

Filed October 31, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	<b>Case No. 12-H-15804</b>
	)	
<b>SCOTT ANTHONY GALLAND,</b>	)	<b>OPINION</b>
	)	
A Member of the State Bar, No. 211330.	)	
_____	)	

The Office of the Chief Trial Counsel of the State Bar (OCTC) appeals the discipline recommendation of a hearing judge who found Scott Anthony Galland culpable of violating several conditions of a public reproof. The judge recommended Galland be suspended for three years and until he establishes his rehabilitation and fitness to practice law pursuant to a proceeding under Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, former standard 1.4(c)(ii).<sup>1</sup> OCTC renews its trial request that Galland be disbarred. It stresses that this is Galland’s third discipline case,<sup>2</sup> and that he previously failed to comply with his reproof conditions. Galland did not seek review.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings and the mitigating and aggravating circumstances, with modifications. Although this is Galland’s third discipline, the misconduct in his two prior records of discipline occurred during the same period of time. Further, Galland’s cumulative

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<sup>1</sup> All further references to standards are to this source. These standards were modified effective January 1, 2014. Since this case was submitted for ruling in 2014, the new standards apply. The current applicable standard is standard 1.2(c)(1).

<sup>2</sup> Standard 1.8(b) provides that disbarment is appropriate discipline under certain circumstances for an attorney with two prior disciplines unless the most compelling mitigating factors predominate.

misconduct neither demonstrates a pattern nor that he is unwilling to conform to his ethical responsibilities. We find that the recommended three-year suspension with the requirement that Galland present proof at a formal hearing of his rehabilitation and present fitness to practice law, will protect the public, the courts, and the legal profession.

## **I. FACTUAL BACKGROUND AND CULPABILITY**

We adopt the hearing judge's factual findings and augment them with evidence from the record.

### **A. Factual Findings**

#### **1. Underlying Discipline Case**

On March 16, 2011, Galland stipulated to three ethical violations in 2009 in a single client matter. A hearing judge approved the stipulation on March 29, 2011, and imposed the agreed-upon discipline of a public reproof with conditions. The court's order took effect April 19, 2011, and required that Galland:

- Submit written quarterly reports to the State Bar Office of Probation (Probation) on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof and state under penalty of perjury whether he complied with all reproof conditions during the preceding calendar quarter;
- Pay restitution to Juli Smith (or the Client Security Fund) according to a payment schedule and provide satisfactory proof to Probation with each quarterly report; and
- Answer fully, promptly and truthfully any inquiries of Probation directed to him personally or in writing relating to whether he was complying or had complied with the reproof conditions.

## **2. Violation of Repeval Conditions**

Galland did not comply with his quarterly reporting requirement. Although he submitted his April 10, 2012 report, it was two days late and defective because he failed to state under penalty of perjury whether he complied with all reprovall conditions during the reporting period. Similarly, although his July 10, 2012 report was submitted under penalty of perjury, he did not report whether he had complied with all reprovall conditions. Additionally, the report was a copy and did not contain an original signature. Galland resubmitted the July 2012 report on July 13 with an original signature but failed to correct the other deficiency. Probation received but did not file the three defective reports.

In each instance, Probation notified Galland that his reports were inadequate. It explained that he failed to state under penalty of perjury that he had complied with all of his reprovall conditions for the reporting period, and informed him that his July 13 report failed to specify the reporting period being covered. Also, in each written communication, Probation informed Galland that he had not provided satisfactory proof of his restitution payments to Juli Smith, and requested that he immediately submit corrected April and July 2012 quarterly reports.

Galland did not timely submit his October 10, 2012 quarterly report. On March 22, 2013, he resubmitted quarterly reports for April 10 and July 10, 2012 and submitted a report for October 10, 2012. Probation accepted these reports as "filed late."

