

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 11-O-17267
	)	
EUGENE WELLINGTON MATTHEWS,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 161396.	)	
_____	)	

This is the third disciplinary proceeding for Eugene Wellington Matthews, who is culpable of multiple probation violations. The hearing judge found that these repeated violations occurred “during a time when [Matthews] was experiencing painful personal and psychological problems and that he has since made significant efforts to comply with his probation conditions . . . .” The hearing judge thus concluded that disbarment was unwarranted, and instead he recommended that Matthews be actually suspended for three years and until he proves his rehabilitation, fitness to practice, and ability as set forth in the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).<sup>1</sup>

Since both parties stipulated to Matthews’s culpability, the only issue before us is the level of discipline. The State Bar’s Office of the Chief Trial Counsel (State Bar) argues that disbarment is the appropriate discipline. Matthews asks that we uphold the hearing judge’s recommendation.

Having independently reviewed the record (Cal. Rules of Court, rule 9.12), we find insufficient evidence that Matthews’s emotional difficulties were directly responsible for his misconduct and that he no longer suffers from those difficulties. Matthews’s avoidance of his

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<sup>1</sup> All further references to standards are to this source.

professional and ethical responsibilities appears to be chronic, if not habitual. Accordingly, we find that further probation and suspension would be inadequate to prevent him from committing future misconduct, and Matthews therefore poses a threat to the public and the legal profession. We conclude that the presumptive discipline of disbarment called for by standard 1.7(b), which applies to attorneys with two or more prior disciplines, is appropriate and necessary. Matthews should be disbarred and required to establish his rehabilitation in a reinstatement proceeding.

## **I. BACKGROUND**

Matthews was admitted to practice law in California on December 9, 1992. He has two prior records of discipline arising from serious misconduct he committed in a total of 14 client matters between February 2004 and October 2011. In the instant case, Matthews stipulated to numerous violations of his probation conditions, which the Supreme Court ordered on May 26, 2010, in his first disciplinary proceeding. Trial occurred on March 12, 2012. The hearing judge found Matthews culpable of all of the charged probation violations.

## **II. CULPABILITY**

We conclude there is clear and convincing evidence that Matthews violated Business and Professions Code section 6068, subdivision (k)<sup>2</sup> because he failed to:

- (1) timely file quarterly probation reports due April 10 and July 10, 2011;
- (2) timely file certifications from a certified public accountant (CPA) confirming that he complied with the State Bar's Trust Account Record Keeping Standards due October 10, 2010, January 10, April 10, and July 10, 2011;
- (3) timely file psychiatric/psychological treatment reports due April 10, and July 10, 2011;
- (4) file proof of restitution payments after his October 10, 2010 quarterly report;
- (5) file proof of membership with the State Bar's Law Practice Management and Technology Section for the second year of probation;

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<sup>2</sup> Business and Professions Code section 6068, subdivision (k) requires an attorney to "comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney." All further references to sections are to this code.

- (6) file a law office management plan by August 24, 2010;
- (7) file proof that he completed specified continuing legal education no later than June 25, 2011;
- (8) timely attend Ethics School by June 2011; and
- (9) timely attend Client Trust Accounting School by June 2011.

### **III. AGGRAVATION AND MITIGATION**

The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)), while Matthews has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

#### **A. AGGRAVATION**

The hearing judge found two factors in aggravation: (1) Matthews's prior record of discipline; and (2) multiple acts of misconduct. We agree.

##### **1. Prior Record (Std. 1.2(b)(i))**

Matthews's first disciplinary proceeding resulted from his misconduct in eight client matters from February 2004 to May 2008, including his failure to communicate with clients, cooperate with the State Bar's investigations, competently provide legal services, maintain client funds in trust, and return unearned fees. He also improperly withdrew from employment and shared legal fees with a non-attorney.

Matthews's violations constituted multiple acts of misconduct, but in mitigation, he practiced law for 12 years without discipline. He also experienced severe financial stress and family problems and was depressed from 2004 to 2007. Matthews received additional mitigation for his good character, community service, and cooperation for entering into a stipulation. The Supreme Court placed him on 120 days of actual suspension and ordered him to comply with California Rules of Court, rule 9.20 as a condition of a four-year probationary period.

