

PUBLIC MATTER -- DESIGNATED FOR PUBLICATION

Filed April 17, 2000

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	Nos. 94-O-13983
)	94-O-10353
RONALD E. LAIS,)	93-O-13983
)	
A Member of the State Bar.)	OPINION ON REVIEW
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We act on requests by both Respondent Ronald E. Lais and the State Bar's Office of Chief Trial Counsel (State Bar) to review this attorney discipline case. A hearing judge had found respondent culpable of some, but not all charged misconduct and recommended that respondent be suspended for three years, stayed on conditions of a one-year actual suspension. Respondent has been disciplined previously (In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907 (Lais I)), but since Lais I was not final until after the trial of the present matter and the misconduct arose at about the same time as in the present matter, its weight for discipline purposes was considerably lessened by the hearing judge.

Respondent urges us to exonerate him of all charged misconduct; and, in any case, to reduce the discipline to, at most, a 30 or 60-day actual suspension. The State Bar argues that we should find respondent culpable of charges which the hearing judge dismissed and recommends disbarment. We agree with the State Bar's arguments on culpability but determine that the appropriate discipline is a three-year stayed suspension on conditions of

probation including a two-year actual suspension and until respondent provides the proof required by standard 1.4(c)(ii), of the Standards for Attorney Sanctions for Professional Misconduct (Standards).

I. Culpability Findings and Discussion.

A. The Walker Matter.

1. Facts and findings.

William F. Walker (Husband), chief financial officer of a health care firm and a certified public accountant, had received valuable stock options (options) from his employer while he was married to Deanna Walker (Wife). In 1987, the parties dissolved their marriage. Husband sold some stock after the couple separated but 60,000 options remained unexercised. A key dispute in the family law trial was the value of Husband's stock options and their proper division as part of the community property. In 1988 the Orange County Superior Court valued the options as of the date of the family law trial, determined the amount of community assets represented by the value and awarded these assets to the parties. Husband objected to this decision and appealed it in propria persona.

In 1989, the court of appeal modified the superior court judgment because of the trial court's error in option valuation, but otherwise affirmed. (In re Marriage of Walker (1989) 216 Cal.App.3d 644 (Walker I.) Rehearing was denied and the Supreme Court denied review.

When Husband failed to tender the value of the options as ordered by the court of appeal, Wife pursued an order to show cause in 1991 in Superior Court. Husband hired respondent to represent him. This was respondent's first appearance in the case. Respondent opposed Wife's request, claiming that she should receive nothing. Relying on Walker I, the superior court ordered Husband to pay Wife \$564,189. Husband, represented by

respondent, appealed. (In re Marriage of Walker (Dec. 16, 1992) G011333/G011681 [nonpub. opn.] (Walker II))¹ The appeal was assigned to the same appellate court division which filed Walker I. In Husband's 47-page opening brief, respondent acknowledged that Walker I "was the law in this case," but urged the Court of Appeal to revisit Walker I because it was based on error. Most of the other issues respondent raised in Walker II also attacked the valuation of the stock options.

Wife opposed respondent's appeal in Walker II, in part urging that the appeal was frivolous. She sought sanctions.

In 1992, the court of appeal filed its opinion in Walker II. That opinion began by characterizing in one sentence the seven issues respondent raised: "Still refusing to accept Walker I, he wants it redecided." (Walker II, typed opn., at p. 3.) The court then discussed each of respondent's issues and pointed out that they were part of the issues decided previously or that respondent's client was obligated to have presented the evidence earlier so that the pertinent issues could have been determined in Walker I. Regarding respondent's attempt to convince the court to redivide the stock, the court held that his citation to Civil Code section 4810 was "ludicrous" in that it did not allow any redetermination of a previously issued appellate decision. (Id. typed opn. at p.3, fn.2.) The court of appeal continued by pointing out the well-settled doctrine of the law of the case which bound trial and appellate courts throughout the subsequent phases of a case even if the court may believe that the former decision is erroneous. (Id., typed opn. at pp. 4-5, citing Kowis v. Howard (1992) 3 Cal. 4th. 888, 893.)

