

Filed June 8, 2020

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) No. 17-O-01111
)
DONALD DENNIS BEURY,) OPINION
)
State Bar No. 141733.)
_____)

A hearing judge found Donald Dennis Beury culpable of failing to pay sanctions ordered by a California superior court and a federal district court. The judge also found Beury culpable of failing to report both sanctions orders to the State Bar of California. The judge found no mitigation and three factors in aggravation, including a 2011 prior record of discipline that resulted in a 60-day actual suspension. The judge recommended progressive discipline, including a six-month actual suspension, continuing until Beury pays the appropriate amounts due under the state and federal court orders.

Beury appeals. He challenges the hearing judge’s findings and argues that a six-month actual suspension is unreasonable. He asserts he did not know about the state court order because he did not receive it. He also contends he did not report the federal order to the State Bar because it was for opposing counsel’s fees and costs, and not for sanctions. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the judge’s decision.

Upon independent review (Cal. Rules of Court, rule 9.12), we agree with the hearing judge, except that Beury did not have to report the federal court order because it was for fees and costs. Though we find less culpability, we affirm the discipline recommendation.

I. PROCEDURAL HISTORY

Beury was admitted to practice law in California on September 29, 1989. On June 25, 2018, OCTC filed a Notice of Disciplinary Charges (NDC). Beury filed his response on October 12, 2018. A one-day trial took place on January 31, 2019, and the hearing judge issued her decision on April 30, 2019. Beury filed his request for review on July 29, 2019, and his opening brief on December 20, 2019. OCTC filed its responsive brief on January 31, 2020. Oral argument was held on March 11, 2020.

On March 12, 2020, we issued an order directing OCTC to file a brief addressing the amount of restitution owed, if any, and to whom. We also granted Beury's unopposed request at oral argument to file his rebuttal brief and authorized him to respond to OCTC's brief. On March 20, 2020, OCTC timely filed its post-oral argument brief addressing restitution. Beury did not file a rebuttal brief or respond to OCTC's brief by the due date, despite an extension of time. The case was submitted for ruling on May 8, 2020.

The NDC charges four counts of misconduct that occurred in 2017. Count one alleges that Beury failed to pay a February 21, 2017 superior court-ordered sanction and count two alleges that he failed to pay a March 16, 2017 federal court-ordered sanction, both in violation of Business and Professions Code section 6103.¹ Count three alleges that Beury failed to report the state court sanction order to the State Bar, and count four alleges that, likewise, he did not report the federal court sanction. Both counts allege a violation of section 6068, subdivision (o)(3). The hearing judge found Beury culpable of all four violations, though she discussed them under counts one and two only. We find Beury culpable of three violations contained in the NDC's first three counts and dismiss count four with prejudice for lack of evidence. The four counts are discussed separately below.

¹ All further references to sections are to this source unless otherwise noted.

II. FACTUAL AND CREDIBILITY FINDINGS

The hearing judge's factual and credibility findings are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A) [factual findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility having observed and assessed witnesses' demeanor and veracity firsthand].) The judge found that some of Beury's trial testimony lacked credibility. Beury argues the judge disbelieved nearly all of his testimony and instead relied on the allegations. We reject Beury's argument as inaccurate. The judge made reasoned findings about specific credibility determinations, which we adopt. We also adopt the judge's factual findings, as supported by the record, and consider other evidence admitted at trial.

III. THE STATE COURT SANCTIONS ORDER

Count One: Failure to Obey Court Order (§ 6103)²

Count Three: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))³

A. Facts Pertaining to Counts One and Three

Benjamin Adler, owner of McDini's Restaurant Corporation (McDini's), hired Beury to represent him in several matters, one of which was McDini's lawsuit against the City of National City (City).⁴ On February 21, 2017, a superior court judge issued an order granting City's unopposed motion for sanctions. The judge ordered \$7,461.62 to be paid to City in "sanctions in the form of a fee award." The judgment was filed on March 7, 2017. The sanctions award was against McDini's and Beury, jointly and severally, for initiating and maintaining a frivolous

² Section 6103 provides that an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

³ Section 6068, subdivision (o)(3), requires an attorney "[t]o report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of . . . [¶] . . . [¶] . . . [t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000)."

