

Filed April 2, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of) Case Nos. 12-O-12927; 13-O-10397
)
ILSE MARIE BUTTERFIELD,) OPINION
)
A Member of the State Bar, No. 128888.)
_____)

This consolidated proceeding marks the second time Ilse Marie Butterfield’s dishonesty has brought her before the State Bar Court. The first time occurred after she filed a 2009 declaration in federal district court that she signed in her client’s name, and then lied about the signature to the judge and at her deposition. She received probation and a 30-day suspension. Then in 2011, while serving her 30-day suspension, Butterfield falsely informed a superior court that she could not attend a hearing due to a previously set engagement rather than because she was suspended. In the same client matter, she engaged in the unauthorized practice of law (UPL), and later denied it to the State Bar Office of Probation (Probation). Also, she violated several conditions of her probation.

In two Notices of Disciplinary Charges (NDC), the Office of the Chief Trial Counsel (State Bar) charged five counts alleging that Butterfield committed acts of moral turpitude, engaged in UPL, sought to mislead a judge, and failed to comply with probation conditions. She stipulated to facts that established this misconduct, and the hearing judge found her culpable on all counts. The judge recommended a one-year actual suspension after considering two factors in aggravation (prior misconduct and multiple acts) and three factors in mitigation (extreme emotional difficulties, remorse, and cooperation).

The State Bar appeals, requesting suspension for two years and continuing until Butterfield demonstrates her rehabilitation and fitness to practice law at a standard 1.2(c)(1) hearing.¹ Butterfield did not seek review.

After independently reviewing the record (see Cal. Rules of Court, rule 9.12), we affirm all but one of the hearing judge's culpability findings as well as the mitigation and aggravation findings. Although Butterfield was extremely candid and cooperative during this proceeding, the standards call for significantly greater progressive discipline than the 30-day suspension she received in her prior case. We adopt the hearing judge's recommended one-year actual suspension as appropriate progressive discipline, but add a requirement that Butterfield prove her rehabilitation and fitness to practice law at a State Bar Court hearing before she can be reinstated. (Std. 1.2(c)(1) [rehabilitation hearing required with actual suspension of two or more years but State Bar Court "can require this showing in other appropriate cases as well"].)

I. FACTS AND CULPABILITY

The hearing judge's findings were based on the parties' stipulation to undisputed facts and the limited evidence offered at trial. We adopt and summarize those findings, adding relevant facts from the record.

A. BACKGROUND AND PRIOR DISCIPLINE CASE

Butterfield was admitted to the California Bar in 1987. She spent nearly 21 years practicing law without incident. But in 2008, she committed her first act of dishonesty to the courts in a civil case she filed in federal district court on behalf of her client, Clarabelle Moura. During the federal court proceedings, the defense moved for dismissal. Butterfield drafted a

¹ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and reflect the modifications to the standards effective January 1, 2014. We note those modifications did not provide any substantive changes to the standards relevant to this proceeding.

response and prepared Moura's supporting declaration. Rather than have her client sign her own declaration, Butterfield signed Moura's name and then filed both documents with the court.

Thereafter, Butterfield told the court that Moura signed the declaration during the hearing on the motion to dismiss. After the court denied the motion, discovery commenced. Moura testified at her deposition that she did not sign the declaration; yet when Butterfield was deposed, she testified that Moura had signed it. At a later court hearing, Butterfield again denied it was her signature on the declaration. Ultimately, the federal court granted a substitution of attorney and removed Butterfield from the case.

The State Bar filed an NDC, and in June 2011, Butterfield stipulated to the facts set forth above and to culpability for: (1) committing acts of moral turpitude by making false statements to the court and to opposing counsel (violation of Bus. & Prof. Code, § 6106),² and (2) seeking to mislead the court (violation of § 6068, subd. (d)). Her misconduct was mitigated by more than 20 years of discipline-free practice but aggravated by her dishonesty.

The Supreme Court suspended Butterfield from the practice of law for one year, execution stayed. She was placed on probation for one year with specified conditions, including that she: (1) serve a 30-day actual suspension; (2) submit quarterly written reports for the period of her probation; and (3) within one year, provide proof of attendance at Ethics School and passage of the Multistate Professional Responsibility Examination (MPRE).