Finally, the court of appeal in Walker II reviewed the key authorities surrounding

¹ Although this opinion was not certified for publication, it may be cited in this disciplinary proceeding. (Cal. Rules of Ct., rule 977(b).)

the awarding of sanctions for pursuing frivolous appeals. The court cited to the leading case of In re Marriage of Flaherty (1982) 31 Cal.3d 637, observing that courts had articulated two standards, subjective and objective. After reviewing these standards, the court held that respondent's appeal was frivolous under either of them, that the matter was prosecuted for an improper motive and that any reasonable attorney would agree that the appeal was devoid of merit. The court also criticized respondent for imposing on the court's time by including multiple volumes of clerk's and reporter's transcripts containing papers "entirely irrelevant to the present appeal," by inapt citations and by arguing evidentiary issues never presented in Walker I. (Walker II typed opn. at pp. 10-11.) The court discussed the harm caused by frivolous appeals, both to the opposing litigant who is delayed in receiving the assets to which she is entitled, to the courts burdened by increased costs of pointless review and to many other litigants in other appeals who are prejudiced while the court is distracted by reweighing matters which had earlier become final.

The court in Walker II summed up the essence of respondent's appeal: "In Walker [I], we told [Husband] what to do. We explained what stock [Wife] was to receive and at what value. [Husband] chose to ignore its mandates, and when [Wife] was compelled to file an order to show cause to receive that to which she was already entitled, he responded that she should receive nothing. When the trial court reminded him it was bound by our decision, he appealed. 'Certainly the judgment was appealable. However, no reasonable attorney could have concluded the trial court did not follow the directions of this court...' (Citation)" (Walker II typed opn. at p. 11 [original emphasis].)

The court of appeal imposed sanctions of \$3,662 against Husband and an equal

amount against respondent.² In doing so, the court cited Business and Professions Code section 6068 subdivision (c)³, rejecting respondent's claim that, as an attorney, he should not be held responsible for merely advocating the position of his client.

In early 1993, the court of appeal denied rehearing, and in April 1993, the Supreme Court denied review.

The State Bar charged respondent with violating section 6068 subdivision (c) and rule 3-200(A), Rules of Professional Conduct of the State Bar⁴ and with failing promptly to report to the State Bar the sanctions ordered (section 6068(o)(3)). Prior to trial, the parties stipulated to the background facts set forth above and that the failure to report sanctions charge be dismissed. The hearing judge made factual findings in conformity with that dismissal.

However, the hearing judge found a lack of clear and convincing proof that respondent violated either section 6068 subdivision (c) or rule 3-200(A) of the Rules of Professional Conduct. The hearing judge determined that the civil appeal in Walker II was decided on a "preponderance of the evidence" standard and that he must therefore independently assess the evidence before him. When doing so, he decided that it failed to meet the clear and convincing standard required for culpability.

2 The \$3,662 was composed of \$2,500 payable to the Wife and \$1,162 payable to the court of appeal, which the court of appeal determined to be a conservative figure representing each assessee's share of the estimate of the cost to taxpayers to process the average civil appeal, excluding overhead such as rent and materials.

3 Unless noted otherwise, all references to sections are to the provisions of the Business and Professions Code. Section 6068 subdivision (c) requires an attorney to "counsel or maintain such actions... only as appear to him or her legal or just, except the defense of a person charged with a public offense."

4 Rule 3-200(A) proscribes, in part, bringing an action or taking an appeal "without probable cause and for the purpose of harassing or maliciously injuring" another.

2. Discussion of culpability.

The State Bar has appealed this determination in the Walker matter. It contends that the standards used by the court of appeal in determining that respondent's appeal was frivolous are so high that they bring the case well within the clear-and-convincing standard and that the hearing judge should have used principles of collateral estoppel to preclude respondent from disputing that the appeal was frivolous. On our independent review of the record (see, e.g., In re Morse (1995) 11 Cal.4th 184, 207; Rules Proc. State Bar, title II, State Bar Court Proceedings, rule 305(a)), we hold that clear and convincing evidence shows that respondent is culpable of the charged misconduct as contended by the State Bar. We also affirm the hearing judge's decision on stipulated facts that respondent is not culpable of failing to timely report the sanctions.

In our view, the hearing judge erred when he held that the record lacked clear and convincing evidence that respondent filed a frivolous appeal which violated section 6068(c) or rule 3-200(A).

A key aspect of the record is the opinion of the Court of Appeal in Walker II which held that respondent's appeal was frivolous. That opinion was preceded by notice to respondent that sanctions were sought by the opposing party.

