

PUBLIC MATTER

FILED

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
) Case No.: 15-O-14409 YDR
)
CHRISTOPHER J. O'KEEFE) AMENDED DECISION
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A Member of the State Bar, No. 165197)

Introduction

In this disciplinary proceeding, Christopher J. O'Keefe (Respondent) is charged with a single count of willfully violating Business and Professions Code section 6106 (moral turpitude)¹ by certifying under penalty of perjury that he had complied with the Minimum Continuing Legal Education (MCLE) requirements, when in fact, he had not taken any courses during the relevant reporting period. The Office of Chief Trial Counsel of the State Bar of California (State Bar) has the burden of proving these charges by clear and convincing evidence.²

As set forth in more detail below, the court finds that the State Bar has established Respondent's culpability and based on the applicable aggravating circumstances and the absence of any mitigating circumstances, the court recommends that Respondent be disbarred from the practice of law.

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.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)



Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on May 23, 2016. Respondent filed his response to the NDC on May 25, 2017. On June 12, 2017, the parties filed a stipulation as to facts.

A one-day trial was held on June 13, 2017. The State Bar was represented by Deputy Trial Counsel Eric Aufdengarten. Respondent represented himself. This matter was submitted on June 13, 2017. The State Bar timely filed its closing argument brief on June 27, 2017; Respondent belatedly filed his brief on June 29, 2017.

This amended decision modifies the original decision, filed September 11, 2017, by incorporating a reference to costs awarded to the State Bar pursuant to Business and Professions Code section 6068.10.

Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's response, the stipulation of facts entered into by the parties, documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 18, 1993, and has been a member of the State Bar of California at all times since that date.

Background Facts Regarding Respondent's Prior Disciplines³

(1) Supreme Court Case No. S132495 (03-O-04419; 04-O-14313)

Effective July 10, 2005, Respondent was ordered suspended for one year, stayed, with one year probation, and 60-days actual suspension, for misconduct in two matters involving the

³ This court adopts and repeats here, the accurate summary of Respondent's first three discipline records as previously set forth by this court in State Bar Court Case No. 08-PM-12170-RAH.

handling of his client trust account and his failure to cooperate in a disciplinary investigation. Respondent participated in this proceeding.

(2) Supreme Court Case No. S137831 (04-O-14389)

Effective January 15, 2006, Respondent, in the underlying proceeding, was ordered suspended for two years, stayed, with six months actual suspension and until restitution/ accounting, and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure,⁴ for misconduct including client abandonment, failing to refund unearned fees, and failing to cooperate in a disciplinary investigation.

Respondent did not participate in this proceeding.

(3) Supreme Court Case No. S132495 (06-PM-10555)

Effective June 29, 2006, Respondent's probation in Supreme Court Case No. S132495 was revoked, the previous stay of suspension was lifted, and he was actually suspended for 30 days for failing to timely file two quarterly reports and failing to timely update his contact information. Respondent participated in this proceeding.

(4) Supreme Court Case No. S137831 (08-PM-12170)

Respondent did not participate in the proceeding underlying his fourth record of discipline which alleged that Respondent willfully violated his probation conditions imposed by the Supreme Court in Case No. S137831 by failing to submit satisfactory evidence of his compliance with medical conditions and failing to file quarterly reports to the Office of Probation. The Supreme Court order in Respondent's fourth discipline record was filed April 29, 2009. Respondent's probation was ordered revoked and he was suspended from the practice of

⁴ This order was subsequently modified by the State Bar Court on January 31, 2007, terminating Respondent's actual suspension pursuant to rule 205 of the Rules of Procedure and adding additional probationary conditions.

law for two years and until he proved rehabilitation, fitness to practice, learning and ability in the general law pursuant to former standard 1.4(c)(ii).⁵

(5) Supreme Court Case No. S192908 (09-N-15798)

Respondent's fifth record of discipline, addressed in Supreme Court order Case No. S192908, filed July 14, 2011, arose in connection with Respondent's stipulation that he willfully violated rule 9.20(c) of the California Rules of Court by filing his 9.20 compliance declaration 93 days late. The Supreme Court ordered Respondent suspended from the practice of law for two years with a one year actual suspension and until he proved rehabilitation, fitness to practice, learning and ability in the general law pursuant to former Standard 1.4(c)(ii), revised effective July 1, 2015.

