

Filed April 30, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

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| In the Matter of |) | Case No. 12-J-15277 |
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| LYNNE MARGERY ROMANO, |) | OPINION AND ORDER |
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| A Member of the State Bar, No. 123413. |) | |
| _____ |) | |

Lynne Margery Romano was suspended indefinitely by the United States Bankruptcy Court for the Central District of California for professional misconduct after the court found she participated in a “series of abusive bankruptcy case filings for the sole purpose of delaying foreclosure.” Indeed, over the course of three years, Romano filed 82 fraudulent bankruptcy petitions on behalf of sham petitioners in order to mislead the court and defraud creditors. Her scheme involved her paralegal, whom she aided in the unauthorized practice of law (UPL). The bankruptcy court admonished that her tactics were “not acceptable in [bankruptcy court] or any other court as a pattern of behavior for an attorney.” (*In re the Disciplinary Proceeding of Lynne Romano* (Bankr. C.D. Cal. 2012) 2:12-mp-00104-TA.)

In this reciprocal disciplinary matter brought pursuant to section 6049.1, subdivision (a) of the Business and Professions Code,¹ the hearing judge suspended Romano for two years and until she proves her rehabilitation and fitness to practice. The Office of the Chief Trial Counsel

¹ Section 6049.1, subdivision (a), provides that “a certified copy of a final order . . . determining that a member of the State Bar committed professional misconduct in [another] jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state . . .” subject to certain exceptions not relevant here. Further references to sections are to the California Business and Professions Code.

of the State Bar (OCTC) appeals the hearing judge's recommendation, seeking Romano's disbarment. Romano has not appealed, and asks that we uphold the hearing judge's recommended discipline.

After independently reviewing the record under rule 9.12 of the California Rules of Court, we affirm the hearing judge's findings of culpability and aggravation, but find fewer mitigating circumstances. Based on the scope of Romano's pattern of misconduct — involving intentional dishonesty in the course of the practice of law — we conclude that disbarment is necessary to protect the courts, the public, and the legal profession.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Romano was admitted to practice law in California on June 10, 1986, and has no prior record of discipline.

A. Romano's Misconduct in the United States Bankruptcy Court

Romano's misconduct stems from her abuse of the bankruptcy laws in the United States Bankruptcy Court for the Central District of California. As a real estate attorney who provided loan modification services to her clients, she did not regularly practice in bankruptcy court. With the assistance of Joseph Quartell, an independent contractor paralegal, Romano filed 82 Chapter 7 bankruptcy petitions for the sole purpose of delaying foreclosure proceedings to afford her clients time to obtain loan modifications or to effect short sales of their properties. She had no intention of obtaining bankruptcy relief for her clients. She also devised a fraudulent scheme involving sham petitioners to shield her clients from any adverse effects on their personal credit ratings resulting from filing the bankruptcy petitions.

Romano caused her clients to transfer fractional interests in their real property to corporations for no consideration and then filed for bankruptcy protection for those corporations. The majority of the corporations were fictional as they had not filed Articles of Incorporation

with the Secretary of State, while other corporations were suspended by the Secretary of State. None of these entities was entitled to file bankruptcy petitions. In most instances, after the petitions were filed, the corporations transferred the fractional real property interests back to the individual clients. Most of the petitions were also incomplete as they did not include the required schedules. Moreover, many of Romano's clients failed to appear at their creditors' meetings.

Romano was the attorney of record on all of the petitions, beginning in 2008, although Quartell prepared most of them. Romano did not supervise him and failed to review most petitions before they were filed. In fact, she relied on Quartell for his bankruptcy expertise. By 2012, she had filed 82 fraudulent petitions, 73 of which were dismissed.

B. Romano Is Suspended Indefinitely for Filing 82 Bankruptcy Petitions in Bad Faith

In February 2012, the Office of the United States Trustee filed an application for an order directing Romano to show cause why she should not be sanctioned and directed her to disgorge fees and explain why the 82 petitions were not filed in bad faith. After an evidentiary hearing, the court issued an order in March 2012, finding Romano engaged in abusive tactics for the sole purpose of delaying foreclosures to allow her clients to seek loan modifications or short sales of their property. The bankruptcy court also found that: (1) Romano failed to supervise a non-lawyer paralegal, Quartell, who performed work on almost all of the bankruptcy petitions; (2) she allowed Quartell to sign documents on her behalf without her review; (3) she aided and abetted UPL; (4) her bankruptcy filings misled the court; and (5) the filings delayed cases and placed a burden on third parties.