At the outset, we agree with the hearing judge's citation to the general rule that civil findings are not, by themselves, dispositive of the issues in a disciplinary case (See, e.g., Rosenthal v. State Bar (1987) 43 Cal.3d 612, 634; In the Matter of Respondent K (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 348) There are sound reasons for this rule. Often the issues in a civil case may be either broader or narrower than the operative issues in this disciplinary proceeding. For example, a civil proceeding may decide only whether an attorney used ordinary care in representing a client or whether a client gave adequate

consideration to support an attorney-client fee agreement and not whether the attorney breached disciplinary standards of conduct. The purposes of a disciplinary proceeding are quite different from those of a civil proceeding (see, e.g., In the Matter of Applicant A (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 327), and the body of law is accordingly different. However, civil matters do arise which bear a strong similarity, if not identity, to the charged disciplinary conduct. As the hearing judge correctly observed, the Supreme Court has also held that even civil findings made under a preponderance of the evidence test are entitled to a strong presumption of validity before the State Bar Court if supported by substantial evidence. (Id. at p. 325.)

The Supreme Court has noted in several cases, the importance to be given appellate court decisions. For example, in In re Morse, supra, 11 Cal.4th 184, the court cited repeatedly to People v. Morse (1993) 21 Cal.App.4th 259, a court of appeal opinion to which the attorney was a party. That court of appeal opinion determined that the attorney's mass mailing of homestead exemption materials to prospective clients was misleading under state law governing homestead filing services. In Lee v. State Bar (1968) 2 Cal.3d 927, 940-941, the court took judicial notice of a court of appeal opinion to which the attorney was a party. (Lee v. Joseph (1970) 267 Cal.App.2d 30.) Although noting, as in the present case, that the evidence of the attorney's culpability rested on independent evidence of misconduct, the Supreme Court also stated that the court of appeal opinion was a conclusive legal determination that the attorney gave no consideration for a promissory note.

Here virtually the entire focus of the court of appeal's opinion in Walker II was on the issue of whether that appeal was frivolous. The appellate court cited and applied the correct law and found that it was a frivolous appeal, giving detailed reasons for reaching

that conclusion. As the State Bar correctly observes, in order to hold that an appeal is frivolous, the law requires an extremely high showing. This is only sound, so that zealous but good faith appeals having any merit are neither deterred nor sanctioned. The Walker II opinion itself cited and applied this law and its decision became final. Accordingly, the court of appeal's decision in Walker II, was, at the very least, a prima facie determination that respondent's appeal in that case was frivolous and that it was pursued in bad faith. Faced with disciplinary charges and with the opportunity for a trial, respondent failed to adduce evidence that overcame the strength of the evidence presented by the State Bar.

Before us, respondent contends that the pertinent doctrine of In re Marriage of Flaherty supra, relied on by the court in Walker II was tempered by San Bernardino Community Hospital v. Meeks (1986) 187 Cal.App.3d 457. Respondent is incorrect. Nothing in the latter case alters the relevant doctrine of Flaherty and the other authorities relied on by the Walker II court in finding respondent's appeal frivolous.

On this record, we need not decide whether the judge should have applied principles of collateral estoppel to preclude the testimonial evidence he considered in addition to the record in Walker II. Indeed the case of Wright v. Ripley (1998) 65 Cal.App.4th 1189, decided after the disciplinary trial below, guides that unless sanctions issues arising under section 128.5 of the Code of Civil Procedure are adequately litigated before the sanctioning court, it would appear inappropriate to apply collateral estoppel to the sanction order.⁵

⁵ Wright v. Ripley, supra, raised the issue of whether a superior court's denial of a sanction order collaterally estopped proof in a separate tort action of the absence of malice. Although the court dealt with a denial of sanctions order, its discussion is of interest to this case: ". . . The majority of sanctions motions can be resolved summarily, and the party seeking sanctions should be encouraged to pursue that option rather than pushed into seeking a full evidentiary hearing. . . . Moreover, if collateral estoppel effect were given to the denial of such motions, it would also have to be given when they are granted. It is difficult to imagine the extent to which judicial economy would be compromised if every lawyer against whom sanctions were sought understood that such an award would constitute a binding adjudication on issues of his or her professional conduct. Regular court business would grind to a halt while lawyers exercised their full due process rights to fight the charges." (Id. at pp. 1194-1195.)

Although we cite Wright v. Ripley, we note the detailed findings of the court in Walker II and discussion of respondent's conduct, compared to the most brief sanctions denial order reviewed in Wright.