In Matthews's second disciplinary proceeding, he stipulated to misconduct in six client matters from August 2007 to July 2010, much of which mirrored his earlier misconduct. He failed to competently provide legal services, cooperate with the State Bar's investigation, maintain client funds in trust, promptly return a client file, and promptly notify a client of the receipt of client funds. He also failed to comply with multiple court orders, including an order pursuant to California Rules of Court, rule 9.20, and he stipulated that his conduct involved moral turpitude due to his gross negligence in the representation of one client. Additionally, Matthews filed his rule 9.20 affidavit in July 2010 stating that he had no clients while he was on suspension from his first discipline when in fact he was attorney of record in four matters pending in federal court. Matthews's violations were aggravated by multiple acts of misconduct and his prior record of discipline. He again received mitigation credit for depression and financial stress, as well as for entering into a stipulation.

The Supreme Court filed its order on August 18, 2011, again placing him on four years' probation conditioned on an 18-month suspension and until he established his rehabilitation, fitness to practice, and learning and ability in the law as provided in a standard 1.4(c)(ii) proceeding.

Matthews's two prior disciplinary matters demonstrate his recurring difficulty in meeting his professional obligations due to his inattention to the practice of law as well as an inability or unwillingness to obey various court orders. These same problems persist in the present case. Therefore, we give heavy weight to Matthews's prior record of discipline because the underlying issues continue to recur.

## **2. Multiple Acts (Std. 1.2(b)(ii))**

Matthews's numerous violations of his probation conditions constitute multiple acts of misconduct and are a substantial aggravating factor. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702 [failure to file fifth and sixth probation reports and proof of continuing education considered multiple acts of wrongdoing].)

### **B. MITIGATION**

The hearing judge found three mitigating factors: (1) extreme emotional difficulties; (2) good character; and (3) cooperation. Of these three factors, we agree only that Matthews's cooperation is deserving of mitigation credit. But we give additional mitigative credit for his extensive community service.

#### **1. Extreme Emotional Difficulties (Std. 1.2(e)(iv))**

Standard 1.2(e)(iv) requires that an attorney suffering from extreme emotional difficulties "at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct" is entitled to mitigation, provided "that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties . . . ." Matthews testified that he suffers from anxiety and depression such that he "would just emotionally get overwhelmed and not want to handle stuff." The hearing judge afforded minimal weight to Matthews's emotional difficulties. We give no weight in mitigation.

This is the third proceeding where Matthews maintains he suffers from severe emotional problems, yet he provided no expert testimony to establish a diagnosis or that his problems caused his misconduct. He also failed to meet the second prong of standard 1.2(e)(iv), i.e., that "he has so overcome or controlled the disorder that it is unlikely to cause further misconduct. [Citations.]" (*In re Naney* (1990) 51 Cal.3d 186, 197.) Matthews testified that he has "gotten significantly better" as the result of his treatment with a therapist for the past two or three years.

He maintains that his depression has been under control since January 2010. But as of 2010, he admitted he still suffered from “setbacks.” We thus have little confidence that Matthews has made the necessary progress to overcome his chronic depression and professional lethargy.

## **2. Good Character (Std. 1.2(e)(vi))**

Two attorneys and a doctor attested to Matthews’s good character. The hearing judge accorded limited weight to this mitigating factor since these witnesses did not constitute a broad range of references as the standard requires. We do not agree. The testimony of these character witnesses is insufficient to establish mitigating credit under standard 1.2(e)(vi). (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients did not constitute broad range of references].)

## **3. Candor and Cooperation (Std. 1.2(e)(v))**

The hearing judge found that Matthews exhibited candor and cooperation during these proceedings. Matthews also entered into a stipulation of facts that expedited the trial. Although many of the admissions were easily proved, some were material to a finding of culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].) We thus accord significant weight to Matthews’s cooperation and candor.