Case No. 15-O-14409 – MCLE Compliance

Facts

Respondent was required to complete 25 hours of MCLE requirements for the period of February 1, 2011, to January 31, 2014 (compliance period). Respondent was required to but did not, report his MCLE compliance by February 3, 2014.

On April 30, 2014, the State Bar Office of Member Records and Compliance (Member Records) sent Respondent an MCLE Noncompliance 60-Day Notice for Respondent's failure to pay the \$75 non-compliance fee and failing to report compliance by the February 3, 2014 deadline. Member Records notified Respondent that once he satisfied the education requirement, "Go to www.calbar.ca.gov to report your compliance online by submitting an electronic compliance card through *My State Bar Profile*. (If you do not have access to a computer, please contact us as soon as possible to obtain a paper compliance card)" Member Records advised Respondent that failure to bring himself into compliance with all MCLE education,

⁵ Former standard 1.4(c)(ii) was revised July 1, 2015.

reporting, and payment requirements by June 30, 2014 would cause him to be placed on Not Eligible status. Member Records included the following in large font at the bottom of the notice: “Questions? Please contact the Member Services Center at MCLE@calbar.ca.gov or 1-888-800-3400.” Respondent received the letter but did not respond to Member Records until after October 24, 2014.

On June 6, 2014, Member Records sent Respondent an MCLE Noncompliance Final Notice by certified letter, return receipt requested, for Respondent’s failure to pay the \$75 non-compliance fee and failing to report compliance. Member Records notified Respondent: “If your report of compliance is listed in the box above as outstanding, make certain that you have satisfied the education requirement. Then, go to www.calbar.ca.gov to report your compliance online by submitting an electronic compliance card through *My State Bar Profile*. If you do not have access to a computer, please contact us as soon as possible to obtain a paper compliance card. (Please be reminded that even if you are exempt from the education requirement, you are required to report compliance by claiming exempt status by the deadline.)” Member Records advised Respondent that failure to bring himself into compliance with all MCLE education, reporting, and payment requirements by June 30, 2014 would cause him to be placed on Not Eligible status. Member Records included the following in large font at the bottom of the notice: “Questions? Please contact the Member Services Center at MCLE@calbar.ca.gov or 1-888-800-3400.” Respondent received the letter but did not respond to Member Records until after October 24, 2014.

On June 30, 2014, Respondent logged into his online State Bar profile and filled out his electronic compliance card. Respondent affirmed: “I have complied with the 25-hour MCLE requirement, including: 4 hours of legal ethics; 1 hour of elimination of bias in the legal profession; and 1 hour of prevention, detection, and treatment of substance abuse or mental

illness.” Respondent then reviewed and affirmatively confirmed the following statement: “I am Christopher O’Keefe and I declare under penalty of perjury under the laws of the State of California that I have complied with the 25-hour MCLE requirement for the period February 1, 2011 to January 31, 2014.” These statements were false. Respondent had not completed any MCLE hours during the compliance period.

On July 7, 2014, Member Records sent Respondent an Audit Notice. Member Records notified Respondent that he had been selected for an audit of his compliance with the MCLE requirement for the compliance period. Member Records instructed Respondent to submit proof of compliance by August 21, 2014, and provided instructions for how to submit proof of compliance. Respondent received the letter but did not respond to Member Records until after October 24, 2014.