Based on these findings, the bankruptcy court ordered Romano to disgorge \$18,500 in fees and referred the matter to the U.S. Bankruptcy Court Disciplinary Committee, which concluded that Romano violated rules 3-110(A), 1-300(A), and 5-200 of the California Rules of

Professional Conduct.² Romano was suspended indefinitely from practicing law in the United States Bankruptcy Court for the Central District of California, with the opportunity to apply for reinstatement after no less than five years. Additionally, the court barred her from indirectly practicing law in the bankruptcy court, from representing any debtor in connection with any bankruptcy matter in any jurisdiction, and from associating with anyone who participates in debtor representation in any jurisdiction. The court further ordered her to participate in at least six hours of continuing legal education in ethics.

Romano did not appeal the bankruptcy court's order.

C. The California State Bar Reciprocal Disciplinary Proceeding

Based on the United States Bankruptcy Court's disciplinary order, OCTC filed a Notice of Disciplinary Charges (NDC) in December 2012, charging Romano with professional misconduct under section 6049.1. OCTC alleged that Romano's misconduct in the bankruptcy court constituted violations of the following: rule 3-110(A) (failure to perform with competence); rule 1-300(A) (aiding UPL); rule 5-200 (seeking to mislead a judge); and sections 6106 (moral turpitude) and 6068, subdivision (d) (seeking to mislead a judge). The hearing judge dismissed the rule 5-200 charge as duplicative of the section 6068, subdivision (d), charge. On review, OCTC does not challenge this dismissal, and we affirm it.

The bankruptcy court's final order is conclusive evidence that Romano is culpable of professional misconduct in California. (§ 6049.1, subd. (a).) During the hearing below, Romano stipulated to facts establishing her professional misconduct. Accordingly, the hearing judge considered only the degree of discipline to be imposed. (§ 6049.1, subd. (b)(1).)

² The California Rules of Professional Conduct and the California Business and Professions Code are applicable to all attorneys who appear in the United States Bankruptcy Court for the Central District of California pursuant to Local Civil Rule 83-3.1.2 of the United States District Court for the Central District of California. Further references to rules are to the Rules of Professional Conduct.

Following a one-day trial, the hearing judge found that Romano's ethical violations were aggravated by multiple acts of wrongdoing and significant harm to the public and the administration of justice. The judge found mitigation in Romano's lack of a prior discipline record, extreme emotional difficulties, cooperation during these disciplinary proceedings, good character, and remorse and recognition of wrongdoing. The hearing judge recommended that Romano be suspended for two years and until she proves her rehabilitation and fitness to practice pursuant to a proceeding under standard 1.2(c)(1) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.³ OCTC seeks review of that disciplinary recommendation.

II. CULPABILITY

A. **Rule 3-110(A) (Failure to Perform with Competence)**⁴

The hearing judge found that Romano violated rule 3-110(A), and we agree. Romano repeatedly: (1) failed to review bankruptcy petitions prepared by Quartell before they were filed; (2) filed petitions and supporting documents that were incomplete and contained false statements; (3) failed to investigate the corporate status of the entities on whose behalf she filed bankruptcy petitions; and (4) failed to supervise a nonlawyer paralegal. Her failure to oversee her bankruptcy practice was "so remiss as to be reckless." (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [failure to supervise personal injury practice and fulfill trust fund responsibilities violated rule 3-110(A)].)

³ Further references to standards are to this source.

⁴ Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

B. Rule 1-300(A) (Aiding UPL)⁵

The hearing judge correctly found that Romano aided Quartell’s UPL by failing to supervise his work. Since she did not review the petitions Quartell prepared and filed, she allowed a nonlawyer to practice law on her behalf. This misconduct violated rule 1-300(A). (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520 [attorney aided and abetted UPL by relying on nonattorneys to prepare and file client documents].)

C. Sections 6106 and 6068, subdivision (d) (Moral Turpitude and Seeking to Mislead a Judge)⁶

The hearing judge also correctly found that Romano was culpable of violating section 6106 by intentionally filing bankruptcy petitions on behalf of sham corporations specifically to delay foreclosures rather than to obtain bankruptcy relief. Romano knowingly engaged in a scheme to defraud creditors, which abused the bankruptcy system and misled the court. The 82 fraudulent petitions contained false information and material omissions. “Such serious, habitual abuse of the judicial system constitutes moral turpitude in violation of section 6106.” (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186; see also *Bach v. State Bar* (1987) 43 Cal.3d 848, 855.)

The misrepresentations and material omissions in the bankruptcy petitions and their filings for an improper purpose also violated section 6068, subdivision (d). But we dismiss this charge as duplicative of the section 6106 charge because the same misconduct underlies both violations. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr.

⁵ Rule 1-300(A) provides that an attorney “shall not aid any person or entity in the unauthorized practice of law.”

⁶ Section 6106 provides in relevant part: “The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension.” Section 6068, subdivision (d), requires 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.”