We must decide whether respondent's frivolous appeal was a violation of section 6068 subdivision (c) or rule 3-200(A) of the Rules of Professional Conduct. In our view it was a violation of both of those charged authorities. In Sorenson v. State Bar (1991) 52 Cal.3d 1036, the court applied section 6068 subdivision (c) to an attorney's conduct culminating in the filing of a municipal court fraud action seeking exemplary damages to redress a basic \$45 billing dispute. The principles of Sorenson apply to respondent's wasteful, expensive relitigation of what respondent knew had been finally established as the law in Walker I. However, since the rule 3-200(A) violation is essentially redundant, for purposes of assessing degree of discipline (see post), we shall find respondent culpable in this matter of only the section 6068 subdivision (c) violation. (Cf. Bates v. State Bar (1990) 51 Cal.3d 1056, 1060; Heavey v. State Bar (1976) 17 Cal.3d 553, 559-560.)

B. The Van Essen Matter - Minnesota.

1. Facts and findings.

In 1992 Rodney (Husband) and Lisa Van Essen (Wife) were involved in a dissolution of marriage action pending in Los Angeles County Superior Court. The parties contested sharply custody of their two young children. At this time, respondent had not yet appeared in the case. As of Summer 1992, custody was awarded jointly but physical custody was awarded to Wife with visitation rights to Husband. The custody order was temporary but effective until further court order.

Because of evidence Husband presented about Wife's contact with another individual who had access to the children, Husband obtained an emergency order in late

1992 for custody. After the dissolution trial in Summer 1993, a custody order was made reinstating joint custody with physical custody to Wife. In October 1993, Husband successfully obtained physical custody of the children. At about this time, Wife retained respondent to represent her.

A hearing was set for a custody order on November 9, 1993. Since respondent recently became Wife's counsel, he asked for a continuance. This was granted to December 13 but on the condition that Husband receive temporary primary physical custody, that he be allowed to take the children to his home, a farm in Minnesota, and that Wife have reasonable visitation rights on reasonable notice to Husband, including a weekend visit with the children if Wife were in Minnesota. Respondent unsuccessfully moved for a stay of the order and unsuccessfully sought extraordinary writ relief from the court of appeal.

On December 16, 1993, after a three day hearing at which respondent represented Wife, Superior Court Commissioner Taylor awarded primary physical custody to Husband in Minnesota; but upon reasonable notice to Husband, Wife was allowed a weekend visit with the children if she were in Minnesota. Respondent unsuccessfully sought a stay of this order which took effect on December 16.

Wife had visited the children in Minnesota over the Thanksgiving 1993 weekend. After the December 16 order, she expressed her interest in returning to Minnesota to visit the children between Christmas Day and New Year's Day. She spoke to Husband several times between December 16 and 22 about her plan. Husband wanted the visit details worked out between their attorneys. On December 21, respondent sent a letter to Husband's counsel by telefacsimile (fax) informing of Wife's plans to visit the children between the afternoon of December 25 and the afternoon of January 1. Respondent requested that Husband's counsel forward the information to her client so that he would

have ample notice of Wife's planned visit. On December 22, respondent sent by fax another letter to Husband's counsel asking whether Husband would allow some visitation when Wife was to be in Minnesota next week. Respondent also told Husband's counsel that his vacation started today but he would be available by phone and that he would "like to resolve the visitation issue before Saturday" so Wife can know what to expect on her arrival in Minnesota.

Although Husband's counsel received the letter the same day it was faxed, she believed that she had extra time to finalize the visitation details. However, without any notice to Husband's counsel, respondent and Wife flew to Minnesota on December 22, arriving late in the evening. A few hours later, they drove in a car respondent had rented to Husband's farm, arriving just before 5:00 a.m. on December 23. The weather was ten degrees below zero, with five to ten inches of snow on the ground. Wife, having previously observed Husband's farming routine, knew that at this time, Husband would be away from the house in a nearby barn milking the cows. Respondent let Wife out of the car near the house and then drove just off Husband's property to wait for Wife and the children. Wife went into the house and led the children outside. The children were wearing only tee shirts. They did not have on any socks or shoes, despite the snow and freezing temperatures. Husband and his father heard the commotion and detained Wife. They also called the sheriff. Husband found respondent in his car and asked him what he was doing. He replied that he had a court order with him awarding custody to Wife. He produced no such order and had none with him. He knew that the current order in effect placed primary physical custody with Husband.