⁴ *McDini's Restaurant Corporation v. The City of National City*, no. 37-2015-00043115-CU-MC-CTL, in the Superior Court of California, County of San Diego.

action solely to delay and increase litigation costs. The superior court judge noted in the order that Adler, on his own, filed an untimely declaration and made comments at oral argument. The judge did not consider them because court records indicated Beury represented McDini's.

On February 22, 2017, the superior court clerk mailed the sanctions order with a "Clerk's Certificate of Service by Mail" to Beury at his condominium residence in San Diego, which was his official State Bar Membership Records address.⁵ The family court records in Beury's divorce action established that he had exclusive use of the condominium residence from March 4, 2016, to March 20, 2017.⁶

On February 22, 2017, the same day the court clerk mailed the sanctions order, Adler filed a Notice of Change of Address or Other Contact Information in superior court. The filing indicated McDini's was a self-represented party and provided contact information for the restaurant. Beury was not served with the notice.

Beury testified Adler fired him in September 2016, before the sanctions order was issued, and repeatedly instructed him not to appear at hearings. He also testified that, in response, he returned Adler's files and provided him with substitution of attorney forms for the cases he was working on for Adler. Though Beury relied on the new attorney in the City case to file the substitution form, he did not check with the court to confirm its filing before the February 21, 2017 sanctions hearing was held. The superior court Register of Actions Notice, admitted into evidence at the disciplinary trial, shows that McDini's ultimately filed a substitution of attorney on May 16, 2017.

⁵ The clerk's proof of service stated, "I certify that I am not a party to this cause. I certify that a true copy of the final ruling o [sic] 02/17/2017 motion for sanctions was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 02/22/2017."

⁶ Beury did not change his official membership records address until September 21, 2017, six months after he left his condominium residence.

In January 2017, a month before the sanctions hearing, Beury was in superior court on another matter. He testified that he saw his name on a docket for a hearing for McDini's. Since no attorney appeared, he signed in. Immediately, an attorney approached him, stating he was Adler's new counsel. Beury testified that he also noticed while at court that the sanctions hearing had been set for February 2017. He testified that he happened to see Adler later, who told him the sanctions hearing went "great."

Beury testified he did not receive the February 21, 2017 sanctions order from superior court. He also did not request a copy after he received the NDC. He testified that he first learned about the order a year before his January 2019 disciplinary trial, when a State Bar investigator informed him by mail. He contends that he did not realize the sanctions were awarded against him, jointly and severally, until OCTC gave him a copy of the order just before his discipline trial. The hearing judge found that Beury's testimony about his "lack of knowledge and lack of notice are neither credible nor excusable." The judge concluded that Beury had timely notice of the order, having received it from superior court.

Sometime after the sanctions order was issued, Adler and his counsel called Beury demanding money. Beury testified they did not explain the reason for the money request, and that Adler and his counsel threatened to report him to the State Bar if he did not pay. Beury also testified he did not ask why the demand was being made because he thought the sanctions were against his client only, he could not afford to pay them, and he felt "blackmailed" by the request. The hearing judge found Beury's testimony on this point was not credible.

Beury testified he did not appeal the sanctions order⁷ or report it to the State Bar. On January 25, 2018, Adler agreed to pay City \$10,000 on behalf of McDini's to settle two

⁷ Beury stated that he did not appeal because (1) time had passed when he found out about the order; (2) it was a conflict of interest to appear in the same case against his client; and (3) he did not wish to expose attorney-client privileged communications.

judgments, including \$4,193.31 to settle the sanctions judgment. Beury has not paid any portion of the sanctions.