On July 11, 2014, Member Records sent Respondent an MCLE Noncompliance Notice of Enrollment on Not Eligible Status. Member Records notified Respondent that he was enrolled on Not Eligible status effective July 1, 2014, because he was not in compliance with the Rules of the State Bar of California for failure to pay the MCLE non-compliance fee of \$75 and the reinstatement fee of \$200. Member Records included the following in large font at the bottom of the notice: “Questions? Please contact the Member Services Center at MCLE@calbar.ca.gov or 1-888-800-3400.” Respondent received the letter but did not respond to Member Records until after October 24, 2014.

On August 29, 2014, Member Records sent Respondent an MCLE Noncompliance 60-day Notice. Member Records notified Respondent that it had not received Respondent’s complete MCLE Audit submission, which was originally due by August 21, 2014. Member Records notified Respondent that if he did not bring himself into compliance with all MCLE requirements by October 31, 2014, the State Bar would enroll him as an inactive member not

eligible to practice effective November 1, 2014. Respondent received the letter but did not respond to Member Records until after October 24, 2014.

Member Records sent Respondent an MCLE Noncompliance Final Notice by certified mail, return receipt requested, on October 14, 2014. Respondent signed for the letter on October 17, 2014. Member Records notified Respondent that it had not received Respondent's complete MCLE Audit submission, which was originally due by August 21, 2014. Member Records notified Respondent that if he did not bring himself into compliance with all MCLE requirements by October 31, 2014, the State Bar would enroll him as an inactive member not eligible to practice effective November 1, 2014.

On November 10, 2014, Respondent submitted to Member Records paper copies of certificates of attendance for 19.5 hours of courses that were completed between October 24, 2014, and November 2, 2014. The 19.5 hours were not for coursework completed during the compliance period.

Respondent sought MCLE credit for 6 hours of State Bar Ethics School that he claimed to have attended earlier in 2014. Respondent attended State Bar Ethics School on August 23, 2012, not in 2014.

On November 10, 2014, Member Records sent Respondent an MCLE Noncompliance Notice of Enrollment on Not Eligible Status. Member Records notified Respondent that he was missing documentation of MCLE compliance and had failed to pay \$150 in MCLE late fees and a \$200 MCLE reinstatement fee. Member Records notified Respondent that he was enrolled in Not Eligible status effective November 1, 2014. On November 10, 2014, Member Records also sent Respondent a letter which notified Respondent that the State Bar was unable to complete his audit because Respondent was missing 5.5 hours of MCLE, including three hours of Legal Ethics. Member Records notified Respondent that the State Bar denied Respondent MCLE

credit for Respondent's attendance at State Bar Ethics School because his attendance was ordered pursuant to misconduct in connection with a disciplinary proceeding. Member Records advised Respondent to carefully review his MCLE records and submit any additional course records he may have to satisfy the MCLE requirement. Respondent received the letter but did not submit any additional course records.

On November 18, 2014, Member Records received a check in the amount of \$350 as a penalty payment for Respondent's failure to comply with the MCLE audit. The check was from the Client Trust Account of Respondent's then counsel, David Carr.

On December 16, 2014, Member Records sent Respondent a letter which notified Respondent that he did not complete the MCLE compliance audit and that Respondent had been placed on administrative inactive status. Member Records notified Respondent that his file may be referred to the Office of Chief Trial Counsel (OCTC), and advised Respondent to retain all records related to his MCLE compliance for the compliance period. Respondent received the letter.

Respondent never provided Member Records any proof of completion of MCLE courses or self-study that occurred during the compliance period.

On October 19, 2015, OCTC Investigator Rosalie Ackerman sent a letter to Respondent's counsel David Carr. Investigator Ackerman requested a written response to the allegation that Respondent intentionally committed an act involving moral turpitude, dishonesty and corruption in willful violation of Business and Professions Code section 6106. Investigator Ackerman asked Respondent to provide documentation, proof of attendance, or proof regarding MCLE courses Respondent attended during the compliance period.

