PUBLIC MATTER

FILED

AUG 24 2016

STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **LOUIS ALLEN LIBERTY,** **Member No. 147975,** A Member of the State Bar.	Case Nos.: **11-O-18778-LMA** (14-O-00647) **DECISION**

Introduction[1]

In this contested disciplinary proceeding, respondent **Louis Allen Liberty** is charged with four counts of misconduct, including misrepresentation, improper solicitation, failing to comply with Vehicle Code section 1808.22, and failing to comply with section 6155.

This court finds by clear and convincing evidence that Respondent is culpable on one of the four counts. Based on the nature and extent of culpability, as well as the aggravating factors, this court recommends, among other things, that Respondent be actually suspended for a period of 90 days.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on November 2, 2015. Respondent filed his response to the NDC on November 24, 2015.

[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.

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The State Bar was represented by Senior Trial Counsel Esther Rogers. Glenn Goffin served as co-counsel with Respondent. Trial dates were held on May 3-6, 9-12, 16, 23, and 31, 2016.

On the last day of trial, Respondent filed a motion to dismiss. In its closing brief, the State Bar moved to strike all references in the motion to dismiss to alleged facts referencing State Bar employees that were not admitted at trial. Good cause having been shown, the State Bar's motion to strike is granted. No good cause having been shown, the motion to dismiss is denied.

Following the filing of closing briefs, this matter was submitted for decision on June 14, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on October 12, 1990, and has been a member of the State Bar of California at all times since that date.

Facts

Partnership with Sutton and Maloney

In or about August 2010, Respondent entered into a partnership with non-attorneys William Sutton (Sutton) and Larry Maloney (Maloney). The purpose of the partnership was to locate and represent purchasers of frame-damaged used cars. They would then sue the used car dealer and lenders for failing to disclose the frame-damage at the time of the purchase.

Generally, the partnership worked as follows. Sutton, a used car dealer with access to wholesale auto auctions and car condition reports, identified frame-damaged cars sold at auction. Maloney, an internet technology expert, created a software program that obtained the vehicle identification numbers (VIN) for frame damaged cars. Sutton and Maloney gathered information from the internet, including CarFax reports, Autocheck reports, and advertisements, and prepared reports for Respondent.

Respondent was responsible for locating the used car purchasers and signing them up as clients to investigate the matter and potentially sue the car dealer. Respondent, Sutton, and Maloney verbally agreed that they would equally share the partnership proceeds, so that each would receive one-third of the proceeds recovered from suing car dealers and lenders. They aspired to ultimately expand their business to other states.

By September 2011, however, Respondent realized that attorneys cannot split fees with non-attorneys. At that point, Maloney and Sutton had already provided Respondent over 100 reports, but no fees had been paid to them. Respondent advised Maloney and Sutton that the partnership agreement would need to be revised. The partners discussed forming an entity that would sign up potential clients through DMV records and set up a nationwide referral network. Under the proposed agreement, the partnership would charge attorneys a $3,000 referral fee for each client who ultimately retained the referral attorney. To this end, a proposed agreement was written up, but Sutton and Maloney refused to sign it.

On October 13, 2011, Respondent, Sutton, and Maloney entered into a new iteration of their partnership structure. Respondent agreed to purchase the reports for $3,500 each. At the time Respondent executed this agreement, he indicated he would have the right of first refusal for California cases. Respondent also agreed to pay for the reports that Sutton and Maloney had previously provided, writing "2/3" under the total owed for each report – meaning that Respondent would owe only two-thirds of the $3,500. Respondent paid Sutton and Maloney $4,666.66 for two reports.

Accessing DMV Records

Although Sutton and Maloney could get the VIN numbers of frame-damaged vehicles sold at auction, they could not identify the purchaser's contact information. That is where Respondent came in. Respondent used his access as an attorney to obtain Department of Motor

Vehicles (DMV) records containing the confidential purchaser contact information. DMV Form INF 1161E (1161E form) permits attorneys to request the name and address of a vehicle's current owner. The 1161E form is titled "Attorney's Information Request," and its purpose is to permit attorneys to obtain residential address information necessary to represent a client in a pending action which is being filed or investigated and directly involves the use of a vehicle/vessel.