B. Culpability Pertaining to Counts One and Three

Count one alleged that Beury failed to comply with the February 21, 2017 order compelling him to pay sanctions of \$7,461.62 to City, in violation of section 6103. An attorney willfully violates section 6103 when, despite being aware of a final and binding court order, knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) The hearing judge found Beury culpable because he received the order and violated it by failing to pay. We agree, and reject Beury's collateral attacks on the final, unchallenged sanctions order. (See *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 605.)

Beury argues that the superior court clerk's mailing should not be conclusive evidence that he received the order. We reject his argument. Pursuant to Evidence Code section 641, "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." Beury contends this presumption is "on shaky ground." But Evidence Code section 604 states the "effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence" We find that the clerk's certification created a rebuttable presumption that Beury received the sanctions order. (*In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522 ["The purpose of a proof of service is to establish notice of the order"].) Beury could not rebut the presumption because (1) the order was mailed to Beury's official membership address, a location where he had been residing for nearly a year, (2) no evidence established any impropriety with the clerk's certification or that the envelope was returned as undelivered, and (3) Beury knew a sanctions

hearing had occurred and ignored later demands for money that reasonably related to the sanctions hearing.

Beury also argues that McDini's change of address filing on the same day the clerk mailed the order supports his claim that he never received the order. He speculates that these two filings on the same day caused a mix-up that prevented the sanctions order from being mailed to him. We reject this argument because the clerk's hard-copy proof of service certified that the sanctions order was correctly mailed to Beury at his condominium residence. Further, no evidence established that McDini's change of address filing affected the court clerk's certified mailing of the sanctions order.

Finally, we reject Beury's argument that he was not required to pay sanctions because he was not the attorney of record. The sanctions order states that court records established Beury represented McDini's when the sanctions were ordered. Beury failed to file a motion for discharge, substitution, or withdrawal as attorney of record. (Code Civ. Proc., § 284.) He may not rely on his belief that another attorney, his client, or anyone else timely filed his substitution of attorney with the court. In fact, McDini's did not file a substitution until May 16, 2017.

Count three alleged that Beury failed to report the February 21, 2017 sanctions order to the State Bar within 30 days, in violation of section 6068, subdivision (o)(3). The hearing judge found him culpable and we agree. Beury concedes he did not report the sanctions but asserts the reason he failed to do so was because he first saw the order when OCTC provided it to him shortly before his discipline trial. He testified that he "didn't see the point in informing the Bar of the sanctions because the Bar was telling [him]." His argument lacks merit. We have found that Beury timely received the order from superior court in 2017. Accordingly, he was obligated to report it within 30 days.

IV. THE FEDERAL COURT FEES AND COSTS ORDER

Count Two: Failure to Obey Court Order (§ 6103)

Count Four: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

A. Facts Pertaining to Counts Two and Four

Beury represented Adler and McDini's Restaurant in a lawsuit brought by J&J Sports Productions, Inc. (J&J), in the United States District Court for the Southern District of California.⁸ On March 23, 2016, the court held an attorneys-only early neutral evaluation conference and case management conference. Beury, counsel for defendants, and Thomas Riley, plaintiff's counsel, were present. The court set an in-person settlement conference for November 16, 2016, which was advanced to November 15. On that date, defendants and Beury failed to appear. The federal court issued an order to show cause (OSC) as to why defendants and defense counsel should not be sanctioned for their failure to appear.

On February 8, 2017, Riley submitted a declaration regarding his fees and costs incurred in attending the November 15, 2016 conference. He claimed a total of \$1,412, including travel and his administrative assistant's time. On February 15, 2017, the court held a telephonic hearing on the OSC and a settlement conference. Riley and Beury appeared.