On January 4, 2016, Investigator Ackerman sent a second letter to Mr. Carr stating that she had neither received a written response nor the documents requested.

Mr. Carr wrote to Investigator Ackerman on January 11, 2016, advising her that he did not represent Respondent in the matter.

On January 15, 2016, Respondent sent an email to Investigator Ackerman acknowledging receipt of her letters to Mr. Carr and requesting an extension for his response. Investigator Ackerman approved the extension to February 15, 2016. OCTC did not receive a response by February 15, 2016 so, on February 16, 2016, Investigator Ackerman notified Respondent that she needed his response to the matter. Respondent replied that he mailed the response package over the weekend and agreed to email a copy of his response. Investigator Ackerman clarified that she only required evidence of MCLE courses taken during the compliance period, not those that were taken after the compliance period.

On February 17, 2016, Respondent emailed Investigator Ackerman a copy of a letter from him to Investigator Ackerman dated February 13, 2016. As of the trial date, June 13, 2017, OCTC had not received the package Respondent claimed to have sent on February 13, 2016.

On February 19, 2016, Respondent told Investigator Ackerman that he had some self-study records and could provide them within a week. Investigator Ackerman told Respondent that he should provide whatever records he has available.

On February 25, 2016, Investigator Ackerman emailed Respondent that she never received the package he mailed and she again asked for evidence of courses Respondent took during the compliance period. Respondent received the email, but did not submit any additional evidence of MCLE compliance.

As of the date of trial, Respondent had not provided OCTC any additional MCLE records or evidence of MCLE credit received by Respondent during the compliance period.

Conclusions of Law

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. The State Bar charged Respondent with violating section 6106 by falsely reporting under penalty of perjury that he had complied with his MCLE requirements for the February 1, 2011 to January 31, 2014 compliance period when he knew he was grossly negligent in not knowing that he had failed to fulfill his MCLE obligations for that period.

It is undisputed that Respondent reported under penalty of perjury that he had complied with his MCLE obligations during the compliance period. It is also undisputed that despite Member Records' multiple requests for him to do so, Respondent never produced documentation that he had taken any MCLE courses during the compliance period.

Respondent's explanation for his failure to take the MCLE courses is that he had a good faith belief that he was not obligated to fulfill his MCLE obligations while he was actually suspended from the practice of law.⁶ Respondent also testified that when he attempted to contact his lawyer, Michael Wine, Esq., he learned from David Carr (another lawyer who had represented Respondent in a prior discipline), that Mr. Wine was deceased. While the record is not clear as to whether Carr gave Respondent any advice regarding his MCLE obligations during his period of actual suspension, the record is clear that even after speaking with Mr. Carr in March 2014, (and notwithstanding the time frame during which Respondent had an opportunity to speak with other counsel), Respondent falsely reported in June 2014 that he had complied with his MCLE obligations by completing the 25 MCLE courses required during the compliance period. In other words, Respondent claims he didn't know he was obligated to take the MCLE courses (and didn't take any courses), yet he unequivocally stated that he had completed the required MCLE courses during the compliance period. Not only was Respondent not candid

⁶ Respondent, who had previously been actually suspended multiple times, did not explain the source of his misunderstanding.

when reporting his MCLE compliance but, when audited, Respondent delayed almost six months before contacting Member Records and when he did contact them, he was not honest and forthright with Member Records or the State Bar about the ethics courses he had taken and when he had taken them.

This court finds that Respondent willfully violated section 6106 by intentionally misrepresenting that he had complied with his MCLE obligations during the compliance period.

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline (Std. 1.5(a).)

As discussed above, Respondent has five records of prior discipline. Respondent's prior disciplines are an aggravating factor.

Indifference, Lack of Insight and Remorse (Std. 1.5(k).)

