PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed February 6, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. **12-O-11820**
	)	
JAMILLA ANN MOORE,	)	**OPINION AND ORDER**
	)	
Member of the State Bar, No. **177733**.	)	
	)	

After 14 years as a public defender, respondent Jamilla Ann Moore began a new chapter in her career as a bankruptcy attorney. One of her first clients was facing imminent eviction. In her haste to file a Chapter 7 bankruptcy petition to stay the eviction, Moore certified to the bankruptcy court that she had been paid $3,100 as her pre-petition legal fee, when she actually had received $950. Moore carelessly repeated the incorrect amount of her fee in an application for a waiver of filing fees, which she filed three days later. Although she subsequently became aware of these errors, she failed to correct them. However, she voluntarily informed an investigator for the Office of the Chief Trial Counsel for the State Bar (OCTC) that she had overstated her legal fee in the bankruptcy matter when the investigator called her to inquire about two other attorneys in an unrelated matter.

Moore also failed to update her membership address until six months after she left her employment with the Office of the State Public Defender (OSPD).

OCTC initiated these proceedings on February 7, 2013, when it filed a Notice of Disciplinary Charges (NDC), charging Moore with violations of Business and Professions Code

section 6068,[1] subdivision (d) (duty to employ means consistent with truth); section 6106 (moral turpitude); and section 6068, subdivision (j) (requirement to update membership address). The hearing judge found Moore culpable of moral turpitude in violation of section 6106 due to her gross negligence in failing to correct the misstatements in the two court documents. The judge also found that Moore failed to timely update her official membership address in violation of section 6068, subdivision (j). Finding nominal aggravation for Moore's three acts of misconduct and strong mitigation due to her discipline-free record of 14 years, her emotional difficulties at the time of her misconduct, cooperation, good character, and remorse, the hearing judge recommended a public reproval with conditions.

OCTC appeals, arguing that Moore's misrepresentations were intentional rather than merely grossly negligent. It further maintains that the hearing judge should have afforded less mitigation (including none for remorse), and greater weight in aggravation for harm to her clients and the courts as well as for indifference. OCTC asks for a 60-day actual suspension. Moore did not appeal.

Having independently considered the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability, mitigation, and aggravation findings. We agree with the hearing judge's recommendation that Moore should be publicly reproved.

I. FACTUAL AND PROCEDURAL BACKGROUND

Moore was admitted to practice on October 4, 1995 and has no prior record. She spent the first 14 years of her career with the OSPD, representing defendants facing the death penalty. In 2010, she left the OSPD to begin a new career as a bankruptcy attorney. Almost immediately, Moore faced a dilemma when one of her first clients, Leslie Lewis, was unable to timely pay her

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

fee. Lewis was seeking Chapter 7 bankruptcy protection to stop his eviction from his home due to foreclosure.

Lewis had agreed to pay Moore $3,100 before she filed the petition and he made a $500 partial payment on May 4, 2010. Moore then prepared a draft bankruptcy petition. Under the section denominated "Disclosure of Compensation of Attorney for Debtor," she certified that she had received $3,100 as compensation for her legal services. At the time she prepared the draft, Moore believed Lewis would pay the balance of her fee before she filed the petition.

However, on May 29, 2010, two days before Lewis was to be forcibly removed from his home, he met with Moore and informed her that he was unable to pay the balance. When Moore advised him that she would not file the bankruptcy petition until she received the remainder of her fee, Lewis became distraught, and begged her to file the petition to save him from eviction. At that meeting, he paid her an additional $450. Moore then agreed to file the petition if he promised to pay the balance as soon as he could.

Because of Lewis's imminent eviction, Moore left the meeting and immediately filed his petition electronically at approximately 9:30 p.m. In her haste, she did not carefully review it, and therefore failed to correct the fee amount that she certified she had received. Three days later, when Moore received a deficiency notice from the bankruptcy clerk for nonpayment of the filing fee, she electronically filed an Application for Waiver of the Filing Fee, which restated the erroneous amount of $3,100 as her fee. Again, Moore did not carefully review the document, which had been generated by software that automatically inserted the incorrect fee amount taken from the petition.

