

Filed December 26, 2017

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 15-O-13669; 15-O-12822
	)	(Consolidated)
FREDDIE FLETCHER,	)	
	)	OPINION AND ORDER
A Member of the State Bar, No. 134734.	)	
_____	)	

A hearing judge found Freddie Fletcher culpable of violating two sanctions orders in a civil case—the first order issued in 2013 for \$3,500, and the second in 2014 for \$1,980. The judge dismissed a separate charge for commingling funds, and ordered a public reproof with conditions that Fletcher attend State Bar Ethics School (Ethics School) and pay all sanctions.

Fletcher appeals culpability only as to the \$1,980 sanctions order. Our disciplinary standards call for a minimum actual suspension for violation of a court order. Fletcher seeks a private reproof for his unchallenged violation and objects to paying sanctions because he contends they were resolved when the civil case settled in 2014. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we affirm the public reproof and not order Fletcher to pay sanctions.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings. Given Fletcher’s considerable mitigation, lack of aggravation, and noting OCTC’s position on discipline, we affirm the public reproof with the condition that Fletcher attend Ethics School. We do not order payment of sanctions in light of the civil case settlement.

## I. SIGNIFICANT PROCEDURAL HISTORY AND ISSUES ON REVIEW

Fletcher was admitted to practice law in 1988. In this, his first disciplinary proceeding, OCTC charged him with three counts of misconduct: one count of commingling funds, in violation of rule 4.100(A)(2) of the Rules of Professional Conduct (First Notice of Disciplinary Charges, filed March 4, 2016, State Bar Court Case No. 15-O-13669); and two counts of disobeying civil court sanctions orders (\$3,500 and \$1,980), in violation of Business and Professions Code section 6103<sup>1</sup> (Second Notice of Disciplinary Charges, filed July 25, 2016, State Bar Court Case No. 15-O-12822). Following consolidation of the cases and a three-day trial, the hearing judge issued her decision on January 3, 2017, as amended on January 18, 2017.

The disputed issues on review are limited. Fletcher does not challenge his culpability for failing to timely pay the \$3,500 sanctions, and OCTC does not challenge the dismissal of the commingling charge. We affirm both counts, as supported by the record. Accordingly, the only issues before us are: (1) whether Fletcher is culpable for not timely paying the \$1,980 sanctions; (2) the appropriate level of discipline; and (3) whether Fletcher should be ordered to pay the sanctions. For reasons analyzed below, we conclude that Fletcher is culpable, a public reproof is the proper discipline, and no sanctions are due.

## II. THE FACTS<sup>2</sup>

John Davis sued Myrine Daiges in a civil action.<sup>3</sup> Fletcher represented Daiges and Daiges's nonprofit corporation, Nova Group Home, Inc. (Nova). Fletcher filed a cross-complaint and amended cross-complaint on behalf of both clients against Davis on July 19 and

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<sup>1</sup> All further references to sections are to the Business and Professions Code.

<sup>2</sup> The facts address only the disputed count and are based on documentary evidence, trial testimony, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) All further references to rules are to the Rules of Procedure of the State Bar.

<sup>3</sup> *Davis v. Daiges*, Los Angeles Superior Court Case No. BC492159.

September 30, 2013, respectively. On October 22, 2013, Davis served interrogatories, requests for documents, and requests for admissions on Fletcher as counsel for Nova. On November 14, 2013, Davis amended his complaint to name Nova in place of a Doe defendant.

Fletcher did not respond to Davis's discovery requests. Instead, he filed a voluntary dismissal of the cross-complaint, which the court granted on December 3, 2013. Two days later, Davis filed three motions to compel discovery and related requests for sanctions against Nova and Fletcher. There is no evidence that Nova or Fletcher filed oppositions.

The superior court heard the motions on July 10, 2014. By this time, Fletcher had filed an answer on behalf of Nova, and he attended the hearing. The court granted Davis's motions and ordered Nova and Fletcher to pay \$1,980 in sanctions to Davis within 10 days. The court also issued a minute order imposing sanctions consistent with the ruling. Fletcher was served with the notice of ruling. Neither Nova nor Fletcher timely paid the sanctions, sought reconsideration, or otherwise appealed the order. On September 19, 2014, the parties entered into a settlement and mutual release that resolved the case, including the sanctions owed to Davis.