B. CASE NO. 12-O-12927 — THE UPL MATTER

In early September 2011, Yanira Miramontes retained Butterfield to represent her in a highly contested family law matter in Alameda County Superior Court. On October 19, 2011, the Supreme Court served Butterfield with the disciplinary order in her prior case involving

² All further references to sections are to the Business and Professions Code.

Moura. Thus, Butterfield was on notice that she would be actually suspended from practicing law 30 days from the date of the order — from November 18 through December 19, 2011.

A hearing in the Miramontes' case was scheduled for December 6, 2011. The day before the hearing, Butterfield informed opposing counsel, John Guthrie, that she could not attend. She was on suspension when she spoke to Guthrie, but did not tell him. Then on December 6, Butterfield sent correspondence on her letterhead to Guthrie, discussing the merits of the case and reiterating that she was "unavailable" for the hearing. Butterfield testified at trial that she did not tell Guthrie about her suspension because she feared he would use it against her client by trying "to cancel out all our bases, our arguments because I was on suspension." She admitted, "It was the wrong thing to do."

Also on December 6, 2011, Butterfield faxed correspondence on her letterhead to the Honorable Elizabeth Hendrickson, Commissioner of the Alameda County Superior Court. In the letter, she stated she was "not available" to attend the hearing because she had "another set engagement that cannot be moved." She blamed a computer breakdown for causing the calendaring error. At the trial below, however, Butterfield admitted she was "not forthcoming with the Court," and had made up excuses to avoid revealing that she was suspended. She testified: "The engagement was I was planning on going out of town with my family, but it wasn't something that should not be moved. I just informed the Court of that because I did not want to put in the letter that I was suspended."

The hearing judge found Butterfield culpable of making misrepresentations to the superior court in violation of section 6106 (act involving moral turpitude).³ Butterfield does not dispute this finding, and we agree with it. By offering Commissioner Hendrickson a false reason for not attending a scheduled hearing and simultaneously concealing her suspension, Butterfield

³ This section makes an attorney's commission of any act involving moral turpitude, dishonesty, or corruption a cause for disbarment or suspension.

committed an act involving moral turpitude. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855-856 [attorney's false or misleading statement to court constitutes moral turpitude warranting discipline].)

The hearing judge also correctly found Butterfield culpable of failing to support the law by engaging in UPL in violation of section 6068, subdivision (a), a finding she also does not dispute.⁴ Butterfield practiced law and held herself out as entitled to practice without active State Bar membership (in violation of §§ 6125, 6126) by discussing the merits of the case in her letter to Guthrie while she was on suspension. (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506 [appropriate method of charging violations of §§ 6125 and 6126 is by charging violation of § 6068, subd. (a)].)⁵

C. CASE NO. 13-O-10397 — THE PROBATION VIOLATIONS

As a probation condition, Butterfield was required to provide quarterly reports to Probation. She submitted her January 2012 report seven days late and her July 2012 report six days late. She also failed to provide timely proof of her completion of Ethics School by November 18, 2012, as required by her probation terms; instead, she completed it on March 12, 2013. Finally, Butterfield admitted at trial that her quarterly report falsely stated under penalty of perjury that she had not practiced law while suspended, although she explained: “As I did not go to court and I tried to stay away from it, when I actually filled out that report, I believed I was acting truthfully.”

⁴ This section requires an attorney “[t]o support the Constitution and laws of the United States and of this state.”

⁵ Although the hearing judge found Butterfield culpable of Count Three, a violation of section 6068, subdivision (d) (misleading judicial officer by false statement), we dismiss it as duplicative of Count One (moral turpitude for misrepresentation to court). (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissal of § 6068, subd. (d) charge proper where underlying misconduct covered by § 6106 charge supporting identical or greater discipline].)

The hearing judge found Butterfield culpable of two counts of misconduct related to her violation of probation terms, which she does not challenge. We agree. Butterfield is culpable of Count One for failing to comply with probation conditions in violation of section 6068, subdivision (k).⁶ She is culpable of Count Two, moral turpitude in violation of section 6106, for making a false declaration in her quarterly report. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at p. 786 [misrepresentations made in writing under penalty of perjury constitute acts of moral turpitude because they provide “the additional imprimatur of veracity” to misstatements and “should have put reasonable persons on notice to take care that their [statements] were accurate, complete and true”].)