Moore was aware of the error in the two court filings as of June 16, 2010. On that date, she sent Lewis a copy of the filed petition along with an email which stated in part:

> The first page of the series of documents shows you the problem we now have given that you are unable to come up with the money for the rest of my fee. As you can see, I have certified to the Court that you have already paid me in full. I filed this document because I trusted in your word and promise that you would pay me in full on June 4. You did not do that, and now we both have a problem because of that.
> . . .
> Most likely, I will eventually have to admit to the federal court that I was not truthful in the attorney fee declaration I filed in your case. I am the one who is going to get in trouble with the court if this happens, not you.[2]

On July 23, 2010, Lewis decided to proceed in pro per under Chapter 13 of the Bankruptcy Code, and he terminated Moore. During the five-week period after she was aware of the errors and prior to her termination, Moore had several opportunities to correct the errors but failed to do so.[3] However, she was contacted in January 2012 by a State Bar investigator who was conducting an unrelated investigation. At that time, she *voluntarily* informed the investigator of her fee misstatements in the two documents filed in Lewis's bankruptcy case.

Prior to trial, Moore stipulated that she left her employment with the OSPD on June 30, 2010,[4] but she did not advise the State Bar of her new official membership address until February 7, 2011 — more than six months after the fact. She also testified at trial that she did not carefully review the bankruptcy petition or the fee waiver application before she electronically filed them. At the conclusion of the trial, the hearing judge dismissed the charge of violating section 6068, subdivision (d), finding it duplicative of the moral turpitude charge.

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[2] On June 29, 2010, Lewis paid an additional $300.

[3] During the five-week period, Moore filed a response to the trustee's notice of failure to submit income tax returns, corresponded with the trustee about a document request, filed a complaint in an adversarial proceeding to establish Lewis's interest in property in Oakland, California, filed an opposition to a creditor's motion seeking relief from the automatic stay, and appeared before the bankruptcy court to challenge the sale of Lewis's property.

[4] Moore was employed by OSPD beginning in 1997, but she was on administrative leave in 2009 until her formal separation in June 2010. While on leave, she obtained permission from OSPD to commence her own private practice.

Finding moral turpitude due to Moore's gross negligence, the hearing judge recommended a public reproval with conditions. OCTC appeals.

II. CULPABILITY

A. Count One: Violation of Section 6068, Subdivision (d), Is Dismissed as Duplicative

The NDC charged Moore in Count One with violating section 6068, subdivision (d),[5] by filing two documents in the bankruptcy court that misstated the amount of her pre-petition legal fee and failing to notify the court of the misstatements. These facts were established by clear and convincing evidence,[6] but they are the same facts alleged in Count Two to establish moral turpitude in violation of section 6106. Accordingly, we adopt the hearing judge's dismissal of Count One as duplicative. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [§ 6068, subd. (d), charge dismissed as duplicative since "the misconduct underlying the section 6068, subdivision (d) charge is covered by the section 6106 charge, which supports identical or greater discipline"].)

B. Count Two: Moore Violated Section 6106

Section 6106 states in relevant part: "[t]he commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." It is well established that moral turpitude includes an attorney's false or misleading statements to a court. (*In the Matter of Maloney and Virsik, supra,* 4 Cal. State Bar Ct. Rptr. 774, 786.) Moore maintains that she did not intend to mislead the court; however, "[t]he actual intent to deceive is not necessary; a finding of gross negligence in creating a false impression is sufficient for violation of section 6106. [Citations.]" (*Ibid*.)

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[5] Section 6068, subdivision (d), states that it is the duty of an attorney "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[6] 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 find that Moore was grossly negligent when she initially misstated her pre-petition compensation in two bankruptcy filings without carefully reviewing them. When she subsequently became aware of the errors, she failed to correct them. Such after-the-fact conduct was intentional. Moore testified that she did not know how to remedy the defect, since she was new to bankruptcy law and that she intended to correct the errors when she met with the trustee. However, the hearing judge found this testimony not credible. The hearing judge's credibility finding is entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

Thus, although Moore may have initially made an honest, albeit grossly negligent, mistake, she intentionally left a false impression with the court and the trustees regarding her pre-petition payment. Viewed holistically, such conduct constitutes moral turpitude. (See, e.g., *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91 [gross negligence in creating false impression sufficient for violation of § 6106]; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 281-282 [concealment of material fact just as misleading as false statement].)

C. Count Three: Moore Violated Section 6068, Subdivision (j)

Section 6068, subdivision (j), provides that an attorney shall "comply with the requirements of Section 6002.1." Section 6002.1 requires an attorney to maintain current records with the State Bar, including current membership address and phone number. (§ 6002.1, subd. (a)(1).) Moore stipulated to violating section 6068, subdivision (j), and the record supports her stipulated misconduct.

III. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[7] Moore has the same burden to prove mitigation. (Std. 1.6.) The hearing judge found minimal aggravation and credited Moore for five mitigating factors. We agree, and find strong overall mitigation greatly outweighs the aggravation.

A. Minimal Aggravation for One Factor

OCTC argues that significant weight should be given for multiple acts of misconduct under standard 1.5(b) because Moore failed to correct the two misstatements about her fee when she had the opportunity to do so on several occasions. Moore's two misstatements occurred within a three-day period and once discovered, she failed to correct them for five and a half weeks. She was then terminated and the matter was dismissed. We agree with the hearing judge that Moore's misconduct constituted a continuum of inaction during a discrete period of time, to which we give only nominal weight in aggravation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 ["two matters of misconduct may or may not be considered multiple acts"].)

We do not agree with OCTC's assertion that we should find additional aggravation for significant harm and indifference. (Stds. 1.5(f) and (g).) The harm asserted by OCTC is speculative as to Lewis (he could have lost his discharge in bankruptcy due to the misrepresentations). Similarly, the harm to the administration of justice posited by OCTC is both speculative (the possibility that the misrepresentations will be relied upon by courts and others) and overly generalized (the entire bankruptcy process is premised on the truthfulness of the parties). Such evidence does not satisfy the clear and convincing standard.

[7] All further references to standards are to this source.

We further reject OCTC's assertion that the hearing judge erred in not considering indifference as an aggravating factor. (Std. 1.5(g).) OCTC points to Moore's testimony that negatively reflected on her client's character as evidence of indifference. However, we consider her testimony about Lewis in the context in which it was given — to explain that her misconduct occurred while she was helping a difficult client facing a serious financial crisis. This testimony fails to establish clearly and convincingly that Moore is indifferent to the consequences of her misconduct.

B. Five Mitigating Factors

Lack of a prior discipline record over many years of practice coupled with misconduct that is not deemed serious constitute a mitigating circumstance. (Std. 1.6(a).) Moore had a discipline-free practice for 14 years, representing defendants facing the death penalty. We do not condone her misstatements in the court documents or her failure to update her official address, but this misconduct does not fall at the more serious end of the disciplinary spectrum. Accordingly, we afford significant weight in mitigation for her many years of practice in one of the most challenging legal arenas. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight for more than ten years of practice without misconduct].)

Standard 1.6(d) provides that emotional difficulties may be considered as mitigation if established by expert testimony and upon showing that the difficulties no longer pose a risk. Moore did not present an expert witness, but she credibly testified that at the time of her misconduct, she was facing "the worst period of my life I had ever been through" due to the confluence of various stressful factors[8] that she was certain affected her practice of law. The standards are not rigidly applied, and indeed mitigation has been afforded for emotional distress

[8] Moore was in the process of ending her long career at OSPD and starting her own practice. Also, she was evicted from her apartment of 17 years and had experienced the recent death of a close relative. These events occurred shortly before — and affected — the present misconduct.

even in the absence of expert testimony. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [Supreme Court considered lay testimony of emotional problem as mitigation].) Given Moore's unrebutted testimony about the convergence of extreme emotional stressors at the time of her misconduct, we afford her modest weight in mitigation. (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 ["some mitigating weight" assigned to personal stress factors established by lay testimony]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341[mitigation afforded for personal problems based on lay testimony because it was "readily conceivable" that problems clouded attorney's judgment].)

Spontaneous candor and cooperation also are a mitigating circumstance and deserve considerable weight in this case. (Std. 1.6(e).) Moore spontaneously informed the State Bar investigator of her misconduct when he called her on an unrelated matter. OCTC argues that less weight should be given to this factor, citing *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 65, fn. 3 (noting that respondent is not entitled to mitigation for self-reporting where attorney has a duty to report misdemeanor conviction). However, Moore was under no obligation to disclose her misconduct as she was not under investigation. In addition, she stipulated to culpability for Count Three. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [mitigation for those who admit culpability as well as facts].)

Six witnesses who were clients or former clients and one friend testified as to Moore's good character. (Std. 1.6(f).) Some of the witnesses had known her for a decade or longer. All of the witnesses were aware of her misconduct and were cross-examined about the discipline charges filed against her. Yet they still considered Moore to be honest and a person of integrity.

