

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 10-O-06727-PEM
)	
LORNA PATTON BROWN,)	DECISION AND FURTHER ORDER
)	
Member No. 133795,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary matter, respondent Lorna Patton Brown and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) stipulated to the disposition of two counts of professional misconduct, and the State Bar Court approved the stipulation. That stipulation, however, was subsequently returned by the California Supreme Court for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

After further consideration of the recommended discipline in light of the applicable attorney discipline standards and case law, and in view of the aggravating and mitigating circumstances, including respondent’s extensive discipline-free record, cooperation with the State Bar, and recognition of her wrongdoing, the court recommends, among other things, that respondent be suspended from the practice of law for four years, that execution of suspension be stayed, that she be actually suspended for two years.

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.

Significant Procedural History

Respondent and the State Bar entered into a pre-notice stipulation of facts and conclusions of law in December 2011. The stipulation was accepted by the hearing judge and filed on December 29, 2011. The matter was then transmitted to the California Supreme Court.

On June 21, 2012, the Supreme Court returned the stipulation “for further consideration of the recommended discipline in light of the applicable attorney discipline standards.” After the matter was returned, the State Bar filed a Notice of Disciplinary Charges (NDC) on August 23, 2012. No motion to withdraw or modify the stipulation was filed by the State Bar. The court found that it was improper to file an NDC in this matter without first obtaining leave of the court to withdraw or modify the stipulation. Therefore, the court rescinded the filing of the NDC on September 10, 2012.

On September 13, 2012, the State Bar filed a motion to introduce supplemental facts and modify the stipulation. On October 9, 2012, respondent filed an opposition to the motion. On October 11, 2012, the hearing judge denied the State Bar’s motion. The court ordered that the parties were permitted to provide evidentiary support for any factors in mitigation and aggravation contemplated by both parties at the time of the execution of the stipulation. The court denied the State Bar’s request to expand its culpability findings.

On January 9, 2013, the court ordered that the parties must enter into a stipulation based on newly discovered evidence, and if the parties were unable to enter into a stipulation regarding newly discovered evidence, the court would make a determination as to what additional facts the court would consider. That same day, the court vacated the trial dates set in January, due to court scheduling conflicts. The court also made it clear that it was limiting the trial to an explanation of the parties’ positions regarding aggravation and mitigation at the time the parties

entered into the stipulation. The matter was set for a pretrial on April 15, 2013, and trial on April 23, 24, and 25, 2013.

At the pretrial on this matter it was clear that the parties could not agree on any additional facts, so the court made a determination as to what additional facts it would take into consideration. The court took judicial notice: (1) of the indictment of respondent's former client Yusuf Bey IV (Bey IV); (2) that respondent was appointed by the court to represent Bey IV; and (3) that a jury found Bey IV guilty on three counts of first degree murder with a firearm.

The matter proceeded to trial on April 23 and 24, 2013. The State Bar was represented by Senior Trial Counsel Robin Brune. Respondent was represented by Vicki Young. Following closing argument and briefs on the level of discipline, the matter was taken under submission on April 29, 2013.²

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 16, 1988, and has been a member of the State Bar of California at all times since that date.

Case No. 10-O-06727 – The Bey IV Matter

Facts

On April 29, 2009, Bey IV was indicted on three counts of murder in the matter *People v. Yusuf Ali Bey IV*, Alameda County Superior Court, Docket No. 160939A. In August 2009, respondent was appointed as counsel for Bey IV, after another attorney withdrew from the case due to his inability to control his client.

On March 8, 2010, respondent visited Bey IV at Santa Rita Jail in Dublin, California. Bey IV gave respondent legal documents—including grand jury transcripts and witness interview

² On May 5, 2013, the State Bar filed a motion to strike portions of respondent's brief on the level of discipline. The motion to strike is granted and no evidence or references to evidence outside the record will be considered.

transcripts—and a sealed envelope addressed to Bey IV’s common law wife, Alaia Bey (Alaia), aka Tiffany Wade. Bey IV requested that respondent hand the documents to Aisha Taylor (Taylor), who was his sister-in-law. In the sealed envelope was a note instructing Alaia:

Don’t worry about giving Aisha those letters. I have something else I want done and it is in the letter to Gary, so destroy those letters A.S.A.P. before you [sic] car get [sic] towed again and the letters are found.³

Respondent took the documents from Bey IV without seeking permission from the official in charge of the jail. It is unclear whether the witness interview and the grand jury transcripts were the subject of attorney-client privileged information and, thus, documents that respondent did not have to clear with the jail before exiting the jail. What is clear is that the sealed envelope addressed to Alaia was written material that respondent should not have removed from the jail without permission of the official in charge of the jail.

