default, respondent did not substitute into the Ysiano matter.

On August 24, 2009, Ysiano was served with a response from Daniel's attorney to Gershenson's request for fees. Respondent received this motion from Ysiano.

On September 9, 2009, Ysiano and Davis appeared in court in the Ysiano matter at the hearing on the motion for fees. The court telephoned respondent from the courtroom and told him

that the court did not have a substitution of attorney from him. Respondent told the court that he submitted one but would file another if the court had not received it. Respondent asserted to the court that he was Ysiano's attorney.

Respondent knew that he had not filed a substitution of attorney form in the matter when he told the court that he had.

At no time thereafter did respondent substitute into the Ysiano matter as counsel for Ysiano.

Respondent did not provide any services of value to Ysiano. Respondent did not earn or refund any portion of the \$3,500 paid by Ysiano for legal services.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

When respondent was hired on May 26, 2009, he knew or should have known that a default was entered into against his client on May 13, 2009. Respondent had a duty to apprise himself of such legal issues in the Ysiano matter, regardless whether the client had told him about the default. Yet, he failed to take any steps to ensure that a motion to set aside Ysiano's default was filed or to seek a stipulation from opposing counsel to set aside the default.

In July 2009, when the court ordered Ysiano to file a response to the petition by August 10, 2009, respondent failed to file such a response on behalf of Ysiano or a substitution of attorney.

Therefore, by failing to take any steps to ensure that a motion to set aside Ysiano's default was filed or to seek a stipulation from opposing counsel to set aside the default; by failing to substitute into the Ysiano matter; and by failing to file a response to the petition on her behalf, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Two - (§ 6068, subd. (d) [Seeking to Mislead A Judge]

By misrepresenting to the court that he had filed a substitution of attorney form in the Ysiano matter when he had not done so, respondent sought to mislead the judge by an artifice or false statement of law or fact in willful violation of section 6068, subdivision (d).

Count Three - (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 failing to refund any portion of the \$3,500 unearned fees to Ysiano, respondent willfully violated rule 3-700(D)(2).

Aggravation⁷

Prior Record of Discipline (Std. 1.2(b)(i))

Respondent has four prior disciplines.

1. On April 29, 1998, the State Bar Court issued an order of private reproof against respondent for misconduct in two matters (State Bar Court case Nos. 96-O-03481 and 96-O-07724). Respondent stipulated to failing to act competently, promptly return files and property to a client, respond to a client, cooperate in the investigation and maintain his official membership records address. There were no factors in aggravation. In mitigation, respondent was candid and cooperative during the proceeding; was suffering from emotional/physical difficulties; and refunded client funds.
2. On September 21, 2001, the California Supreme Court filed an order (S099103) that suspended respondent from the practice of law for six months, stayed, and that placed

⁷ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

him on probation for four years. Respondent stipulated to misconduct in two matters (State Bar Court case Nos. 96-O-06449 and 97-O-15740), including two counts of incompetence and two counts of failing to respond to clients or keep them apprised of significant developments. In aggravation, respondent had a prior record of discipline. In mitigation, respondent was candid and cooperative during the proceeding. In addition, respondent was still suffering from problems resulting from eye ulcers and was regularly attending AA meetings. The State Bar stipulated in the instant case that the prior misconduct in 2001 coincided with the earlier misconduct in 1998, which would have resulted in one instance of discipline had they been prosecuted simultaneously. Based on the State Bar's stipulation, the 1998 and 2001 matters were treated as one prior record of discipline.

3. On November 3, 2005, the California Supreme Court filed an order (S136729) suspending respondent from the practice of law for two years, stayed, and placing him on probation for two years on condition that he be actually suspended for 75 days. Respondent stipulated to misconduct in three matters (State Bar Court case Nos. 01-O-03184; 03-O-00704; and 05-O-02280), involving trust account mismanagement and failing to support the laws of California. In aggravation, respondent had a prior record of discipline and trust funds or property was involved. In mitigation, respondent was remorseful and acted in good faith.
4. On August 10, 2011, the California Supreme Court filed an order (S192322) that suspended respondent from the practice of law for two years, stayed, and that placed him on probation for two years on condition that he be actually suspended for one year for unauthorized practice of law when he was suspended (State Bar Court case Nos. 06-O-11022; 06-O-11190).

Respondent's prior misconduct is remarkably similar to his behavior in this case in that he made a misrepresentation which was relied on by the State Bar Court hearing judge in granting a continuance of his trial in the 2011 unauthorized practice of law matter. In the Ysiano matter, he misrepresented to the Riverside County Superior Court that he had filed a substitution of attorney form when, in fact, he had not. "Respondent's past and present misconduct show a disturbing willingness to employ deceitful means to accomplish his objectives." (See *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 177.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii))

Respondent's multiple acts of misconduct are an aggravating factor. He failed to perform services competently, committed acts of moral turpitude, improperly withdrew from employment, failed to communicate with client, failed to promptly return unearned fees, and sought to mislead the court.