By early 2011, Maloney and Sutton had provided Respondent with a number of reports. In or about February 2011, Respondent submitted twenty 1161E forms to the DMV to obtain confidential contact information in connection with those reports. The DMV rejected some of the forms because they did not disclose a client or case number.

In early April 2011, Respondent telephoned the DMV and spoke with DMV Supervisor Kimberlie Keister (Keister) regarding why some of the forms he submitted were rejected while others were accepted. Line by line, Respondent and Keister went over the instructions on the 1161E form and the related Vehicle Code section. Respondent told Keister he was investigating auto dealers that were selling frame-damaged cars and had civil actions that were to be filed. Both Respondent and Keister misinterpreted the form and the statute. Keister allowed Respondent to use the 1161E form and reference her name on the form.[2]

Between about April and September 2011, Respondent submitted approximately 180 1161E forms to the DMV. Section D of the 1161E form stated, in part 1, "Briefly describe the vehicle/vessel related incident for which this information is required. Include date and location." In this section, Respondent wrote "Investigating Auto Dealer Fraud in the Sales Process. Potential lawsuit against dealership for fraudulent actions, Business Tort/Consumer Law –

[2] The State Bar asserts that Keister's authority was obtained by Respondent under false pretenses. Keister, however, credibly testified that she did not recall everything she discussed with Respondent. There is no clear and convincing evidence that Respondent misled Keister.

failure to disclose." Part 2 of section D requests that the attorney provide the "[c]ase number AND [n]ames of involved parties (including your client(s) [sic]." In this section, Respondent wrote, "No client or case number as yet. Under investigation. Approved by Kim Keister, DMV Policy and Privacy Section Supervisor."

When processing 1161E forms, the DMV would immediately send the automobile owner an official DMV notification that Respondent had obtained their confidential information. Upon receiving the purchaser's contact information, Respondent would send them a solicitation letter.

Eventually, the DMV asked Keister why Respondent was using her name on numerous 1161E forms. In about October 2011, Keister told Respondent to stop using her name on the forms. Respondent complied with this request.

The Solicitation Letters

Between February and August 2011, Respondent sent out approximately 180 solicitation letters to automobile owners whose contact information he obtained from the DMV. There were various versions of these letters, but all of them stated in bold, underlined text, that Respondent was contacting them regarding the DMV Notice.

In one version of the solicitation letter, Respondent claimed that the purchaser's car was worth up to 25 percent less than the purchase price. Another version said the car was worth up to 50 percent less than the purchase price. All versions of the solicitation letter stated that the car may be unsafe to drive. (See Exh. 2, pp. 18-20.)

Some versions of the solicitation letter indicated that the purchaser would surrender their legal rights if they contacted the auto dealer before contacting Respondent. This was not a true statement.

One version of the solicitation letter stated that there would be no costs to the purchaser for the "investigation." (Exh. 2, p. 18.) Another version stated, "[t]here is no cost to you for our

firm to handle the dealer negotiations and legal paperwork to get you the refund you are due." (Exh. 2, p. 19.) None of the letters disclosed that in the event of litigation, the purchasers could be exposed to attorney fee and cost awards.

Below are the contents of one version of Respondent's solicitation letter:

Re: VIN: [Purchaser's VIN]
Model: [Color, Year, and Model of Purchaser's Car]
Sale Date: [Date of Purchase]
Mileage: [Mileage]
Dealer: [Dealer]

Your Case number is: [Case Number]

Notice re: Department of Motor Vehicles – Information Request CVC§1808.22

Dear [Purchaser]:

According to our records, your dealer may have failed to inform you of the true condition of your car. Such a car is generally worth up to 50% less than what you paid. It may also be unsafe to drive.

Because of this we believe you may be due a large refund.

There is no cost to you for our firm to handle the dealer negotiations and legal paperwork to get you the refund you are due. Our fee, if there is any, comes entirely from the dealer.

Our firm restricts its practice exclusively to Automobile Dealership Fraud in the State of California.

Please feel free to give me a call at (650) 341-0300 or drop by our peninsula office at 370 Bridge Parkway, Redwood City, CA 94065.

Lastly, please do not surrender your legal rights by contacting your dealer before you call us.

Please have your sales documents and DMV notice with you when you call. Thank you.

Sincerely

Louis A. Liberty

(See Exh. 2, p. 20,[3] Exh. 44, and Exh. 108, p. 6.)