II. MITIGATION AND AGGRAVATION

The appropriate discipline is determined in light of the relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Butterfield must establish mitigation by clear and convincing evidence⁷ (std. 1.6), while the State Bar has the same burden to prove aggravating circumstances. (Std. 1.5.)

A. THREE FACTORS IN MITIGATION

1. Credit for Cooperation (Std. 1.6(e))

The hearing judge assigned mitigation credit for Butterfield’s cooperation with the State Bar. We agree and assign it significant weight. Butterfield entered into a stipulation of facts that established her culpability and conserved judicial resources. As the hearing judge noted, “the State Bar did not have to call any witnesses.” In addition, Butterfield does not dispute any

⁶ 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.”

⁷ 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.)

culpability findings on review, and fully and candidly admitted her wrongdoing at the hearing below and again at oral argument. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation for those who admit culpability and facts].)

2. Minimal Credit for Extreme Emotional Difficulties (Std. 1.6(d))

Extremely stressful family circumstances may be considered as mitigation (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702 [depression due to stress of son's emotional turmoil considered in mitigation]). Butterfield credibly testified about significant personal and financial problems she experienced at the time of her misconduct in December 2011. On Christmas of that year, her car was repossessed. Shortly thereafter, she lost her home to foreclosure. Butterfield is the sole support for her two sons, ages 22 and 16, since their father was murdered in 2003 — a tragedy she no doubt continues to cope with today. She also testified that her financial circumstances have improved now that her father purchased a home for her, and her two sons earn money that they contribute to household expenses. Based on this testimony, the hearing judge found that Butterfield's "immediate money problems have been abated," and assigned mitigation credit for her financial and emotional difficulties. We agree, but diminish the weight since she presented only her own testimony. (Std. 1.6(d) [emotional difficulties mitigating where established by expert]; but see *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [Supreme Court considered lay testimony of emotional problems as mitigation].)

3. Modest Credit for Remorse/Recognition of Wrongdoing (Std. 1.6(g))

The hearing judge assigned some mitigating weight to Butterfield's recognition of her misconduct, finding she "was candid in this hearing and clearly recognized her wrongdoing." The judge also noted her belated efforts to comply with her probation conditions, such as

amending her false probation report. We agree and assign mitigating weight to this factor. (See Rules Proc. of State Bar, 5.155(A) [hearing judge’s factual findings entitled to great weight on review].)

B. TWO FACTORS IN AGGRAVATION

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

Butterfield has one prior record of discipline involving the Moura matter. It was recent, serious, and involved dishonesty to the federal court and opposing counsel, as well as lying under oath, while on suspension for previous acts of dishonesty. We thus assign her past case significant weight in aggravation. (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 710 [prior discipline of actual suspension imposed in recent past entitled to considerable weight where attorney had “not taken any steps to correct the problem or to indicate his reform”]; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 528, 531 [greater discipline warranted due to close nexus between previous misconduct and present probation violation].)

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

Butterfield committed multiple acts of misconduct, which we consider as aggravation. We assign great weight to this factor because her ongoing dishonesty demonstrates “disregard of the practice designed to seek truth in legal matters.” (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149 [where ethical violations in one client matter were similar to those in second client matter and involved dishonesty, evasiveness, and contempt for oath of attorney; multiple violations considered in aggravation and warranted increase in discipline].)

III. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession. (Std. 1.1.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline

imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) In doing so, we look to the standards for guidance. (*In re Silvertown* (2005) 36 Cal.4th 81, 91.)

The applicable standard here is 2.7, which addresses misconduct constituting moral turpitude. It provides that “disbarment or actual suspension is appropriate for an act of moral turpitude” and 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.” Although Butterfield’s dishonesty did not harm her client, it was directly related to the practice of law since she made misrepresentations to the superior court and to the State Bar’s probation office. Because she has a prior record of discipline, the sanction in this case “must be greater than the previously imposed sanction unless” the prior discipline was remote in time and not serious. (Std. 1.8(a).) The prior 2011 discipline case is recent and serious – it involved dishonesty. Accordingly, at a minimum, we must impose a sanction greater than the 30-day suspension Butterfield received in her prior case in order to address her recidivist misconduct.