Sheriff's deputies who responded to the call placed respondent and wife under arrest. Respondent was arrested for burglary and depriving Husband of his parental rights.

Criminal charges against respondent were later dismissed.⁶ On December 23, sheriff's deputies interviewed respondent. He showed them a July 1992 stipulation providing for custody per conciliation efforts but failed to show the deputies the current orders respondent knew placed custody in Husband. Respondent also gave a written statement to the sheriff's department on December 23, representing that Wife had legal and physical custody as a result of a July 1992 order and that there was no superseding custody order. On December 23, Husband was able to reach his counsel who went to the courthouse and sent a copy of the current custody order by fax to the Minnesota sheriff.

On January 13, 1994, the superior court issued a judgment of dissolution of marriage. Joint legal custody of the children was awarded with primary physical custody remaining in Husband in Minnesota. Wife was authorized to visit on reasonable notice to Husband.

Respondent and Wife each testified that their decision to go to Minnesota early was sudden, arising after Wife was unable to reach Husband on December 22 because Husband's phone had been disconnected. Respondent agreed to accompany wife to Minnesota without fee in return for Wife's payment of his airfare. Respondent thought it might be necessary to retain local counsel for court action to regain custody of the children if Husband refused visitation or had left the farm with the children. Although respondent may have consulted with local family law counsel, that counsel's services were never utilized.

The State Bar charged respondent with committing moral turpitude in violation of section 6106 by assisting and advising his client to violate the court's December 13, 1992

⁶ Respondent testified that the reason for dismissal was that a Minnesota judge did not want to become enmeshed in resolving California custody orders. The record indicates no other facts about the outcome of the criminal charges.

custody order. The hearing judge discussed the evidence at length in his decision and found respondent culpable.

2. Discussion of culpability.

The State Bar agrees with the hearing judge's findings. Respondent however contends that Wife did not intend to abduct the children from Husband's farm on December 23; and, even if she did, the record is devoid of evidence that respondent either knew that she would or that he acted unlawfully. Respondent has taken issue with the manner in which the hearing judge weighed the credibility of witnesses and used that weight to conclude that respondent was culpable. Respondent has posited his own version of the events of December 23 to show that they are more plausible than the State Bar's. However, even if we credit respondent's attack on some of the testimony, it does not warrant reversing the hearing judge's conclusion that he was culpable. The undisputed chronology of court orders and the barest details of the events at Husband's Minnesota farm on December 23, 1993, amply establish respondent's culpability.

At all times, respondent was aware of the chain of custody orders. He knew that the December 16 superior court order provided for physical custody to remain with Husband. Even assuming that Wife devised the plan on her own to visit her children in Minnesota two days early, respondent knew that such precipitous visitation was not authorized either by his letters that he had faxed to Husband's counsel or the outstanding court order which required reasonable notice prior to visitation. If Wife was worried that her Husband's disconnected phone was a sign he might refuse her visit, respondent never let opposing counsel know that he was flying to Minnesota with Wife on December 22. His personal presence in driving Wife to the farm aids in the moral turpitude conclusion, for respondent knew that Wife had planned to leave with the children on December 23, as she had packed

bags of clothes for them and had reservations at a resort in Minnesota. Even if we were to credit respondent's claim, that the December 23 visit to the farm was solely Wife's idea, and respondent was an innocent escort, he was fully as culpable as a principal in this unfortunate escapade. Even if respondent's acts and motive were pure, however, by acting as he did in Minnesota, he placed his client and the children at great risk. It was entirely foreseeable that in dark, winter conditions, harm might occur to the children, Wife or Husband, if an altercation developed. That apparently no one was harmed was fortuitous. (Cf. In the Matter of Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60-61.)

This case represents a classic one for applying the well-established rule that we give great weight to findings of the hearing judge resting on determination of witness credibility. (Rules Proc. State Bar, title II, State Bar Court Proceedings, rule 305(a); In the Matter of Harney (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280 citing Connor v. State Bar (1990) 50 Cal.3d 1047, 1056.) The judge saw and heard all witnesses over a four day trial and was in the appropriate position to and did appropriately assess the credibility of witnesses. Twelve pages of his decision are devoted to a thorough assessment of the credibility of respondent with many reasons for finding respondent not credible as a witness. We are given no good reason in the record to overturn that determination and we uphold it.