On March 11, 2010, respondent met Taylor on a street corner and hand delivered the documents, which respondent had placed in manila envelopes. Respondent was unaware of the contents of the sealed envelope she agreed to deliver to Alaia. Respondent believed the sealed envelope contained an intimate card with an exchange of apology between Bey IV and Alaia.⁴ Prior to her meeting with Taylor, respondent put a list of the witnesses’ names into an envelope, and addressed it to Gary Popoff (Popoff). This envelope was also given to Taylor on March 11, 2010.

On March 12, 2010, a confidential informant called the Alameda County District Attorney’s Office (District Attorney’s Office) and informed them that respondent would deliver the documents to Taylor, who would then pass them on to Bey IV’s “number one soldier,” Popoff. The informant also told them when Popoff would be picking up the documents. Based

³ The court does not know the contents of the referenced letters.

⁴ The parties stipulated to this fact. Respondent also credibly testified regarding the facts and circumstances surrounding this issue.

on this tip, the District Attorney's Office recovered the envelopes from Popoff soon after he picked them up from Taylor.

On April 13, 2010, two investigators from the District Attorney's Office interviewed respondent about her involvement in delivering the witness interview transcripts, grand jury transcripts, and card to Taylor. Respondent claimed that she had permission from the deputies to take the documents from the jail. She admitted that she delivered transcripts, which she described as grand jury and witness transcripts, to Taylor at Bey IV's instruction. She, however, denied knowing that packaged among the transcripts was the greeting card to Alaia. She also denied delivering a list of witnesses to Popoff.

Shortly after that interview respondent advised the court that she had a conflict of interest. And on April 19, 2010, respondent was removed from the case.

On August 11, 2010, respondent voluntarily submitted to another interview with the District Attorney's Office and admitted that she had not been forthcoming in her earlier April 13, 2010 interview. She specifically admitted that she lied about the fact that she did not know there was a greeting card to Alaia in the package she handed to Taylor. Respondent also acknowledged that she knew she had delivered a list of witness names to Popoff.

On June 9, 2011, Bey IV was convicted on three counts of murder. Respondent, on the other hand, has not been charged with any crime.

Conclusions

Count One – § 6068, Subd. (a) [Duty to Support Constitution and All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. On March 8, 2010, respondent visited Bey IV at Santa Rita Jail in Dublin, California, and took documents out for Bey IV. Bey IV instructed respondent to pass the documents to Taylor. Taylor picked up the documents from

respondent. Admittedly, respondent took documents from Bey IV without the permission of the official in charge of Santa Rita Jail, in violation of Penal Code section 4570, a misdemeanor.⁵ By violating Penal Code section 4570, respondent failed to support the laws of this state, in willful violation of section 6068, subdivision (a).

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 lying to the District Attorney's Office investigators on or about April 13, 2010, respondent committed acts involving moral turpitude, dishonesty, and corruption.

Aggravation⁶

Misconduct Surrounded/Followed by Dishonesty or Overreaching (Std. 1.2(b)(iii))

The State Bar asserted that respondent's misconduct was surrounded by dishonesty or overreaching. As an attorney, respondent had special privileges that entitled her to confidential communications and the exchange of documents relating to Bey IV's legal representation. Respondent relied upon her status as an attorney to remove documents from jail that were unrelated to her legal representation, specifically the sealed envelope addressed to Alaia. Respondent *concealed* the documents she took out of the jail from the official in charge of the jail. By using her privileges as an attorney to obtain documents unrelated to Bey IV's legal representation and concealing the documents from the official in charge of the jail, respondent committed surrounding acts involving dishonesty and concealment.

⁵ Penal Code section 4570 states that any person who takes a letter, writing, literature, or reading matter to or from any prisoner without the permission of an officer in charge of the prison is guilty of a misdemeanor.

⁶ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent's Uncharged Misconduct

Evidence of uncharged misconduct may be considered in aggravation where the evidence is elicited for a relevant purpose and where the determination of uncharged misconduct is based on the attorney's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) At trial, the State Bar introduced evidence that respondent took other documents from Bey IV without the permission of the jail, including sermons to Bey IV's mother. This evidence, however, did not come from respondent's own evidence and was not even addressed in the parties' stipulation. Consequently, the court does not give this evidence any weight in aggravation as uncharged misconduct.