On March 16, 2017, Magistrate Judge Ruben B. Brooks issued an "Order Reimbursing Fees and Costs," requiring Beury to pay Riley \$1,412. The order discusses authorities that establish the federal court's inherent power to sanction an attorney, and referenced rules that permit the court to impose money sanctions or attorney fees and costs for failing to appear. The order concluded that Beury, and not McDini's, must reimburse J&J's counsel \$1,412 for fees and costs incurred in attending the November 15, 2016 conference. Payment was due by April 15, 2017. More than a year later, on September 21, 2018, Riley wrote to Beury declaring that he would commence collections if Beury did not pay, by October 1, 2018, all "fees and costs"

⁸ *J&J Sports Productions v. Adler et al.*, no. 15-cv-2570-H-RBB.

awarded by the federal court on March 16, 2017. Beury testified he has not paid because he could not afford it, citing his eviction from his condominium and a bankruptcy he asserted he filed where he listed the federal order.

B. Culpability Pertaining to Counts Two and Four

Count two alleged that Beury failed to pay federal court sanctions of \$1,412 to J&J's counsel, as Judge Brooks ordered on March 16, 2017, in violation of section 6103. The hearing judge found him culpable and we agree.

Beury argues he did not pay because he could not afford to do so, testifying he was "totally broke." His argument does not excuse his non-payment here. Despite Beury's claimed inability to pay, the order is final and binding because he did not timely challenge it in federal court. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [despite financial hardship, attorney culpable for failure to pay court-ordered sanctions where no relief from order sought].) He also failed to present credible evidence that he filed a bankruptcy listing the federal order, such as a bankruptcy court docket. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 925 [unexplained failure to corroborate testimony with evidence that could be produced is strong indication testimony is not credible].)

Count four alleged that Beury failed to report the federal order (as a sanction) to the State Bar, in violation of section 6068, subdivision (o)(3). The hearing judge found him culpable, relying on the order's reference to authorities addressing attorney fees as sanctions and the fact that the order was in response to Riley's OSC for sanctions. Despite these references in the order, we find OCTC did not prove by clear and convincing evidence⁹ that the order was for sanctions as opposed to an order for reimbursement of fees and costs.

⁹ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

We have carefully examined the federal court order to reach our conclusion. First, we note that Judge Brooks titled it as “Order Reimbursing Fees and Costs.” Further, the concluding paragraph requires reimbursement of fees and costs, without mention of sanctions. While Judge Brooks cited authorities that discuss sanctions, he also noted that the Federal Rules of Civil Procedure provide for imposition of fees and costs instead of, or in addition to, other sanctions. Given the language of the order and the broad authority of the federal courts to order monetary sanctions and/or attorney fees, we will not speculate that Judge Brooks intended his order to be a reportable sanction without specifically stating so. Resolving all reasonable doubts in Beury’s favor, as we must (*Lee v. State Bar* (1970) 2 Cal.3d 927, 939), we interpret Judge Brooks’s order to be reimbursement for fees and costs, as titled, and not for sanctions under section 6068, subdivision (o)(3). Accordingly, we dismiss count four with prejudice for lack of evidence. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

V. AGGRAVATION AND MITIGATION

Standard 1.5¹⁰ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Beury has the same burden to prove mitigation. (Std. 1.6.)

A. THREE FACTORS IN AGGRAVATION

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

Beury has one prior record of discipline. On July 27, 2011, the Supreme Court ordered that he be placed on three years’ probation and actually suspended from the practice of law for 60 days, continuing until he paid restitution totaling \$2,680 plus interest in two client matters. In April 2011, Beury stipulated to committing misconduct from 2005 to 2010 in four client matters, including (1) failing to perform legal services with competence, (2) failing to obtain informed

¹⁰ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

written consent to a potential conflict of interest, (3) failing to refund unearned fees, (4) failing to maintain inviolate the confidences of a client, (5) violating his duty of loyalty to a client, and (6) failing to keep a client informed of significant developments. Beury also stipulated that he disobeyed superior court orders, in violation of section 6103, when he failed to timely prepare two orders after hearing in a family law case—he delayed filing the first order for six months and the second one for a year. In aggravation, Beury committed multiple acts of misconduct. In mitigation, he had no prior record of discipline during 16 years of practice, experienced emotional difficulties due to his mother’s death in 2007, and had conferred with the State Bar Ethics Hotline in one client matter.