Moreover, a very serious matter which is hardly disputed by respondent on review, was his practice of deceit to Husband and the Minnesota sheriffs deputies as to the custody order in effect. Husband's counsel was required to hurry to the courthouse, obtain a copy of the order and fax it to the sheriff in Minnesota in order to give an accurate view of the current custody order. Respondent's attack on the hearing judge's findings is limited to his dispute over whether he made a written misstatement to the sheriff.

We hold that, clear and convincing evidence supports the hearing judge's determination that respondent engaged in moral turpitude in violation of section 6106 in this court.

C. The Van Essen Matter - Riverside County Superior Court Action.

1. Facts and findings.

This matter can be stated briefly. On January 19, 1994, respondent filed for Wife a civil complaint in Riverside County Superior Court against Husband and others. The suit sought remedies for Husband's alleged interference with child custody, with causing emotional distress and other torts. When respondent filed this suit, he was aware of the determinations made by the Los Angeles Superior Court in the family law proceeding. Yet in the Riverside County civil complaint, respondent alleged facts without stating that the facts had been the subject of findings in the Los Angeles County dissolution of marriage proceeding. In the Riverside action, respondent stated those facts in a way that would mislead that court as to the facts found. Respondent made this omission in three separate areas of his complaint, concerning whether Wife exposed her children to contact by someone who was dangerous to them, whether Husband refused to give up custody, and whether Husband improperly videotaped Wife and children.

In May 1994, the Riverside court found in a two-page, single-spaced minute order that the three areas were the subject of judicial determinations in Los Angeles adverse to respondent's allegations and that respondent was aware of them. The Riverside Court concluded that respondent's complaint was not grounded in fact and was filed to harass, an

improper purpose proscribed by section 447 of the Code of Civil Procedure.⁷ That court sanctioned respondent under section 128.5 of the Code of Civil Procedure and ordered him to pay \$14,675 in attorney fees, finding that respondent's action was frivolous, in bad faith and that thereby, the opposing party incurred expenses including substantial attorney fees. In September 1994, respondent moved for reconsideration of the sanctions order and the court reduced sanctions to \$10,000. Respondent did not pay the sanctions and discharged this obligation in bankruptcy.

The State Bar charged respondent with violating: section 6068 subdivision (d) by failing to employ truthful means in maintaining causes confided to him and by seeking to mislead the judge by an artifice or false statement of fact or law (counts five, seven and nine); section 6106 by committing moral turpitude (counts six, eight and ten); section 6068 subdivision (c) and rule 3-200(A), Rules of Professional Conduct by filing unjust action (counts eleven and twelve); and section 6068 subdivision (o)(3) by failing to timely report the Riverside Court's imposition of sanctions. The hearing judge found respondent culpable of moral turpitude in counts six and eight and of failing to use truthful means in counts five, seven and nine, dismissed the moral turpitude charge in count ten as duplicative; and failed to find sufficient clear and convincing evidence to support the section 6068 subdivision (c), section 6068 subdivision (o)(3) and rule 3-200(A) charges.

2. Discussion of culpability.

Respondent contends that he should be exonerated of all culpability found as to the Riverside civil complaint. He contends that the findings of the Los Angeles court in the marriage dissolution were not material facts in the Riverside complaint and; in any case,

⁷ Section 447 was subsequently repealed in 1994. However, its proscription of filing a complaint for the purpose of harassment was carried forward to Code of Civil Procedure section 128.7.

respondent had no intent to mislead. The State Bar supports the hearing judge's conclusions of culpability and urges that we also find respondent culpable of the unjust action charges prohibited by section 6068 subdivision (c) and rule 3-200(A). Upon our independent review, we uphold the hearing judge's findings and find clear and convincing evidence that respondent is also culpable of wilfully violating section 6068 (c) by maintaining an unjust action.

Respondent's claim that the facts he alleged or omitted were not material in the Riverside action is simply incredible and gives further support to the way in which the hearing judge has weighed respondent's credibility. The key facts respondent misstated went to the very heart of the Riverside action. Even respondent agreed in his testimony that the issue of custody orders was important.

Respondent also contends that he should not be found culpable because his statements were in an initial pleading. His claim is without any merit as the State Bar Act makes any act of dishonesty or misleading of a court to be disciplinable (See, e.g., §§ 6068 subd. (d); 6106.) Moreover, similar arguments in defense to those respondent has made here were rejected by the Supreme Court in Davis v. State Bar (1983) 33 Cal.3d 231, 239-240 [false statements in a verified answer]. We conclude that clear and convincing evidence exists that respondent failed to use truthful means and committed moral turpitude as found by the hearing judge.