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

Respondent's misconduct significantly harmed the administration of justice. This matter centered on a high-profile murder case involving circumstantial evidence and hesitant witnesses. Respondent's conduct caused the District Attorney's Office inspector to contact the prosecution witnesses and apprise them of the situation. The witnesses were understandably frightened and one requested and received witness protection protocols.⁷

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

Respondent was found culpable of two acts of misconduct. Multiple acts of misconduct are an aggravating factor.

Mitigation

No Prior Record (Std. 1.2(e)(i))

Respondent has no prior record of discipline over many years of practice. Respondent had been admitted to practice law in California for nearly 22 years before the first act of

⁷ The court does not find clear and convincing evidence that respondent's misconduct caused a significant delay in the criminal proceedings. The evidence indicates that a change of venue motion was pending and the matter was unlikely to proceed to trial in May 2010, as scheduled.

misconduct in this matter. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [attorney's practice for more than 20 years with an unblemished record is highly significant mitigation].) However, while still a significant mitigating factor, this mitigation is reduced somewhat because the underlying misconduct is serious. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Good Faith (Std. 1.2(e)(ii))

Respondent argues that she should receive credit in mitigation for good faith. The court disagrees. Respondent knew she should not have been relaying personal messages from her client without the permission of the jail authorities. Respondent asserts that she didn't know the contents of the letter; however, her act of intentionally turning a blind-eye to the contents of the documentation does not establish good faith.

Candor and Cooperation (Std. 1.2(e)(v))

By entering into a stipulation of facts and conclusions of law, respondent displayed spontaneous candor and cooperation with the State Bar during the disciplinary investigation and proceedings. Respondent's candor and cooperation warrant consideration in mitigation.

Good Character (Std. 1.2(e)(vi))

The following witnesses testified regarding respondent's integrity and good character. Each was very supportive of respondent and aware of her misconduct.

Philip Schnayerson (Schnayerson) has been practicing law since 1968. He is an experienced criminal defense attorney. Schnayerson has known respondent for many years and has co-counseled cases with her. He has found her to be a conscientious worker who always took the ethical high road. Schnayerson believes respondent is a wonderful person and that this case is an over-reaction triggered by the politics surrounding the Bey IV matter.

Anne Bobson has known respondent since 1978. She was shocked to hear about the present misconduct. In her experience, she's found respondent to be extremely honest and truthful. She has observed how upsetting this situation has been to respondent.

James Giller (Giller) is an experienced criminal attorney, who was admitted in 1958. He knows respondent fairly well and has dinner with her once a month. Giller has found respondent to be honest and professional. He believes that the present misconduct was aberrational, and a mistake. The present misconduct has not changed his opinion of respondent.

Gary Sirbu (Sirbu) has been an attorney since 1966. He has worked extensively in criminal law. He has found respondent to be a professional and prepared advocate, who really puts zeal into her cases. Sirbu understands the present charges and believes that respondent made a mistake. He still maintains great respect for respondent.

Barbara Michele Church Thomas (Thomas) has been practicing law since 1982. She is a criminal defense attorney and handles serious felonies. Thomas has known respondent since 1992, and has considered her to be a role model. Thomas has gone to respondent for advice, and has always found her to be honest and ethical.

Shelley Federgreen (Federgreen) has been an attorney since 1989. She currently works as a dependency law specialist. Federgreen met respondent in 1992, and the two have remained colleagues and friends ever since. Federgreen believes respondent made a mistake, but still considers her to be candid and honorable, with a very high work ethic.

The testimony of respondent's six character witnesses does not constitute a broad range of references, and therefore warrants limited consideration in mitigation. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [six character witnesses, including three lawyers, afforded "limited" mitigation weight as not representing a broad range of references].)

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii))

Respondent has shown remorse and a willingness to accept responsibility for her misconduct. Respondent was ashamed and embarrassed about her misconduct. The knowledge of what she had done weighed heavily on her. She described lying in bed crying, and feeling that she gave her children a reason to be ashamed of her.

Respondent contacted the District Attorney's Office, in August 2010, and set up a meeting. The purpose of the District Attorney's Office interview was to tell the truth and get it off her chest. Respondent set up this meeting voluntarily, and without any promises from the District Attorney's Office.

Respondent felt terrible. She had been an attorney for about 22 years and had never been in trouble. This was especially difficult on her considering the arduous path she had taken to become an attorney in the first place. Respondent graduated with a nursing degree in 1966, and worked in various intensive care units. By 1981, she was separated and raising two children. She went back to school and worked every weekend. Respondent started law school in 1983, and graduated in 1986. She loved practicing law and gravitated to criminal defense. She appreciated her role as an attorney, and strove to find some good in every client she represented.