774, 786-787 [dismissal of § 6068, subd. (d), charge proper where underlying misconduct covered by § 6106 charge supporting identical or greater discipline].)

III. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5.⁷ Romano has the same burden to prove mitigation. (Std. 1.6.)

The hearing judge found that multiple acts of wrongdoing, a pattern of misconduct, and significant harm to the public and the administration of justice were aggravating circumstances. The judge afforded mitigating credit for 22 years of discipline-free practice, extreme emotional difficulties, cooperation, good character, and remorse and recognition of wrongdoing. We agree with the aggravation findings and all but two of the mitigating factors. As detailed below, we afford no mitigating credit for Romano's lengthy period of discipline-free practice or her emotional difficulties.

A. Aggravating Circumstances

1. Multiple Acts (Std. 1.5(b)) and Pattern of Misconduct (Std. 1.5(c))

The hearing judge found that the misconduct underlying Romano's numerous violations of the Rules of Professional Conduct and Business and Professions Code constitute multiple acts of misconduct. He also found that the filing of 82 fraudulent bankruptcy petitions between September 2008 and January 2012 demonstrated a pattern of misconduct. We agree. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14 [“the most serious instances of repeated misconduct over a prolonged period of time” demonstrate pattern of misconduct].)⁸ Romano does not dispute these findings and we consider this to be serious aggravation.

⁷ Clear and convincing evidence must leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

⁸ The hearing judge evaluated multiple acts and a pattern of misconduct collectively under former standard 1.2(b)(ii). The new standards specify these as separate aggravating

2. Significant Harm (Std. 1.5 (f))

Romano's repeated misuse of the bankruptcy system to delay foreclosures resulted in a "waste of judicial time and resources" for a lengthy period. (*In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 189.) This is a serious aggravating circumstance.

3. No Aggravation for Indifference (Std. 1.5 (g))

Romano made statements in her response and hearing before the bankruptcy court that she "believed [she] was doing the right thing for [her] clients" and that she was using her abilities "to help people who were scared." (*In re Woodman, Inc.* (Bankr. C.D. Cal. 2012) 1:08-bk-17123-MT.) OCTC argues that those explanations demonstrated her indifference and failure to understand the wrongfulness of her misconduct. (Std. 1.5(g).) We do not find this is clear and convincing evidence of indifference.

B. Mitigating Circumstances

1. Minimal Credit for Prior Discipline-Free Practice (Std. 1.6(a))

Standard 1.6(a) provides for mitigation in the absence of discipline over many years coupled with present misconduct that is not serious. At the time of her misconduct, Romano had practiced law for 22 years without discipline. The hearing judge gave this factor significant weight. However, we afford it minimal weight because Romano's misconduct was most serious, involved intentional dishonesty, and continued over three and a half years. Also, we give no weight to a statement by Romano's psychologist, who characterized her misconduct as "an aberration from her normal conduct" and "unlikely to recur." Romano was only in treatment for six months at the time her therapist offered that opinion. Moreover, she did not produce her psychologist as a witness; rather, the psychologist's opinion was contained in a three-paragraph letter that had little, if any, persuasive value in the absence of testimony and cross-examination.

circumstances. Whether considered under the former or new standards, Romano's multiple acts and pattern of misconduct are deemed serious.

Given the lengthy period of her misconduct and the magnitude of the fraudulent scheme, Romano did not prove that her misconduct was aberrational, even in the face of her 22 years of discipline-free practice. (Cf. *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [prior record of discipline-free practice is most relevant for mitigation if it occurred during a “single period of aberrant behavior” and is unlikely to recur].)

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

The hearing judge considered Romano’s emotional difficulties in mitigation. Suffering from extreme emotional or physical difficulties at the time of the misconduct may be considered as mitigation if: (1) the difficulties are “established by expert testimony as directly responsible for the misconduct;” and (2) it is established clearly and convincingly that the difficulties “no longer pose a risk” of future misconduct. (Std. 1.6(d).)

We do not assign any mitigating credit for Romano’s emotional difficulties because no clear and convincing evidence establishes that they were directly responsible for her misconduct. Romano’s therapist’s letter indicated that two main factors contributed to her misconduct — life and health circumstances and her tendency to represent the “underdog.” In 2010, Romano was distracted, anxious, and distressed by symptoms she experienced indicating she might have breast or cervical cancer, and because her mother became ill, eventually requiring open-heart surgery. However, Romano filed her first improper bankruptcy petition in 2008, well before she and her mother developed medical issues. Thus, she failed to establish the nexus between her emotional difficulties and her misconduct.

3. Minimal Mitigation for Cooperation with OCTC (Std. 1.6(e))

“[S]pontaneous candor and cooperation displayed . . . to the State Bar” is a mitigating circumstance under standard 1.6(e). The hearing judge correctly afforded very limited weight for cooperation because Romano entered into a stipulation at the end of the hearing. The timing and

nature of the stipulation, which admitted facts that were easily proven, obviated very little in terms of OCTC's preparation for trial. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if facts assisted prosecution of case].)