The Riverside Court made a detailed determination, after hearing respondent, that he had breached the standards of section 128.5, of the Code of Civil Procedure by acting in bad faith and that his omissions and allegations were false and misled the court. As we concluded in the Walker matter ante, we need not decide whether principles of collateral estoppel should be applied as the hearing judge considered other evidence, including

respondent's own testimony concerning the events. On our independent review of the record, we conclude that clear and convincing evidence exists that respondent's bad faith actions in litigating the Riverside civil action violated section 6068 subdivision (c) and subjected him to discipline.

We uphold and adopt the hearing judge's dismissal of the charge under section 6068 subdivision (o)(3) that respondent failed to timely report the sanctions order,

II. Degree of Discipline Evidence, Findings and Discussion.

A. Mitigation.

The hearing judge considered in mitigation, respondent's practice of law for many years without discipline and his many bar, community service and charitable activities and that respondent made efforts to correct the problems surrounding the disciplinary matters. Much of this evidence was also presented by respondent and considered as mitigating in Lais I. As we held in Lais I, respondent's experience and his many public-service activities are indeed mitigating. However, respondent's experience as a family law specialist and his State Bar investigation referee experience should have aided him to avoid misconduct in these matters.

B. Aggravation.

The hearing judge found that at the time he filed his decision, the discipline in Lais I was before us for review. The hearing judge correctly cited In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619 for guidance in weighing the prior discipline (in Lais I) which arose at about the same time as that in the present record. However, it appears that the hearing judge did not apply Sklar, as he ultimately decided that this proceeding and Lais I should not be considered as one.

In Lais I, we found respondent culpable of misconduct in five client matters.

Collectively, this misconduct involved failing to promptly refund unearned fees in two matters, failing to properly communicate with two clients, recklessly failing to provide competent legal services, failing to promptly pay settlement funds on request, breach of the trust account rules and improper withdrawal from a case. After making some changes in the hearing judge's findings, we considered mitigating circumstances, including favorable character evidence and extensive public service activities performed by respondent. We also considered aggravating circumstances of multiple acts of wrongdoing and failure to show rectification of misconduct and attempted interference with the disciplinary investigation in one matter. We recommended 90 days of actual suspension incident to a two-year stayed suspension, a greater actual suspension than recommended by the hearing judge.⁸ The Supreme Court imposed our recommended discipline by order filed on August 13, 1999, in case number S075593. Respondent is currently on probation in Lais I.

Also considered aggravating by the hearing judge in the present proceeding was respondent's multiple acts of misconduct, that he demonstrated a lack of insight into his misconduct, that he failed to timely comply with discovery requests of the State Bar, failed to timely file his pretrial statement and that he presented misleading evidence in mitigation, by presenting a resume which misled his services as counsel for a well-known party. We agree with and adopt the hearing judge's findings in aggravation.

C. Discussion of Recommended Discipline.

Despite respondent's positive evidence of mitigation, we have found him culpable of serious misconduct which burdened parties to litigation and the trial and appellate courts to adjudicate two matters. This included a patently frivolous appeal in the Walker matter,

⁸ The hearing judge in Lais I was not the same hearing judge whose recommendation we now review.

dishonesty in the Van Essen matter when apprehended by Minnesota law enforcement officers and misleading the Riverside Superior court of what was found in the Los Angeles family law action. Respondent's conduct in accompanying his client to the farm in Minnesota in the pre-dawn of December 23 exposed his client to the risk of physical harm if Husband or others at the farm had thought that Wife and respondent were intruders and had sought to defend themselves. At the least it appeared to put the imprimatur of respondent, as an attorney, on Wife's attempted taking of the children and amounted to aiding and counseling of his client contrary to court orders he knew were in effect. Of special concern is that respondent's background as a certified family law specialist for much of his practice and his activity in bar work, failed to serve him to avoid the misconduct in this record.