During the disciplinary hearing, Galland testified that he did not comply with his reporting requirements because he was consumed with daily life and was in dire financial stress. During the year 2012, his adjusted gross income was less than \$10,000. He was fearful of being incarcerated because he was behind in his child support payments, and he lost his apartment since he could not pay the rent. At the time of the hearing, he had obtained temporary employment earning \$600 per week in Los Angeles, but that ended in the Spring of 2013.

## **B. Culpability**

The hearing judge found Galland culpable of violating rule 1-110 of the Rules of Professional Conduct by: (1) submitting defective April 10 and July 10, 2012 quarterly reports; (2) being excessively late in correcting the deficiencies in his reports; (3) filing an untimely October 10, 2012 report; (4) failing to submit satisfactory proof to Probation of his monthly restitution payments to Smith; and (5) not responding to Probation's inquiries about his non-compliance until eight to 10 months later. Neither party challenges the culpability findings, and we adopt them as being supported by the record.

## **II. AGGRAVATION AND MITIGATION**

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5.<sup>3</sup> Galland has the same burden to prove mitigation. (Std. 1.6.) The hearing judge found two aggravating circumstances — two prior records of discipline and multiple acts of wrongdoing. He found three mitigating factors — cooperation, recognition of wrongdoing, and extreme financial difficulties. We adopt these findings as modified below.

### **A. Aggravation**

#### **1. Prior Disciplinary Record (Std. 1.5(a))**

##### ***In the Matter of Scott A. Galland (March 29, 2011) (Galland I) – Public Reproval***

On March 29, 2011, Galland was publicly reprovved with conditions after he stipulated to failing to keep his client informed, to competently perform, and to return unearned fees. Galland stipulated to this misconduct before an Notice of Disciplinary Charges (NDC) was filed. His client, Juli Smith, paid him \$36,060 to represent her. He abandoned her in May 2009 and his failure to perform caused Smith to lose a settlement of at least \$15,000. Additionally, the court

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<sup>3</sup> 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.)

dismissed her wrongful termination and employment discrimination suit. Galland stipulated that he owed Smith \$15,000 in unearned fees. In mitigation, he had no prior record of discipline, and he cooperated; there were no aggravating circumstances. One of Galland's reproof conditions required him to pay \$15,000 in restitution to Smith.

***In re Scott Anthony Galland on Discipline (Aug. 16, 2012) (Galland II) – One-Year Actual Suspension***

On August 16, 2012, the Supreme Court ordered Galland suspended from the practice of law for two years, stayed, and placed him on probation for two years subject to conditions, including a one-year actual suspension and restitution. Before an NDC was filed, Galland stipulated to misconduct in five matters, three of them involving clients. His misconduct arose when he abandoned three clients in October 2009, April 2010, and December 2010, which occurred before the public reproof was issued in *Galland I*. In all three matters in *Galland II*, he failed to perform with competence, which resulted in the dismissal of two of his clients' complaints.<sup>4</sup> He also failed to keep his clients informed and failed to return unearned fees to each client totaling \$11,030. Other misconduct included improper withdrawal from employment, failure to obey a court order, failure to render an accounting, and failure to return a client's file.

In the remaining two matters, Galland failed to report a \$1,000 sanction order to the State Bar, failed to obey that order, and failed to comply with the reproof conditions in *Galland I*. In the reproof violation matter, Galland filed an untimely October 2010 report and defective January and March 2012 reports, and failed to submit proof of passage of the Multistate Professional Responsibility Examination (MPRE) or that he attended Ethics School. Furthermore, he ceased making monthly restitution payments to Smith after September 2011.

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<sup>4</sup> One client's dismissal was vacated after Galland filed a motion and admitted attorney neglect pursuant to Code of Civil Procedure section 473, subdivision (b). He took this action after his client retained new counsel and incurred additional attorney fees totaling \$21,520.08.

Between 2009 and 2010, Galland went through a contentious divorce. Additionally, his home was foreclosed due to his ex-wife's failure to pay the mortgage. Galland received mitigation credit for his family problems and for cooperation, while his prior discipline record, significant client harm, and multiple acts of wrongdoing were aggravating circumstances.