The hearing judge found Beury’s prior record of misconduct to be a moderate factor in aggravation. (Std. 1.5(a) [prior discipline record is aggravating].) We agree. Beury disobeyed court orders in his prior and current discipline cases. Though this commonality renders his prior record serious, his past misconduct ended in 2010, and he remained discipline-free before his present misconduct began in 2017. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].)

2. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found Beury’s multiple violations to be an aggravating factor. (Std. 1.5(b) [multiple acts of wrongdoing are aggravating].) We agree and assign limited weight as Beury is culpable of three counts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

3. Significant Harm (Std. 1.5(j))

The hearing judge assigned aggravation for significant harm to a client and to the administration of justice. (Std. 1.5(j) [significant harm to client, public, or administration of

justice is aggravating circumstance].) We assign moderate aggravating weight to this factor. Beury significantly harmed Adler, who paid \$4,193.31 to settle the joint and several sanctions judgment. Beury also harmed Riley in the federal case, who needlessly incurred attorney fees that Beury has not paid. Finally, Beury burdened the courts because they had to perform additional work to address his misconduct by issuing orders for sanctions and reimbursement of fees and costs. Beury's misconduct undermines the ability of a tribunal to rely on an attorney's word. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 220 [wasting judicial time and resources is harmful to administration of justice]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79 [harm to administration of justice where considerable time wasted due to attorney's failure to conduct affairs properly and as directed, including refunding fees].)

B. NO FACTORS IN MITIGATION

1. No Credit for Extraordinary Good Character (Std. 1.6(f))

The hearing judge assigned no mitigation for Beury's character evidence. (Std. 1.6(f) [mitigation credit for extraordinary good character attested to by wide range of references in legal and general communities who are aware of full extent of misconduct].) We agree.

Beury presented letters from two witnesses—a 20-year friend and a 25-year attorney colleague and friend. Each praised Beury as competent, fair, conscientious, and dependable, and described Beury's marital difficulties. While we give serious consideration to character evidence from attorneys (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), two witnesses do not represent a wide range of references in the legal and general communities, as required by standard 1.6(f). (See *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 624 [assigning little weight in mitigation for character evidence from two witnesses who were social friends of attorney].) Further, the witnesses did not establish they

were aware of the full extent of Beury's misconduct. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].)

2. No Credit for Extreme Emotional Difficulties (Std. 1.6(d))

Mitigation is available for extreme emotional difficulties if (1) Beury suffered from them at the time of his misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that Beury will commit future misconduct. (Std. 1.6(d).) Beury provided his tax return showing \$11,679 as his adjusted gross income for 2017, and testified that he filed for bankruptcy in 2018. He also presented evidence he was going through a difficult divorce during the time of his misconduct. The hearing judge did not assign mitigating for emotional difficulties related to these events, primarily because Beury failed to establish a nexus between the difficulties and his misconduct. We agree, assign no credit, and note that Beury also did not prove that his claimed difficulties no longer pose a risk for future misconduct.

VI. SIX-MONTH ACTUAL SUSPENSION IS PROPER PROGRESSIVE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) OCTC requests we affirm the hearing judge's recommended discipline and Beury argues that the hearing judge's findings are not based on the evidence and the six-month suspension is unreasonable.

We begin our discipline analysis by identifying which standard presents the most severe sanction for the misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) The hearing judge properly relied on standard 2.12(a), which calls for disbarment or actual suspension for violation of a court order related to the practice of law. This standard echoes the language of section 6103, which provides for disbarment or suspension for willfully violating a court order. We also consider standard 1.8(a), which states when a member has a single prior record of discipline, the “sanction must be greater than the previously imposed sanction,” subject to certain exceptions not applicable here. Beury received a 60-day actual suspension in his prior discipline case.