As one witness described: "She's always been honest . . . . She's a very honest person, and she has high integrity, high honesty." Another witness referred Moore to several friends and colleagues after she helped him deal with the loss of his business and the foreclosure of his

home. Based on his experience with Moore and the feedback he received from individuals whom he had referred to her, the witness testified that "she has proven to me with her track record that she is a person of integrity. She is a person of honesty. . . ." Yet another witness testified: "She, as a person, is always trying to do what is best for . . . the people around her." One witness detailed Moore's willingness to acknowledge her shortcomings.
Finally, a former client stated that Moore was very "up front" with her about her ethical lapses.

Moore also presented testimony that she volunteered as a fitness instructor at the YMCA for many years. (See *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158, fn. 22 [community service "may be considered as some evidence in mitigation notwithstanding that it does not meet the criteria for character evidence set forth in the standard"].) On the whole, we afford Moore's good character testimony significant weight in mitigation.

The hearing judge afforded mitigative weight for Moore's remorse, and we agree. (Std. 1.6(g).) She testified: "I am sorry for the error. I wish I had never committed it, and I wish that I had done everything differently." She further testified: "I can't tell you how much I have learned from this." Moore also no longer represents clients in bankruptcy proceedings. However, we discount the weight given for remorse because she does not recognize that her failure to correct the misstatements was intentional.

IV. 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 professional standards for attorneys. (Std. 1.1.) We begin our discipline analysis with the standards, which the Supreme Court instructs us to follow whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) But they do not mandate a particular discipline. (*In*

the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) Instead, we balance all relevant factors, including aggravation and mitigation, on a case-by-case basis. (*Sugarman v. State Bar* (1990) 51 Cal.3d 609, 618.)

Standard 2.7 is most applicable to Moore's misconduct. It instructs that "[d]isbarment or actual suspension is appropriate for an act of moral turpitude" and that the "degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."[9] OCTC urges a 60-day suspension because "there is no reason to deviate from Standard 2.7." Like the hearing judge, we disagree.

Moore's wrongdoing, although related to the practice of law, occurred during a time of stress and appears to be aberrational, given her 14 years of discipline-free practice. Her grossly negligent misstatements occurred within a three-day period, and her intentional failure to correct those misstatements occurred over a five-week period. Rather than conceal her misconduct, Moore voluntarily disclosed it to a State Bar investigator. She also testified that she is ready and willing to be disciplined for her misconduct. She has been cooperative and candid from the outset.

Standard 1.7(c) provides that a lesser discipline than suggested in the applicable standard is appropriate in "cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future." Such are the circumstances here.

[9] Effective January 1, 2014, standard 2.7 replaced standard 2.3. Since this case was submitted after the effective date, we apply the new version. The amendments do not conflict with the former standards.

The strong evidence in mitigation and the minimal evidence in aggravation call for a lesser discipline than that provided under standard 2.7. We agree with the hearing judge who found that "[a]ny imposition of increased discipline [beyond a public reproval] would not further the objectives of attorney discipline and would be punitive in nature." Indeed, the decisional law supports the hearing judge's discipline recommendation. (See, e.g., *In re Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 335-337 [public reproval for gross negligence amounting to moral turpitude for reporting inaccurate MCLE compliance report; over 10 years of discipline-free practice given significant weight]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220-221, 226 [one-year stayed suspension and probation for § 6106 violation for intentionally misleading settlement judge]; see also *Gendron v. State Bar* (1983) 35 Cal.3d 409, 424-425 [pre-standards decision imposing public reprimand where attorney was grossly negligent amounting to moral turpitude for failing to investigate and declare conflicts in criminal case; 30-year discipline-free record weighed in his favor].)

We conclude that the public reproval ordered by the hearing judge is not only appropriate but is all that is necessary to ensure the protection of the public, the courts, and the legal profession.

V. ORDER

Jamilla Ann Moore, State Bar number 177733, is ordered publicly reproved, effective 15 days after the date of service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(B).)

Further, she must comply for one year with the specified conditions attached to the public reproval. (Cal. Rules of Court, rule 9.19(a); Rules Proc. of State Bar, rule 5.128.) Failure to comply with these conditions may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct.

Moore must fulfill the following conditions:

1. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her reproval.

2. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

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

4. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

6. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's 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 she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further order that Moore take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the public reproval in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VII. COSTS

We further order that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

EPSTEIN, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.