### **III. FLETCHER IS CULPABLE**

We affirm the hearing judge's finding that Fletcher willfully disobeyed the superior court's July 10, 2014, order by failing to timely pay the sanctions of \$1,980, in violation of section 6103.<sup>4</sup> To establish a willful violation of this section, an attorney must know an order is final and binding. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney's knowledge of final, binding order is essential element of § 6103 violation].) Fletcher knew the sanctions order was final and binding because he received notice

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<sup>4</sup> Section 6103 provides that: "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

of the motions, attended the hearing, and was served with a notice of the ruling. Nevertheless, he failed to pay the sanctions within the specified period.

On review, Fletcher argues that the sanctions order is void and unenforceable. He contends that the superior court lacked subject matter and personal jurisdiction over Nova and him when it issued the sanctions because he had dismissed the cross-complaint involving Nova before the sanctions motion was filed. We reject his argument. Under established *disciplinary* authorities, this court does not review a superior court order for such jurisdictional validity, and Fletcher may not collaterally attack the order for the first time in the State Bar Court to avoid culpability and discipline for violating section 6103.<sup>5</sup> Though we do not elaborate on Fletcher’s jurisdictional challenge, we note that case law provides that civil courts may retain jurisdiction to determine and enforce statutory sanctions against dismissed parties and their attorneys where the misconduct meriting sanctions occurred before the dismissal. (See *Frank Annino & Sons Constr., Inc. v. McArthur Restaurants, Inc.* (1998) 215 Cal.App.3d 353, 357–358; *Durdines v. Superior Court* (1999) 76 Cal.App.4th 247, 256 [attorney is officer of court and generally subject to court’s jurisdiction, as person connected with judicial proceeding].)

Fletcher relies on *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, to support his argument for collateral attack on the order as void. His reliance is misplaced. *Respondent X* concerned a violation of a confidentiality order where the attorney challenged the order’s validity at the time when he would be punished for his disobedience, namely, at the superior court contempt sentencing hearing. We did not entertain a collateral

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<sup>5</sup> *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1, 9 (attorney “was obligated to obey the order unless he took steps to have it modified or vacated, which he did not do”); *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 (“In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed”); see *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951–952 (technical arguments regarding validity of order waived if order becomes final without appropriate challenge; “[t]here can be no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid”).

attack in that disciplinary proceeding as to the order's validity, as Fletcher seeks to do here. To the contrary, we deferred questions of the superior court order's validity to the state courts and emphasized that the attorney "had his opportunities to litigate *in the courts of record* his claims that the order he violated was void" and that there was "no valid reason to go behind the now-final order." (*Id.* at p. 605, emphasis added.) We find that, for purposes of attorney discipline, the unchallenged \$1,980 sanctions order is final and binding, and Fletcher violated section 6103 by not timely complying with it.

#### **IV. SUBSTANTIAL MITIGATION AND NO AGGRAVATION<sup>6</sup>**

The hearing judge found three factors in mitigation, which we affirm with modifications that increase Fletcher's overall mitigation credit. We find that his mitigation predominates as there are no aggravating factors.

##### **A. No Prior Discipline**

Mitigation is available where no prior record of discipline exists over many years of practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) Fletcher has a 25-year record of discipline-free practice. While the misconduct occurred over a roughly nine-month period of time, it involved a single matter and the sanctions payment was resolved by settlement more than three years ago. When we view Fletcher's transgressions in relation to these factors, we conclude his misconduct was aberrational and unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long record of no discipline is most relevant when misconduct is aberrational].) We agree with the hearing judge that Fletcher is entitled to substantial mitigation under standard 1.6(a). (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight for more than 10 years of practice].)

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<sup>6</sup> Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Under standard 1.6, Fletcher has the same burden to prove mitigation. All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

## **B. Good Character Evidence**

Fletcher is entitled to mitigation if he establishes “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of his misconduct.” (Std. 1.6(f).) The hearing judge assigned moderate mitigating credit.

Six character witnesses testified, including several people who had long-term relationships with Fletcher, such as his pastor, his older brother (a military contract specialist), a friend and former employee, and three former or current clients. The witnesses convincingly described Fletcher’s honesty and passion for the law, and they knew about the discipline charges. One witness said Fletcher was “decent” and “kindhearted,” while another believed his reputation in the community was that of “a very honest attorney” who is always willing to help people.

Overall, we find that the quality of these endorsements is impressive and persuasive. Yet the witnesses did not include any references from the legal community, as the standard requires to form “a wide range of references in the legal and general communities.” For this reason, we assign moderate mitigating weight to Fletcher’s character evidence. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].)