Upon sending these letters, Respondent did not know the extent of the frame damage and whether it was disclosed by the dealers. Respondent also did not know what amount the purchasers paid for their cars and, therefore, had no reasonable basis to estimate that their vehicle's value may be up to 50% of what they paid.[4]

Resolution

Respondent, Sutton, and Maloney dreamed of making millions, but it never happened. The partnership dissolved, and Sutton and Maloney sued Respondent in the San Mateo County Superior Court for unpaid reports and damages. This litigation has yet to be resolved.[5]

Conclusions

Count One – Section 6106 [Moral Turpitude – Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In Count One, the State Bar alleged that Respondent made two misrepresentations constituting moral turpitude.

The first allegation is that Respondent stated under penalty of perjury on approximately 180 DMV forms that he required confidential consumer information in order to represent existing clients when, in reality, he had no clients. The evidence presented at trial, however,

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[3] Another version of Respondent's solicitation letter was nearly identical, except for its representation that "such a car is generally worth up to 25% less than what [the purchaser] paid." (Exh. 2, p. 19.)

[4] The court also notes that Respondent's letters explicitly stated that his firm restricts its practice to exclusively auto dealership fraud. Yet, Respondent's prior discipline, which occurred in or about the same time period, involved his home loan modification services.

[5] Throughout this proceeding, Respondent claimed that Sutton stole documents from him. Respondent, however, chose to form a partnership with non-attorneys. After forming the partnership, Respondent abruptly changed the terms and conditions of the partnership. The whole arrangement was haphazardly put together and there was no credible evidence that the partners ever agreed what documents belonged to whom. Consequently, the court did not find Respondent's claims of theft to be credible.

contradicts this assertion. While Respondent's use of the 1161E form apparently went beyond its intended purpose, he was authorized to do so by a DMV supervisor and clearly stated on each form that he had no client or case number. Accordingly, Respondent did not misrepresent on DMV forms that he represented existing clients.

The second allegation is that Respondent "made misrepresentations in his communications to approximately 180 prospective clients when he stated that his investigation was at 'no cost' to each prospective client, when [he] knew or should have known that the prospective client could be responsible for paying the used car dealers' attorney fees and costs if the used car dealers prevailed against the prospective clients." The court disagrees and considers this allegation to be equivalent to comparing apples and oranges.

To begin with, none of Respondent's clients testified in this proceeding, so the court was not able to consider their understanding of Respondent's no-cost investigation offer. On its face, the offer of a no-cost investigation does not equate to an offer to absolve the plaintiff from all potential sanctions, counter-claims, or attorney fees, should he or she lose at trial. The court could not find case law supporting such a broad application of rule 1-400(D).[6]

Accordingly, the State Bar has not satisfied its burden of proving allegations of Count One by clear and convincing evidence. Count One is therefore dismissed with prejudice.

Count Two – Section 6068, Subdivision (a) [Failure to Comply with 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. The State Bar alleged that Respondent violated Vehicle Code section 1808.22 by submitting "approximately 180 [DMV] forms stating that he was requesting confidential DMV information on behalf of his 180 clients, when

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[6] This rule has been enforced against attorneys deceptively advertising "no-cost" services without disclosing additional fees and costs for ancillary services. (*Leoni v. State Bar* (1985) 39 Cal.3d 609, 627.)

Respondent did not actually represent these consumers at that time," in willful violation of section 6068, subdivision (a).

The evidence presented at trial did not support the State Bar's allegation that Respondent's forms stated he was requesting DMV information on behalf of existing clients. Instead, Respondent clearly stated on his information request forms that he had no clients. Accordingly, the State Bar did not present clear and convincing evidence of the alleged misconduct, and Count Two is dismissed with prejudice.

Count Three – Rule 1-400(D)(2-5) [Improper Solicitation]

In Count Three, the State Bar alleged that Respondent's solicitation letters to approximately 180 prospective clients violated subdivisions (2), (3), (4), and (5) of Rule 1-400(D). Accordingly, this court will consider the allegations in relation to each subdivision.[7]

Rule 1-400(D)(2)

Rule 1-400(D)(2) provides that attorney communications or solicitations shall not contain any matter or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public. The State Bar alleged that Respondent's solicitation letters constituted a willful violation of rule 1-400(D)(2) by giving the impression that Respondent had a relationship with the DMV, that he possessed evidence that the prospective clients' recently purchased cars were unsafe to drive, and that prospective clients would surrender their legal rights if they contacted the dealer before calling Respondent. The court agrees.