We also consult case law, given the broad range of discipline standard 2.7 provides (from suspension to disbarment). (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) No case is directly analogous to Butterfield’s circumstances. The hearing judge found two review department cases to be instructive that involved UPL and the attorneys’ failure to disclose a suspension: *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 (six-month suspension) and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 (90-day suspension). For its part, the State Bar urges that we look to *Arm v. State Bar* (1990) 50 Cal.3d 763 (18-month suspension), and *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166 (six-month suspension), where attorney misrepresentations to the court were involved. In each of these four cases, the attorney had at least one prior discipline record, but the aggravating and mitigating circumstances were varied.

Overall, we find that Butterfield's misconduct is more serious than in *Wyrick*, *Mason*, and *Chesnut* because she was dishonest *to a court* for the second time. Yet, her case is less serious than *Arm*, which involved the attorney's fourth discipline. Accordingly, the appropriate level of discipline is a suspension ranging from six to 18 months. We adopt the hearing judge's recommended one-year suspension rather than the two years urged by the State Bar for the reasons that follow.

First, Butterfield was credited with three mitigating factors including her complete cooperation and candor in these proceedings; she fully stipulated to culpability and has repeatedly admitted her wrongdoing. Second, her past and present misconduct occurred over a three-year period after the tragic loss of her children's father, as compared to more than 20 years of prior discipline-free practice. Finally, we recommend an additional requirement that Butterfield prove her rehabilitation at a hearing in the State Bar Court before she is reinstated to the practice of law. At oral argument, Butterfield embraced the opportunity to prove to the State Bar that she is rehabilitated and acknowledged the challenge in doing so, given her history of dishonesty to the courts. (See *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737, 742-743 [reinstatement hearing offers public protection through formal proceeding designed to ensure moral fitness and legal learning before attorney permitted to return to practice of law].)⁸

⁸ In the reinstatement proceeding, Butterfield will have to prove, by a preponderance of the evidence, facts necessary to show her rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, rule 5.404; std. 1.2(c)(1)). Such rehabilitative evidence has included, *but is not limited to*, making amends for wrongdoing, paying restitution or debts, engaging in pro bono work, occupying a fiduciary position, or completing appropriate counseling. (See, e.g., *In re Menna* (1995) 11 Cal.4th 975, 990 [making amends to victim and community harmed]; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430 [pro bono legal work on capital case, volunteer work, and occupying fiduciary position nine years after misconduct ended]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317-319 [pro bono service and psychological counseling 15 years after criminal acts].)

It is worth emphasizing to Butterfield that attorneys are sworn officers of the courts, and “[i]t is, of course, an extremely serious breach of an attorney’s duty to lie in statements made to the court.” (*In re Aguilar* (2004) 34 Cal.4th 386, 394.) Practically speaking, our courts simply cannot function unless they can trust that the attorneys appearing before them are telling the truth. Honesty is absolutely fundamental in the practice of law; without it, “ ‘the profession is worse than valueless in the place it holds in the administration of justice.’ ” (*In re Menna, supra*, 11 Cal.4th at p. 989[.]) Since this case is Butterfield’s second disciplinary matter, any future failure to comply with her ethical responsibilities may result in her disbarment. (Std. 1.8(b) [disbarment for third discipline case unless compelling mitigation clearly predominates].)

IV. RECOMMENDATION

For the foregoing reasons, we recommend that Ilse Marie Butterfield be suspended from the practice of law for three years, that execution of that suspension be stayed, and that she be placed on probation for three years on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first year of the period of her probation, and remain suspended until she provides proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law. (Std. 1.2(c)(1).)⁹
2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to 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 Probation.
4. Within 30 days after the effective date of discipline, she must contact Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of Probation, she must meet with the

⁹ We decline Butterfield’s request that she be given credit for the time she served on suspension for failing to timely pass the MPRE since that suspension resulted from prior misconduct, not the misconduct at issue in this case.

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.

5. She must submit written quarterly reports to 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.
6. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries 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.

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

V. STATE BAR ETHICS SCHOOL

We do not recommend that Butterfield be ordered to attend the State Bar's Ethics School, as she completed it on March 14, 2013. (Rules Proc. of State Bar, rule 5.135(A).)

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We do not recommend that Butterfield be ordered to take and pass the Multistate Professional Responsibility Examination as she submitted proof of her passage on June 4, 2013.

VII. RULE 9.20

We further recommend that Butterfield be ordered to comply with the requirements of rule 9.20 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 order in this proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

We further recommend 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

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.