Of particular concern to this court is Respondent's repeated probation violations and misconduct while on actual suspension. Respondent has demonstrated an indifference in complying with his probation conditions and a lack of insight into his misconduct which raises this court's concern that if once again placed on suspension with the imposition of probation conditions, the misconduct will recur. (Std. 1.5(k).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std.1.6.) The court finds the following with regard to mitigating factors.

Cooperation (Std. 1.6(e).)

Respondent is entitled to minimal mitigation for cooperating with the State Bar by entering into a stipulation of facts. Respondent's late filings, including his late response to the NDC, do not reflect cooperation on Respondent's part and most of the facts to which he stipulated, were easily provable. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

No Other Mitigating Circumstances

Respondent attempted, but has not presented, clear and convincing admissible evidence that during the recent misconduct and now, he continues to suffer physical and emotional difficulties as a result of injuries sustained in automobile accidents that occurred eleven years ago. Moreover, Respondent failed to establish by expert testimony that his physical and emotional difficulties were suffered by him at the time of his misconduct and that there is a nexus between such difficulties and his most recent misconduct. (See Std. 1.6(d).) As such, Respondent is accorded no mitigation credit for his alleged extreme physical and emotional problems.

Discussion

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

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

State Bar (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.8(b) provides that where a member has two or more prior records of discipline, disbarment is appropriate in certain circumstances, unless compelling mitigating circumstances predominate. Here, Respondent's mitigation is a far cry from compelling and, as mentioned above, Respondent has five prior records of discipline and an actual suspension was ordered in each. Analysis of Respondent's prior records reveals a pattern of misconduct involving culpability for moral turpitude and dishonesty and a failure to satisfy probation conditions. Moreover, Respondent seems unwilling or unable to conform to his ethical responsibility to make truthful statements. In sum, under these facts, standard 1.8(b) applies and disbarment is the appropriate discipline.

As to decisional law, such acts of moral turpitude are grounds for suspension or disbarment, even if no harm results. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 221, 220). (*See Barmun v. State Bar* (1990) 52 Cal. 3d 104, 113) (disbarment appropriate where attorney had three priors and no compelling mitigation); (*Chang v. State Bar* (1989) 49 Cal. 3d 114, 128-129).

Moreover, it is well settled that "false testimony on a material issue is a serious breach of basic standards as well as a breach of the attorney's oath of office and his duties as an attorney"; particularly when knowingly false statements are made by a member to the State Bar. (*See Olguin v. State Bar* (1980) 28 Cal.3d 195, 200)

Therefore, in view of Respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, the court finds that Respondent's disbarment is the appropriate measure which will provide adequate protection for the courts, the public, and the legal profession.

Recommendation

This court recommends that respondent Christopher J. O'Keefe be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys admitted to practice law in this state.

California Rules of Court, Rule 9.20

It is further recommended that the Supreme Court order Respondent comply with California Rules of Court, rule 9.20 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 the Supreme Court order in this matter.⁷

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

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that Christopher J. O'Keefe, Member No. 165197, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rule of Proc. Of State Bar, rule 5.111(D)(1).)⁸ Respondent's

⁷ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1998) 44 Cal.3d 337, 341.)

⁸ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, section 6126, subd. (b); see also Bus. & Prof. Code, section 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are

inactive enrollment will terminate upon (1) the effective date of the Supreme Court's order imposing discipline; (2) as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or (3) as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: September 21, 2017


YVETTE D. ROLAND
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 Los Angeles, on September 21, 2017, I deposited a true copy of the following document(s):

AMENDED DECISION

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

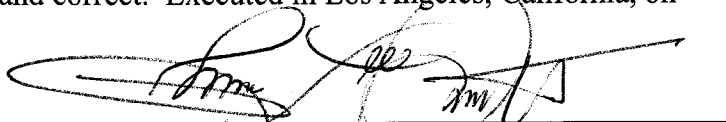
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**CHRISTOPHER J. O'KEEFE
12179 ROYAL LYTHAM ROW
SAN DIEGO, CA 92128**

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

ERIC J. AUFDENGARTEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court