Beyond the standards, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Since violations of court orders are often coupled with other serious misconduct and/or prior records of discipline, no case directly compares to this one. However, the hearing judge cited two cases that properly support her discipline recommendation. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, a less serious case than Beury’s, the attorney received a stayed suspension for one count each of failing to perform competently, failing to obey a court order, and failing to report a judicial sanction. Multiple acts of misconduct and harm to administration of justice aggravated the case and mitigation was assigned for 17 years of discipline-free practice, cooperation, and good character. In *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, a far more serious case than Beury’s, the attorney was disbarred for two counts of moral turpitude by making misleading statements to the courts, four counts of violating court orders, and two counts of failing to report judicial sanctions. Aggravation included two prior records of discipline, multiple acts of misconduct, harm to the administration of justice, and indifference. Mitigation was assigned for

cooperation. Given the broad range of discipline in the standard and among these cases, we must look to factors specific to Beury's misconduct to determine the appropriate discipline.

We find that Beury's primary failing, as an attorney and an officer of the court, is that he has repeatedly disobeyed court orders. He violated two court orders that were issued within one month of each other: the February 21, 2017 state court order and the March 16, 2017 federal court order. The 60-day suspension Beury served in his prior discipline case should have placed him on heightened notice that he must obey orders of the courts. It appears this prior discipline did not impress upon him that committing further ethical violations, specifically disobeying court orders, is serious misconduct and grounds for additional discipline. (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 [obedience to court orders intrinsic to respect attorneys and their clients must accord judicial system].)

Considering the aggravation, the lack of mitigation, and the need for progressive discipline beyond a 60-day actual suspension, a six-month actual suspension is appropriate. It is in the mid-range of discipline in standard 2.12(a),¹¹ and reflects our increasing concern about Beury's failure to comply with court orders. We affirm the hearing judge's discipline recommendation. Beury's six-month actual suspension will continue until he pays the court-ordered sanctions and reimbursement of fees and costs, as provided below.

VII. RECOMMENDATION

We recommend that Donald Dennis Beury, State Bar No. 141733, be suspended from the practice of law in California for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

¹¹ Standard 1.2(c)(1) provides, in pertinent part, "Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met."

- 1. Actual Suspension.** Beury must be suspended from the practice of law for the first six months of his probation, and he will remain suspended until the following requirements are satisfied:

No later than 30 days before the end of the period of probation, Beury must pay (and furnish satisfactory proof of such payment to the Office of Probation) to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

- a. McDini's Restaurant Corporation, 105 E. 8th Street, National City, CA 91950, in the amount of \$3,730.81 plus 10 percent interest per year from February 21, 2017;¹² and
- b. Thomas P. Riley in trust for J&J Sports Productions, Inc., at Law Offices of Thomas P. Riley, First Library Square, South Pasadena, CA 91030-3227, in the amount of \$1,412 plus 10 percent interest per year from March 16, 2017.¹³

If Beury remains suspended for two years or longer, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Beury must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Beury must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.
- 4. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Beury must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes.

¹² McDini's settled the sanctions debt with City. We agree with the hearing judge and OCTC's request that Beury pay McDini's \$3,730.81, which is one-half of the total \$7,461.62 sanctions award since it was issued jointly and severally against McDini's and Beury.

¹³ OCTC requested in its post-oral argument brief that the fees and costs be paid in this manner.

Beury must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Beury must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Beury must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court. During his probation period, the State Bar Court retains jurisdiction over Beury to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his State Bar record address, as provided above. Subject to the assertion of applicable privileges, Beury must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports

a. Deadlines for Reports. Beury must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Beury must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Beury must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Beury is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Beury must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Beury will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Commencement of Probation/Compliance with Probation Conditions. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Beury has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Beury be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If he provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

IX. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Beury be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.¹⁴ Failure to do so may result in disbarment or suspension.

X. COSTS

We further recommend 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.

¹⁴ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Beury is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)