The similarity of misconduct in the two matters is also of concern. Respondent's misdeeds cannot be ascribed to inexperience or simple zealousness. Moreover, there is nothing in the record which could ascribe this misconduct to any health or similar, singular condition

Respondent's urges that, if we find culpability here, we should not recommend more than an additional 30 or 60 days of actual suspension beyond what the Supreme Court imposed in Lais I. In support of his argument, he cites Chefsky v. State Bar (1984) 36 Cal.3d 116 and In the Matter of Kaplan (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. Neither of those cases are persuasive here, although we noted in Lais I that Kaplan was instructive on the type of misconduct involved in the prior record. We also noted that Kaplan involved neither moral turpitude nor serious misconduct, both of which we find in the present matter. Chefsky is also dissimilar in that there was no dishonesty to officials or courts or violation of a court order.

The State Bar concedes that there is no case similar in facts to this one on issues of degree of discipline, but cites cases such as Rosenthal v. State Bar, *supra*, 43 Cal.3d 612 and In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. We consider those cases to reflect more serious misconduct and more aggravating or less mitigating circumstances than in the present case.

The hearing judge consulted the Standards for Attorney Sanctions for Professional Misconduct (Standards) for guidance and appropriately concluded that they supported a recommendation of disbarment or suspension, depending upon defined factors. (See stds. 2.3; 2.6.) Ultimately, as the hearing judge observed correctly, the informed recommendation of discipline arises from a balanced consideration of all relevant factors. (Rose v. State Bar (1989) 49 Cal.3d 646, 666.) The hearing judge was guided by In the Matter of Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767 in which a one-year actual suspension was ordered as part of a longer stayed suspension. Fandey was disciplined for aiding and abetting his client's departure from the state to avoid complying with a child support order. The hearing judge in the present case properly observed that the misconduct in this case was more serious than in Fandey; and, although respondent had more mitigation than Fandey, Fandey had no prior discipline. Significantly, however, we have found respondent culpable of more misconduct than the hearing judge did.

If we follow the principle of In the Matter of Sklar, *supra*, we determine the appropriate discipline as if all matters in Lais I and this matter were consolidated in one proceeding. We share the hearing judge's concern over respondent's lack of insight and failure to appreciate the wrongfulness of his misconduct. This does not bode well for respondent avoiding similar misconduct in the future. Nor is a positive factor the hearing judge's observation, which we find well supported, that "anytime [r]espondent lost on the

merits of an issue, he could not accept the court's adverse judicial determination and would attempt to blame the ruling on the court's lack of understanding of the issues."

Balancing all relevant factors, and seeking to protect the public, courts and the legal profession (std. 1.3; see also Young v. State Bar (1990) 50 Cal.3d 1204, 1215), we shall recommend that respondent be suspended from practice for three years, stayed on conditions including a two year actual suspension continuing until respondent has made the required showing under standard 1.4 (c)(ii).

III. Formal Recommendation.

For the foregoing reasons, we recommend that respondent Ronald E. Lais be suspended from the practice of law in the State of California for three years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; that execution of the three-year suspension be stayed; and that respondent be placed on probation for three years on all the conditions recommended by the hearing judge in his decision except: (1) that respondent shall be actually suspended from practice of law in California during the first two (2) years of the period of probation and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; and (2) that the time period in which respondent is required to attend and pass the State Bar's Ethics School shall be extended from one year until the period of respondent's actual suspension.

We further recommend that respondent be required to comply with the provisions of rule 955 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's order.

We do not recommend that respondent be required to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners as he is required to do so in Lais I.

Finally, we recommend to the Supreme Court that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7 of that Code.

STOVITZ, Acting P.J.

I concur:

NORIAN, J.

In the Matter of Ronald E. Lais
93-O-16308, 94-O-10353; 94-O-13983
Dissenting Opinion of Brott, J.

In my view the appropriate discipline in this matter, including for respondent's filing of the frivolous appeal in the Walker matter and frivolous action in the Van Essen matter, is an eighteen-month actual suspension and a requirement that respondent provide the proof required by Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

BROTT, J^{*}

* Hon. Eugene E. Brott, Judge of the State Bar Court Hearing Department, sitting by designation pursuant to the provisions of rule 305 (e), of the Rules of Procedure of the State Bar, title II, State Bar Court Proceedings.

In the Matter of Ronald E. Lais
93-O-16308, 94-O-10353; 94-O-13983

Hearing Judge:	Hon. Carlos E. Velarde.
For Respondent:	David A. Clare 2755 Bristol St., Suite 280 Costa Mesa, CA 92626
For the State Bar:	Allen Blumenthal and Terry St. Bernard Office of the Chief Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015