At least two of the versions of Respondent's solicitation letter began with the sentence, "According to our records, your dealer may have failed to inform you of the true condition of

[7] As noted above, there were at least three versions of Respondent's prospective client solicitation letter. While Respondent acknowledged sending out approximately 180 solicitation letters, it is unclear how many of each version was sent.

your car." This sentence was misleading. Attorneys don't typically maintain a database of records. The DMV, on the other hand, does maintain records. And it was the DMV's records that Respondent used to identify and contact the purchasers Accordingly, it would be reasonable for the recipients of this letter to believe that Respondent had a relationship with the DMV. This belief was bolstered by additional elements included in the letter, such as the "case number," the recipient's VIN, the detailed description of the recipient's vehicle, the date of sale, the mileage of the recipient's vehicle, and the dealer from which the vehicle was purchased. The impression that Respondent had a relationship with the DMV was further solidified by his request that purchasers have their DMV notice with them when they call.

Respondent's representation that prospective clients would surrender their legal rights by contacting their dealer before they called his firm was also misleading. Obviously, merely contacting the dealer would not result in the loss of legal rights. It seems clear that Respondent's assertion to the contrary was intended to prevent prospective clients from independently resolving the issue with their dealer.

Respondent's assertion that the prospective clients' cars may be unsafe to drive was also misleading in that it was pure speculation on his part. Respondent had no actual knowledge of the condition of the cars and whether or not they had been repaired. Stating that the dealer may have failed to disclose the "true condition of" the prospective clients' cars strongly implied that Respondent knew the true condition of the cars. In truth, all Respondent knew was that the cars had been sold at auction with the caveat that they had experienced some degree of frame damage.[8]

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[8] The State Bar also alleged that Respondent's solicitation letters tended to confuse, deceive, or mislead the public by giving the impression that there would be no cost to the prospective client. The court finds this allegation was not supported by clear and convincing evidence.

Rule 1-400(D)(3)

Rule 1-400(D)(3) provides that attorney communications or solicitations shall not omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public. Here, the State Bar alleged that Respondent's solicitation letters willfully violated rule 1-400(D)(3) by omitting that Respondent: (1) had no personal knowledge that the used car dealers failed to disclose frame damage; (2) had no personal knowledge that the prospective clients' cars were worth less than 50 percent of the purchase price; and (3) had no personal knowledge that each prospective client surrendered his or her legal rights by contacting the dealer before calling Respondent.

The court agrees that the first two of the aforementioned omissions were misleading. Although Respondent's solicitation letters included a lot of personal information specific to each purchaser, he knew very little about the automobiles in question, including whether the dealers disclosed the frame damage, the amount of the purchase price, and the extent of the existing damage (if any). Respondent's omissions were misleading to the public.[9]

Rule 1-400(D)(4)

Rule 1-400(D)(4) provides that attorney communications or solicitations shall not fail to indicate clearly, expressly, or by context, that it is a communication or solicitation. The context of Respondent's letters indicates that they are communications. Respondent also testified that the envelopes the letters were sent in were identified as an advertisement, and no credible contradictory evidence on this issue was presented by the State Bar. Accordingly, a violation of rule 1-400(D)(4) has not been established by clear and convincing evidence.

[9] The court declines to find Respondent culpable for omitting that he had no personal knowledge that each prospective client surrendered his or her legal rights by contacting the dealer before calling Respondent. The charging language is confusing and incongruous. Further, the court already found Respondent's warning regarding surrendering legal rights to be misleading pursuant to rule 1-400(D)(2).

Rule 1-400(D)(5)

Rule 1-400(D)(5) provides that attorney communications or solicitations shall not be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct. The State Bar alleged that Respondent willfully violated rule 1-400(D)(5) by sending letters and follow-up emails identifying confidential DMV information specific to the prospective clients' recently purchased used cars, and implying that the dealer sold them an unsafe, defective car for which only Respondent could remedy the harm. The court agrees. Respondent's letters were unsolicited and contained misleading and confusing information that was likely to result in panic and fear on the part of the prospective clients. (See *Leoni v. State Bar*, *supra*, 39 Cal.3d 609, 627.) Such information included Respondent's assertions that the prospective clients' cars may be unsafe to drive and worth half of what they paid for them, and that they would surrender their legal rights by contacting the dealer before calling Respondent.