Misconduct Surrounded/Followed by Bad Faith, Dishonesty, Concealment, Overreaching or Other Violations of State Bar Act/ Rules of Professional Conduct; If Trust Funds/Property Involved, Refusal/Inability to Account to Client/Other Person for Improper Conduct Toward Funds/Property (Std. 1.2(b)(iii))

Respondent's multiple acts of misrepresentations and dishonesty which constituted violation of section 6106 could not be considered as the same basis for aggravation and would otherwise be duplicative. (*In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80.)

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv))

Respondent's repeated failures to comply with discovery orders in the Robinson and Biggers matters, which resulted in multiple sanctions, caused undue burden to the client and the administration of justice. Particularly harmful to the administration of justice was shown by, in the Robinson matter, the Ninth Circuit's finding that respondent so damaged the integrity of the discovery process that there could never be assurance of proceeding on the true facts. And

because of his failure to perform services competently in the Biggers and Ysiano matters, the clients had to hire substituting attorneys and they were deprived of their funds that were paid to respondent for services of no value.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v))

Respondent has yet to refund the unearned fees of \$3,500 to each of his clients, Biggers and Ysiano. He demonstrated lack of insight into his wrongdoing. Not only did he fail to see the seriousness of his misconduct, but he also blamed others for his ethical and professional relapses, including clients, the courts, and the State Bar. He continued to assert, despite overwhelming evidence to the contrary, that he did not commit any acts of misconduct. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi))

Respondent’s misconduct was followed by dishonesty in this proceeding. In the Ysiano matter, he produced in evidence a false letter, claiming that he sent it to his client. The June 1, 2009 letter purported to inform Ysiano that his role was to only review the case but not actually work on the matter, such as setting aside the default. The court finds that he had never sent such a letter to his client. Ysiano never received the letter. In fact, the addresses on the letterhead (former address) and on the bottom of the stationery (current address) were not the same; when he had supposedly wrote the letter in June, he had not moved to the North Tustin Avenue address until July. Indeed, the letter was fabricated as a self-serving document to insulate him from culpability of misconduct. It was a deliberate attempt to mislead this court.

Mitigation

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv))

To receive mitigation for extreme emotional difficulties, an attorney must: (1) prove that he or she suffered from extreme emotional difficulties at the time of the professional misconduct; (2) provide expert testimony that establishes the emotional difficulties were directly responsible for the misconduct; and (3) establish that he or she no longer suffers from such emotional difficulties.

Although respondent testified that his wife was ill, there is no clear and convincing evidence that the emotional difficulties were directly responsible for the misconduct or that he no longer suffers from such emotional difficulties. Thus, this court affords him no mitigation.

Passage of Time Since Misconduct and Proof of Rehabilitation (Std. 1.2(e)(viii))

Respondent argues that he was prejudiced in the Robinson matter by the delay in this disciplinary proceeding. However, it was his appeal that made the State Bar wait so long to file. Where respondent failed to show that the delay was not attributable to him and that it caused specific, legally cognizable prejudice, the passage of time since the misconduct was not a mitigating circumstance. (*In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735.)

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 1.6, 1.7, 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, in pertinent part, 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 1.7(b) provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty, or of concealment of a material fact, must result in actual suspension or disbarment depending upon the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member’s practice of law.

Standard 2.4(b) provides that a member’s culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member’s culpability of willfully failing to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that violation 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, with due regard for the purposes of discipline.

Finally, standard 2.10 provides that violations of any 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 gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

Respondent denied any wrongdoing. In the Robinson matter, he argued, among other things, that the Ninth Circuit erred in finding him committing “yet another fraud on the court.” In the Biggers matter, he blamed his client and opposing counsel for the default judgment. In the Ysiano matter, he argued that it was not his job to set aside the client’s default. Therefore, any lack of due diligence was not his fault. The court finds respondent's contentions without merit.

The State Bar urges disbarment and restitution.⁸ The court agrees.

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.) An attorney’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Apparently, respondent's four prior impositions of discipline had very little impact on his behavior and demonstrated his inability to conform his conduct to ethical norms. Not only did respondent fabricate defenses and documents in the Robinson matter (eviction letters in an attempt to dismiss the bankruptcy petition and altered date on the docket sheet to avoid

⁸ Since the bankruptcy court has already imposed sanctions against Robinson and respondent in the amount of \$88,421.17, this court does not need to recommend to the Supreme Court that respondent pay the sanctions.

terminating sanctions), he also manufactured evidence in an attempt to deceive this court (letter to Ysiano that was never sent). Respondent's failure to recognize his misdeeds and the severity he had harmed the administration of justice and the integrity of the legal profession concerns this court. His production of false evidence to conceal his misconduct and persistent claims that the fault lied on his clients and the courts are indeed troubling and adversely reflect on his fitness to practice law.

Based on the egregiousness of the offense, the serious aggravating circumstances, above all, his three prior records of discipline, and the lack of any compelling mitigating factors, the court must recommend disbarment under standard 1.7(b).

Recommendations

It is recommended that respondent **Roy Chester Dickson**, State Bar Number **105583**, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

It is also recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 5.136):

1. To Felicia Biggers in the amount of \$3,500 plus 10 percent interest per year from May 11, 2007; and
2. To Martha Ysiano in the amount of \$3,500 plus 10 percent interest per year from May 26, 2009.

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 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 this order.

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 Rules of Procedure of the State Bar, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: September _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court