## **4. Community Service**

We consider Matthews’s service to the community as a mitigating factor. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.) Although he was given mitigation credit in a prior discipline matter for his extensive community service, he has continued to provide noteworthy services as a volunteer. In 2011, he volunteered with a non-profit organization to replace walkers, wheelchairs and crutches with new ones, receiving a commendation from California Assemblyman Mike Davis for his efforts. And in 2012, Matthews participated in the Los

Angeles Police Department's youth cadet mentoring program and raised funds to pay for free breakfasts for the at-risk cadets in the training program. From 2007 until the present, he has helped to raise funds to obtain backpacks and school supplies for children in need. Matthews's character witnesses corroborated his testimony regarding his community service, and thus we accord significant weight in mitigation for his commendable efforts.

#### IV. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession, to maintain high standards for attorneys and to preserve public confidence in the profession. (Std. 1.3.) There is no fixed formula to determine the appropriate discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, we balance all relevant factors, including aggravating and mitigating circumstances, on a case-by-case basis to impose discipline consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.)

We begin our discipline analysis with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11), and we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) Although standard 2.6(a)<sup>3</sup> applies to this case because Matthews violated section 6068, we consider standard 1.7(b) to be most apt due to Matthews's extensive prior discipline. Under standard 1.7(b), an attorney with two or more prior disciplines shall be disbarred unless the most compelling mitigating circumstances clearly predominate such that they warrant an exception to

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<sup>3</sup> Standard 2.6(a) provides that the appropriate discipline for a violation of section 6068 should be "disbarment or suspension depending on the gravity of the offense, or harm to the victim . . . ."

the presumptive discipline of disbarment. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under std. 1.7(b) imposed where no compelling mitigation found].)

However, the Supreme Court does not apply standard 1.7(b) in a rote fashion, and neither do we. Rather, we “examine the nature and chronology of respondent’s record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case.” (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) Despite Matthews’s evidence of progress toward rehabilitation from his emotional problems, he has not demonstrated that “the most compelling mitigation” clearly predominates over his serious aggravating circumstances, most notably his extensive disciplinary record. In considering the facts and circumstances unique to this case, we conclude that disbarment is both warranted and necessary to protect the public, the courts and the profession.

We are concerned that some of the probation conditions that Matthews violated are significantly related to the misconduct for which probation was imposed. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) For example, he did not timely submit quarterly mental health and CPA reports, which were intended to assure that he had been rehabilitated from his prior emotional problems. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151 [attorney’s failure to comply with restitution requirement or file any probation reports reflected adversely on rehabilitation efforts and called into question need to protect public].)

We also are concerned with the sheer number of probation violations. Indeed, at the time of trial, Matthews still had not satisfied several probation conditions. He had not completed specified legal education courses or provided proof that he attended either the State Bar Ethics



School or Client Trust Accounting School. Given his extensive experience with the discipline system, Matthews should have taken the utmost care in meeting his professional obligations.

We conclude that further probation and suspension are inadequate to prevent Matthews from committing future misconduct that would endanger the public and the legal profession. The standards and decisional law support our conclusion that the public and profession are best protected if Matthews is disbarred and required to establish his rehabilitation in a reinstatement proceeding.<sup>4</sup>

## V. RECOMMENDATION AND ORDER

We recommend that Eugene Wellington Matthews, Member No. 161396, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys admitted to practice in this state.

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

We recommend that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable as provided in section 6140.7 and as a money judgment.

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Matthews is ordered enrolled inactive. The order of inactive

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<sup>4</sup> *Farnham v. State Bar* (1988) 47 Cal.3d 429 [disbarment where attorney with prior discipline record habitually ignored ethical duties to clients]; *McMorris v. State Bar* (1983) 35 Cal.3d 77 [disbarment where attorney habitually failed to perform in five client matters and was twice previously suspended for similar misconduct]; *Barnum v. State Bar, supra*, 52 Cal.3d at p. 113 [disbarment where attorney was previously placed on probation followed by suspension and probation revocation, and where depression was not “most compelling” mitigation when weighed against risk of recurrence of misconduct]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 [disbarment under std. 1.7(b) where attorney had two prior records of discipline and was unable to conform conduct to ethical norms].)

enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar,  
rule 5.111(D)(1).

EPSTEIN, J.

WE CONCUR:

REMKE, P. J

PURCELL, J.