## **C. Pro Bono and Community Services**

Community service and pro bono activities are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned moderate credit after citing generally to Fletcher’s pro bono services and his work with the “Feed the Hungry” program. The record, however, reveals much more detail that entitles Fletcher to greater mitigation.

As an overview, case authorities guide us to evaluate community and pro bono service by looking at several different factors such as: (1) the nature, quality, and specificity of the volunteer service itself (see *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal

abilities, dedication, and zeal in pro bono work]); and (2) the amount, quality, and persuasiveness of the proof of such service. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony].) Fletcher's evidence addressed both of these factors.

Fletcher, as well as several character witnesses, testified about his ongoing pro bono and community service, as well as his generosity. His older brother provided background information about Fletcher, including that he has been civic-minded since high school where he served as the first African-American student body president. And Fletcher's past and present clients testified, citing his selfless volunteer nature. One former client noted that Fletcher provided significantly reduced-fee legal services to him and several of his family members through representation in criminal cases or preparation of living wills and trusts. A current client testified that Fletcher handled a civil case at no cost, and when the client lost his income and property, Fletcher gave him money, clothing, and \$600 for Christmas. In addition to his pro bono legal work, Fletcher is actively involved with the "Feed the Hungry" program for the City of Inglewood, which he personally supports and for which he solicits involvement and donations from other attorneys.

Based on this evidence, we find that Fletcher has proved, by clear and convincing evidence, that he is dedicated to pro bono and community service. We therefore assign significant mitigation credit.

#### **V. A PUBLIC REPROVAL IS APPROPRIATE 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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight. (*In re Silvertown* (2005)

36 Cal.4th 81, 92.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.) Ultimately, 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.)

The hearing judge properly cited to standard 2.12(a), which calls for disbarment or actual suspension for violation of a court order related to the practice of law. This standard echoes the language of section 6103, which also provides for disbarment or suspension for willfully violating a court order. Yet the hearing judge opted to resolve this case with a public reproof with conditions. While the judge recognized that Fletcher’s violation of two court orders is serious misconduct “unbefitting an attorney” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112), she concluded that it “does not warrant a period of actual suspension or disbarment as provided for in standard 2.12(a).” The judge reasoned that there was no culpability other than the section 6103 violations, several factors in mitigation were present and none in aggravation, and case law supported a public reproof.<sup>7</sup>

Like the hearing judge, we too find clear reasons to depart from standard 2.12(a) and recommend a public reproof. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons to deviate from standards].) As noted, Fletcher has a lengthy discipline-free record, has performed extensive pro bono and volunteer work, and presented character witnesses who credibly testified to his reputation for integrity. Further, the sanctions were resolved through the civil case settlement in 2014, and there are no aggravating circumstances. Though violation of a court order is serious misconduct, there is no evidence of harm or injury,

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<sup>7</sup> The hearing judge relied on *In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. 592 (public reproof for violating court order) and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 (private reproof with conditions for violating sanctions order). These cases do not currently provide clear guidance, however, because they were based on former standard 2.6, which allowed for a stayed suspension for violating a court order, while current standard 2.12(a) calls for a minimum *actual* suspension for such a violation.



and Fletcher's aberrational misconduct over 25 years of practice demonstrates he is willing and able to abide by his ethical responsibility in the future. Given these findings, and noting OCTC's request to affirm the hearing judge, a public reproof, and not the private reproof Fletcher requests, is the proper discipline.

#### **VI. FLETCHER SHOULD NOT BE REQUIRED TO PAY SANCTIONS**

Neither party requests that Fletcher pay sanctions, and we agree because they were resolved in the civil settlement. We do not find it necessary for rehabilitation purposes to require Fletcher to pay them now. The discipline imposed is adequate to impress upon him the seriousness of his misconduct. (See *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093 ["significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness"].)

#### **VII. ORDER**

Freddie Fletcher is ordered publicly reproofed, to be effective 15 days after service of this opinion and order. (Rule 5.127(A).) He must comply with the specified condition attached to the public reproof. (Rule 5.128; Cal. Rules of Court, rule 9.19.) Failure to comply with this condition may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct. Fletcher is ordered to comply with the following condition:

Within one year of the effective date of this public reproof, he must submit to the Office of Probation satisfactory evidence of completion of 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 he shall not receive MCLE credit for attending Ethics School. (Rule 3201.)

### **VIII. COSTS**

Costs are awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.