Count Four – Section 6068, Subdivision (a) [Failure to Comply with All Laws]

The State Bar alleged that Respondent violated section 6155 by entering into a partnership with Sutton and Maloney to refer potential clients to attorneys without registering the service with the State Bar, in willful violation of section 6068, subdivision (a).

Section 6155 applies to lawyer referral services. It states, in part, that a partnership shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients unless: (1) the service is registered with the State Bar; and (2) the combined charges to the potential client do not exceed those that would be normally paid if no referral service were involved.

Although Respondent, Sutton, and Maloney aspired to create a lawyer referral service, the evidence demonstrated that this venture never got off the ground. Further, there is no

indication in the record that Sutton and Maloney ever referred clients to Respondent or any other attorney. Instead, they provided Respondent with reports, and Respondent then used the VIN numbers in those reports to locate potential clients through DMV records requests.

Based on these facts, section 6155 is not applicable. Accordingly, Count Four is dismissed with prejudice.

Aggravation[10]

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

Respondent has been previously disciplined on two occasions. On December 3, 2013, the Supreme Court issued order No. S213513 (State Bar Court case No. 11-O-17476) suspending Respondent from the practice of law for two years, stayed, with two years' probation. In this matter, Respondent was found culpable of collecting an advance fee for loan modification services and improperly using a lien to secure payment for his loan modification work.[11] In aggravation, Respondent demonstrated a lack of insight and remorse. In mitigation, the court considered Respondent's lack of a prior record of discipline and pro bono work.

On June 11, 2014, the Supreme Court issued order No. S216449 (State Bar Court case Nos. 12-O-16161, et al.) suspending Respondent from the practice of law for two years, stayed, with two years' probation, including a six-month period of actual suspension. In this matter, Respondent stipulated to collecting advanced fees for loan modification services (eight counts), improperly using a lien to secure payment for his loan modification work (eight counts), and improperly withdrawing from representation (one count). In aggravation, Respondent had a

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

[11] The misconduct in this matter spanned from April to July 2011.

prior record of discipline,[12] committed multiple acts of misconduct, and caused significant harm to his clients. In mitigation, Respondent terminated his loan modification practice after being contacted by the State Bar and cooperated by entering into a pre-filing stipulation.

The present case is unusual in that the current misconduct also occurred during the same time period as Respondent's two prior disciplines. Accordingly, the court assigns nominal aggravation for Respondent's prior record of discipline and considers what the discipline would have been had all the charged misconduct been brought as a single case.

Bad Faith or Dishonesty (Std. 1.5(d).)

The State Bar spent considerable time attempting to establish that Respondent made fraudulent representations to this court (and other courts) regarding his vision. While Respondent's representations regarding his medical condition may have been inflated, it was established that he had multiple eye surgeries between June 2015 and February 2016. Clearly, Respondent was enduring ongoing visual problems and it stands to reason that his repeated eye surgeries caused him to be somewhat hypersensitive. Accordingly, the court affords Respondent the benefit of the doubt and does not assign this issue any weight in aggravation.

Uncharged Misconduct (Std. 1.5(h).)

Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the "evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was based on [the attorney's] own testimony. . . ." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.) Here, the State Bar requests that the court assign aggravation

[12] The misconduct in this matter occurred between June 2011 and May 2012. Pursuant to *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619, the parties' stipulation considered the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct been brought as a single case.

based on uncharged criminal misconduct involving Respondent's admitted use of methamphetamines. Here, the State Bar elicited testimony from Respondent regarding his occasional drug use in order to discredit his testimony. The State Bar also presented testimony from other witnesses regarding statements Respondent purportedly made on this subject. The evidence relating to Respondent's drug use was not elicited for the purpose of inquiring into the cause of the charged misconduct. Accordingly, the court declines to assign any weight in aggravation for uncharged misconduct relating to Respondent's past drug use.

Significant Harm (Std. 1.5(j).)

The State Bar argued that Respondent's conduct caused significant harm to the defendants and the administration of justice. The court finds there was insufficient evidence at trial to support such a finding. Respondent's highly contested litigation in the two matters referenced by the State Bar does not demonstrate, by clear and convincing evidence, significant harm to the public or the administration of justice.