4. Limited Weight for Good Character (Std. 1.6(f))

Standard 1.6(f) authorizes mitigating credit for an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the member's misconduct. Romano presented a declaration from one individual and testimony from four witnesses that included her husband, two attorneys, a law firm librarian, and a real estate business owner. The witnesses characterized Romano as a person with high moral character and integrity. They deemed her honest, caring, and a very competent lawyer. The witnesses knew about Romano's misconduct but maintained a positive opinion of her ethics and moral character because they believed her actions were aberrational and completely out of character. Even with these positive assessments, the hearing judge properly assigned limited weight to this factor because the five witnesses "hardly constituted a broad range of references from the legal and general communities. [Citations]." (*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].)

5. Moderate Weight for Remorse and Recognition of Wrongdoing (Std. 1.6(g))

The hearing judge assigned minimal weight to Romano's remorse and recognition of wrongdoing. (Std. 1.6(g).) At the time of her hearing to show cause why she should not be sanctioned, Romano apologized and explained that she had come to the realization that she could not justify her conduct merely because her intent was to help her clients. She also disgorged \$18,500 in wrongfully obtained fees, although she did so pursuant to a court-imposed sanctions

order. Her expressions of remorse, although somewhat belated, show a recognition of wrongdoing, as does her payment of the sanctions. Accordingly, we assign moderate weight to Romano's remorse.

IV. DISBARMENT IS WARRANTED

When recommending discipline for professional misconduct, our primary purposes are to protect the public, the courts, and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession. (Std. 1.1.) In arriving at an appropriate discipline, "we must consider the underlying conduct and review all relevant aggravating and mitigating circumstances. [Citation.]" (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932.) Our analysis begins with the standards. The Supreme Court instructs us to follow them "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Although not binding, we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

When two or more standards are applicable, standard 1.7(a) guides us to consider the most severe sanction. We accordingly focus on standard 2.7, which applies to misconduct constituting moral turpitude and provides for disbarment or actual suspension depending 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." Romano intended to defraud creditors and the bankruptcy court. Her efforts involved an elaborate scheme whereby she utilized sham petitioners, primarily corporations that were non-existent or not in good standing, to hold a fractional interest in her clients' real property in order to shield those clients from poor credit ratings. She did not intend to obtain bankruptcy discharges for her clients, only to delay foreclosures. Over the course of three years, Romano had the opportunity to consider the consequences of her behavior each time she filed another petition. And yet she continued

unabated until the bankruptcy trustee took action. Romano's misconduct was most serious, it significantly harmed the judicial system, and it was directly related to her practice.

In light of the broad range of potential discipline for Romano's misconduct, we look to case law for further guidance. The hearing judge found three cases instructive in recommending that Romano be suspended for two years and until she proved her rehabilitation and fitness to practice: *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297 (two-year suspension); *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 (two-year suspension); and *In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. 498 (three-year suspension). While we find some similarities to these cases, the instant matter is in fact distinguishable in that Romano's fraud encompassed 82 separate matters and occurred over three and a half years, which is twice as long as the misconduct in *Lybbert*. Furthermore, there were no aggravating circumstances in *Lybbert*, whereas Romano has serious aggravation.

Romano's misconduct to some extent also mirrors *In the Matter of Jones, supra*, 2 Cal. State Bar Ct. Rptr. 411 and *In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. 498. Both of these cases involved attorneys who abdicated their responsibilities and aided others in UPL for over two years with dire consequences. A significant distinction however, is that both the *Jones* and the *Valinoti* cases involved gross neglect, whereas Romano repeatedly committed intentional fraud on the court. Moreover, the attorney in *Jones* established significant mitigation, while Romano's mitigation is minimal and greatly outweighed by the aggravation.

We ultimately conclude that the record in this case clearly evidences a pattern of misconduct involving a recurring type of dishonesty. As such, we look to the directive of the Supreme Court as stated in *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45: "Multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment." Such is the case here. Given the scope of Romano's misconduct and the seriousness of the evidence in

aggravation, which outweighs the mitigation, we conclude that no discipline other than disbarment will adequately protect the public, the courts, and the legal system.

V. RECOMMENDATION

We recommend that Lynne Margery Romano be disbarred and that her name be stricken from the roll of attorneys.

We further recommend that she must comply with rule 9.20 of the California Rules of Court and 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 in this matter.

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

VI. ORDER

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Lynne Margery Romano is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1)).

EPSTEIN, J.

WE CONCUR:

HONN, Acting P. J.

McELROY, J.*

*Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.