Respondent knew it was wrong to take the card out of the jail, but did it out of the sympathy she felt for her client. Clearly, she now understands the gravity of her misconduct. Respondent's remorse and recognition of her wrongdoing warrants some consideration in mitigation.

Discussion

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for

attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.6 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 shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3 and 2.6 apply in this matter. The most severe sanction is found at standard 2.3, which recommends actual suspension or disbarment for an act of moral turpitude, fraud, or intentional dishonesty.

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.)

The State Bar urges the court to disbar respondent from the legal profession. Respondent, on the other hand, argued for a six-month period of actual suspension, as contemplated by the original stipulation.

In support of its disbarment recommendation, the State Bar cited multiple out-of-state matters where attorneys were disbarred for improper contact with prisoners. The court, however, found that these cases were considerably more serious or contained more aggravation and less

mitigation than the present matter. (See *In re Complaint of Garvey* (1997) 932 P.2d. 549 [Oregon Supreme Court disbarred attorney for numerous counts of misconduct including, but not limited to, criminal conviction for assisting in a prisoner's escape]; *In Re Cofield* (2010) 26 So.3d. 729 [Louisiana Supreme Court *permanently* disbarred an already disbarred attorney found culpable of holding himself out as entitled to practice while attempting to schedule a phone call with an inmate]; *Lawyer Disciplinary Board. v. Stanton* (2010) 225 W.Va. 671 [West Virginia Supreme Court annulled license of state consumer advocacy attorney who falsely claimed to represent an inmate with whom he was engaging in and paying for sexual relations]; and *Florida Bar v. Bitterman* (2010) 33 So.3d. 686 [Florida Supreme Court disbarred a suspended attorney with a lengthy discipline record who held herself out as entitled to practice law to get access to a prisoner and then to take the prisoner's car from an impound lot].)

Instead, the court looked to *Price v. State Bar* (1982) 30 Cal.3d 537, for some guidance. In *Price*, a prosecutor altered evidence presented at a murder trial in order to obtain a conviction. The prosecutor's misconduct involved moral turpitude, and was aggravated when the prosecutor visited the defendant in jail without his attorney's knowledge and offered to seek a favorable sentence if the defendant agreed not to appeal the conviction. The prosecutor presented significant evidence in mitigation, including his lack of a disciplinary record, cooperation, remorse, good character, and community works. Although the misconduct was extremely serious, the Supreme Court concluded that the weight of the mitigation warranted a level of discipline short of disbarment. The Supreme Court therefore imposed a five-year stayed suspension, including, among other things, a two-year period of actual suspension.

While *Price* is not directly on point, it entails dynamics similar to the present case. At first blush, the misconduct in *Price* may appear to be more severe than the present matter. This, however, is not entirely true. The misconduct in the present case is extremely serious, especially

when one considers that respondent covertly transported a sealed letter and other documents, including a list of witnesses, from a defendant facing three murder charges to individuals on the outside. Respondent willfully ignored her duties as an attorney, as well as the health and safety of the witnesses who planned to testify against her client. And when the District Attorney's Office began investigating the matter and questioned respondent about her actions, she lied. All told, the ramifications of respondent's misconduct could have been devastating.

That being said, the present case, like *Price*, also involves extensive mitigation, including no prior record of discipline over many years of practice. Respondent's mitigation included her demonstration of good character and candor and cooperation with the State Bar. In addition, respondent's expressed remorse and recognition of wrong doing assures the court that her misconduct is unlikely to reoccur.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for four years, that execution of that period of suspension be stayed, and that she be placed on probation for three years, including a minimum period of actual suspension of two years and until respondent provides proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law.

Recommendations

Accordingly, it is recommended that respondent **Lorna Patton Brown**, State Bar Number 133795, be suspended from the practice of law in California for four years, that execution of that period of suspension be stayed, and that she be placed on probation for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and will remain suspended until the following requirement is satisfied:
 - i. Respondent must provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will

be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Respondent must also comply with the following additional conditions of probation:

- i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (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 she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein;
- iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
- vi. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics

School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirements, and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar); and

3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for four years will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation during the period of her actual suspension. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁸

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. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

⁸ Respondent is required to file a rule 9.20 affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1998) 44 Cal.3d 337, 341.)

Order

The order filed on December 29, 2011, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition, in the above-entitled matter is hereby **VACATED**.

The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, which was filed on December 29 2011, is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, filed on December 29 2011, from the State Bar's website.

Dated: July _____, 2013

Pat McElroy
Judge of the State Bar Court