Lack of Insight

Respondent demonstrated a lack of insight regarding the misleading and confusing statements contained in his solicitation letters. In fact, Respondent now argues – in his motion to dismiss and closing brief – that there is not sufficient evidence to prove that he even sent the solicitation letters. He makes this argument despite the documentary evidence in the record, as well as the fact that he acknowledged sending 180 solicitation letters in his response to the NDC. Respondent's lack of insight and unwillingness to acknowledge his own misconduct gives the court serious concerns regarding his propensity to re-offend, and therefore warrants significant consideration in aggravation.

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Multiple Acts (Std. 1.5(b).)

Sending the aforementioned solicitation letters to approximately 180 potential clients constituted multiple acts. Respondent's multiple acts of misconduct warrant some consideration in aggravation.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.6.) No mitigating factors were shown by the evidence presented to this court.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. *(Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. *(Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. *(Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

In this case, the standards call for the imposition of a sanction ranging from reproval to actual suspension. (Std. 2.19) In addition, standard 1.7 states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

Due to Respondent's prior record of discipline, the court considers the applicability of standard 1.8. Standard 1.8(b) states that when an attorney has two prior records of discipline and

has previously served a period of actual suspension, disbarment is appropriate unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Here, Respondent's prior and present misconduct occurred during the same approximate time period. Therefore, standard 1.8(b) does not apply.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested that Respondent be disbarred. Respondent, on the other hand, argued that his case should be dismissed.

Before considering the relevant case law, the court must address the fact that the present matter represents an unusual situation. The misconduct in the present matter occurred over approximately the same time period as Respondent's first two disciplines. Therefore, the court must consider the totality of the findings in the three cases to determine what the appropriate discipline would have been had all the charged misconduct been brought as a single case. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

In Respondent's second discipline, the parties considered his first two disciplines together, and Respondent was actually suspended for six months, along with other conditions. (Exh. 116.) The question now becomes what level of discipline would have been warranted if the present matter was included with Respondent's first two disciplines.

Relevant cases involving violations of rule 1-400(D) have resulted in a range of discipline as lenient as admonishment and as severe as one month of actual suspension. (*In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442 [admonishment for single instance of misleading out-of-state solicitation in violation of rule 1-400(D) where no aggravating circumstances found and no harm found in mitigation]; *Leoni v. State Bar, supra,* 39 Cal.3d 609 [public reproval for two attorneys who mass-mailed misleading solicitations and had no prior discipline in over 30 years of practice]; *Belli v. State Bar* (1974) 10 Cal.3d 824 [one-month actual suspension for improper solicitation].)

That said, the aggravation found in the present case would have significantly increased the appropriate discipline recommendation in the prior matter. In addition, Respondent would have been required to reconcile how he could represent numerous loan modification clients and still assert in his automotive solicitation letters that, "Our firm restricts its practice exclusively to Automobile Dealership Fraud in the State of California."

In view of Respondent's misconduct, the case law, the standards, and aggravating factors, this court concludes that if the present case would have been included in Respondent's prior disciplines, an additional 90-day period of actual suspension would have been appropriate. Accordingly, this court recommends, among other things, that Respondent be suspended for 90 days.

Recommendations

It is recommended that respondent **Louis Allen Liberty**, State Bar Number 147975, be suspended from the practice of law in California for two years, that execution of that period of

suspension be stayed, and that Respondent be placed on probation[13] for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 90 days of probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. Respondent must 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 of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all 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 probation period.

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.

6. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's 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.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.[14]

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[13] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

[14] It is not recommended that Respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on June 11, 2014, by the Supreme Court in case No. S216449.

Multi-State Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on June 11, 2014, by the Supreme Court in case No. S216449.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

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

Dated: August 24, 2016

LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 24, 2016, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

LOUIS A. LIBERTY
LOUIS A. LIBERTY
553 PILGRIM DR SUITE A-1
FOSTER CITY, CA 94404

GLENN M. GOFFIN
GLENN M. GOFFIN, ATTORNEY-AT-LAW
920 BEACH PARK BLVD APT 39
FOSTER CITY, CA 94404

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 24, 2016.

Mazie Yip
Case Administrator
State Bar Court