## **2. Multiple Acts of Wrongdoing (Std. 1.5(b))**

Galland submitted two defective quarterly reports; failed to promptly correct the deficiencies in those reports, resulting in their untimeliness; filed a third report late; failed to submit satisfactory proof to Probation that he made the monthly restitution payments to Smith; and did not promptly respond to Probation's inquiries about his compliance with the reprobation conditions. These numerous instances of non-compliance support an aggravating factor for multiple acts under standard 1.5(b). (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [violating three separate conditions of probation constituted multiple acts of wrongdoing].)

## **B. Mitigation**

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

The hearing judge afforded mitigation credit for Galland's cooperation with OCTC. We agree and assign it significant weight. Galland entered into a stipulation of facts that established his culpability. The stipulation conserved judicial resources and eliminated the need for the probation deputy to testify. In addition, Galland does not dispute any culpability findings on review, and candidly admitted his wrongdoing at the hearing below. (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. Recognition of Wrongdoing (Std. 1.6(g))**

Standard 1.6(g) provides mitigation credit where an attorney takes prompt objective steps that demonstrate spontaneous remorse and recognition of wrongdoing, and timely atones for the misconduct. During the hearing, Galland acknowledged that he “should have corrected [the defective reports] earlier or promptly.” He has started to understand and deal with his restitution responsibilities, particularly “as a condition of, you know, showing . . . rehabilitation.” We afford modest weight for Galland’s recognition of wrongdoing because he began to address his restitution payments, albeit only after OCTC interceded.

## **3. Financial Difficulties**

Financial difficulties may be considered in mitigation for professional misconduct. (See *Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 747-748.) Pursuant to the reproof conditions, Galland paid Smith \$200 monthly from April through September 2011. When the monthly payments increased to \$760, he was unable to comply with his restitution obligations. He testified that he was experiencing severe financial pressures when he violated his reproof conditions.

In 2012, Galland’s adjusted gross income was less than \$10,000, he had difficulty securing employment, and was unable to make his child support payments, which prompted worry that he would be incarcerated for nonpayment. Also, Galland had to vacate his apartment because he could not afford the rent. Galland testified that these circumstances caused him to neglect his professional duty to comply with his reproof conditions, including making restitution payments to Smith. The hearing judge found Galland’s testimony credible, and we give great weight to that finding. (Rules Proc. of State Bar, rule 5.155(A).) Although Galland found a job at the time of the hearing, it was temporary, and he was not current with his restitution obligations. We afford minimal weight to this factor since there is no evidence that he

has overcome his financial difficulties. (Cf. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684 [attorney with prolonged financial hardship given mitigation credit for difficulties where evidence of good faith effort to comply with restitution obligations].)

### **III. DISBARMENT IS NOT WARRANTED**

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 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 the standards do not mandate a particular discipline (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994), nor must they be followed in “talismanic fashion.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Instead, we balance all relevant factors, including aggravation and mitigation, on an individual case basis. (*Sugarman v. State Bar* (1990) 51 Cal.3d 609, 618.)

The most relevant standard is 1.8(b), which applies to an attorney who has been disciplined twice. In part, standard 1.8(b) provides that unless the most compelling mitigating circumstances clearly predominate “or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct,” disbarment is appropriate where: (1) actual suspension was ordered as a prior discipline; (2) the prior disciplines, coupled with the current matter, demonstrate a pattern of misconduct; or (3) the prior discipline together with the current misconduct “demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.”

The hearing judge did not recommend disbarment because of Galland’s “compelling” mitigation. We do not find Galland’s mitigating circumstances compelling nor do they clearly predominate over his misconduct and the aggravation of his two prior disciplines. But we also



do not recommend disbarment, albeit for a different reason. Although Galland's two priors were serious and involved client abandonment and the failure to perform, the misconduct occurred during the same time period, diminishing their aggravating weight. Thus, Galland did not have an opportunity to appreciate or heed the import of the earlier discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) Accordingly, we do not strictly apply standard 1.8(b). (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [court did not apply former std. 1.7(b) where prior discipline given less weight because it was imposed after commencement of second disciplinary proceeding].)<sup>5</sup>

We do, however, find guidance in standard 1.8(a), which provides that discipline should be progressive. Since Galland previously received a one-year suspension, he should now receive more serious discipline.

We examine comparable precedent to ensure consistency among discipline cases. *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In requesting that Galland be disbarred, OCTC cites *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, and *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. We do not find these cases persuasive because the attorney in *Rose* had four priors, and in *Grueneich*, the probation violations were more extensive than in the present case. More importantly, both cases involve probation violations rather than violations of reproof conditions. Therefore, we seek guidance from cases specific to reproof violations. In these cases, discipline ranges from a further reproof to 90 days' actual suspension, depending on mitigation, aggravation, and level of

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<sup>5</sup> Under the Supreme Court's guidance, we have not reflexively applied the standard in every case but rather have done so "with an eye to the nature and extent of the prior record. [Citations.]" (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.) "Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller, supra*, 1 Cal. State Bar Ct. Rptr. 131, 136.) Rather, "we must examine the nature and chronology of the respondent's record of discipline." (*Ibid.*)

cooperation in the proceedings.<sup>6</sup> In fact, reprobation cases have called for no more than 90 days' actual suspension even where mitigation was absent or nominal and where failure to cooperate resulted in a default.

We adopt the hearing judge's three-year suspension recommendation and the requirement that Galland remain suspended until he proves his rehabilitation and fitness to practice. Even though the reprobation violation cases provide for no more than a 90-day suspension, Galland had more priors than in two of those cases and his prior misconduct was much more serious than in the third. Additionally, Galland's suspension must be greater than the one-year suspension he received in *Galland II*. Moreover, his restitution payments remain delinquent despite his expressed intention to address them. Finally, during his closing argument, Galland conceded that "an extended actual suspension would be appropriate" and he "would expect for the full three years' suspension." Weighing all factors, we conclude that a three-year actual suspension and until he proves his rehabilitation and fitness to practice law best serves the purposes of attorney discipline.

#### IV. RECOMMENDATION

For the foregoing reasons, we recommend that Scott Anthony Galland be suspended from the practice of law for four years, that execution of that suspension be stayed, and that he be placed on probation for four years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first three years of his probation, and remain suspended until the following conditions are satisfied:

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<sup>6</sup> *Conroy v. State Bar* (1990) 51 Cal.3d 799 (60-day actual suspension in default proceeding for failing to pass MPRE with one factor in mitigation and three in aggravation including prior record of discipline, failure to participate, and lack of remorse); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813 (further reprobation for failing to pass MPRE with no mitigation and one aggravating factor of prior discipline); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 (90-day actual suspension in default proceeding for failing to submit quarterly reports and to complete CLE hours with no mitigation and four aggravating factors including two prior discipline records, multiple acts of wrongdoing, indifference, and failure to cooperate).

- a. He makes restitution to Juli Smith in the amount of \$15,000 plus 10 percent interest per annum from April 1, 2011, (or reimburses the Client Security Fund to the extent of any payment from the Fund to Juli Smith, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,
  - b. He provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his 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 Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
  4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request
  5. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his 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, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
  7. Within one year after the effective date of the discipline herein, he 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 he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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 he has

complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **V. PROFESSIONAL RESPONSIBILITY EXAMINATION**

Pursuant to Evidence Code section 452, subdivision (d), we take judicial notice of Scott Anthony Galland's passage of the Multistate Professional Responsibility Examination given on November 2, 2013. We do not recommend that he be ordered to take and pass the MPRE since he submitted proof of passage to Probation in *In re Galland on Discipline* (Aug. 16, 2012, S203069) Cal. State Bar Ct. no. 11-O-12629.

#### **VI. RULE 9.20**

We further recommend that Scott Anthony Galland 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.

#### **VII. 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.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.