PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed May 8, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-H-30623
	)	
KEITH GOFFNEY,	)	OPINION AND ORDER
	)	
State Bar No. 175821.	)	
	)	

In his second disciplinary matter, Keith Goffney was charged with a single count of misconduct for failing to comply with one condition of his public reproval in violation of rule 8.1.1 of the California Rules of Professional Conduct.[1] Specifically, the Notice of Disciplinary Charges (NDC) alleges Goffney failed to timely submit satisfactory evidence of completion of State Bar Ethics School (Ethics School) and passage of the test given by the June 6, 2019 deadline. The hearing judge found Goffney culpable as charged and recommended a one-year stayed suspension.

Goffney seeks review, asserting that he is not culpable because he was unaware of the Ethics School compliance deadline and the State Bar Office of Probation (Probation) failed to inform him. He seeks a dismissal or, alternatively, that we impose no more than a private reproval. The Office of Chief Trial Counsel of the State Bar (OCTC) requests that we affirm the hearing judge's decision.

[1] All further references to rules are to the Rules of Professional Conduct, effective November 1, 2018, unless otherwise noted.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings. However, given the unique facts of this case, including minor misconduct in his prior discipline and in the instant matter, which we find is mitigated by his unemployment and lack of financial resources, we conclude that discipline is not necessary to protect the public, the courts, and the legal profession. An admonition is the appropriate disposition.

I. PROCEDURAL BACKGROUND

On November 13, 2019, OCTC filed a one-count NDC alleging that Goffney violated rule 8.1.1, which requires that attorneys comply with reproval conditions. Goffney filed a response on December 23, 2019. The hearing judge held a pretrial conference on November 22, 2021, during which Goffney demonstrated cooperation through his testimony and verbal stipulation to certain undisputed facts and to the admission of some documents. A one-day trial occurred on November 30, 2021. Posttrial briefing followed and the judge issued his decision on March 15, 2022. Goffney filed his request for review on June 17, 2022. Oral arguments were heard on April 5, 2023.

II. FACTUAL BACKGROUND[2]

Goffney was admitted to practice law in California on November 18, 1987. He was ordered inactive as of July 25, 2015, due to the State Bar's enforcement of a binding arbitration award that Goffney failed to pay pursuant to Business and Professions Code section 6203. Goffney's attorney status has been listed as "Not Entitled" to practice law since July 25, 2015.

[2] The facts included in this opinion are based on the pretrial and trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

A. The State Bar Court Publicly Reproved Goffney

Goffney has one prior record of discipline. In his prior matter, Goffney had been representing a client in a family law case since 2015 but had not been able to hire alternate counsel for his client for an upcoming evidentiary hearing on October 8, 2015. At that time, Goffney was not entitled to practice law due to his inability to pay the binding arbitration award issued in July. However, after speaking with a superior court clerk, Goffney concluded that despite his inactive status, he could file an ex parte application to notify the superior court that he would not be able to appear at the October hearing.

On September 29, 2015, Goffney filed an ex parte request on behalf of his client to continue the October hearing and appeared in court the same day in support of his request. Goffney disclosed to the superior court that he was not entitled to practice law and sought a continuance to allow him to resolve the arbitration matter affecting his inactive status. The matter was continued to December 8. On December 3, Goffney filed a second ex parte request for continuance and appeared at the December 8 hearing. During the hearing, the superior court judge informed Goffney that he should have hired an attorney eligible to practice law to appear and make the ex parte application. The judge denied Goffney's second request without prejudice, ordered that Goffney be reported to the State Bar, and continued the hearing to January 12, 2016. Goffney's requests for continuances were actually misguided attempts to *avoid* practicing law by delaying the case.

On June 22, 2017, the Hearing Department issued its decision finding Goffney culpable of two counts of engaging in the unauthorized practice of law (UPL) in 2015 by filing two ex parte requests for a continuance when his license was inactive. (Case Nos. 16-O-10016; 16-O-15832 (Consolidated).) The hearing judge ordered a public reproval with a condition that Goffney attend Ethics School and submit proof of successful completion within one year.

On June 27, 2017, Probation Case Specialist Ivy Cheung mailed Goffney a courtesy letter reminding him of the terms of the reproval and indicating the Ethics School compliance deadline was July 28, 2018. Goffney testified that he received the letter. However, Goffney later appealed the Hearing Department's decision. Since Goffney appealed the decision, Cheung's reminder letter ultimately became moot.

On May 16, 2018, we issued our opinion and order (Reproval Order), affirming the Hearing Department's decision finding that Goffney engaged in UPL. He received mitigation for his 28 years of discipline-free practice, lack of client harm, and for him entering a detailed stipulation with OCTC. One aggravating circumstance was established due to his lack of insight. The Reproval Order stated, in part:

> Keith Goffney is ordered publicly reproved, to be effective 15 days after service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(A).) He must comply with the specified conditions attached to the public reproval. (Rules Proc. of State Bar, rule 5.128.) Failure to comply with this condition may constitute cause for a separate proceeding for willful breach of [former] rule 1-110 of the Rules of Professional Conduct.[3]

The Reproval Order further stated that "Goffney is ordered to comply with the following condition: Within one year of the effective date of this public reproval, he must submit to the Office of Probation satisfactory evidence of the completion of Ethics School and passage of the test given at the end of that session." Goffney was served with the Reproval Order via mail, and he testified that he received it. He also testified that he understood the order to mean that the Hearing Department's decision was affirmed. Pursuant to the Reproval Order, Goffney's public reproval became effective June 6, 2018.

[3] The Reproval Order referenced former rule 1-110, the predecessor to rule 8.1.1.

B. Goffney's Interactions with Probation

On May 31, 2018, Nikiah Hawkins, a Probation Case Specialist, uploaded a courtesy reminder letter and attachments to Goffney's State Bar profile reminding him that the Reproval Order required that he provide evidence of successful completion of Ethics School by June 6, 2019. The following documents were included with the reminder letter: a copy of the Reproval Order, the 2018 Ethics School schedule and enrollment information, and an Ethics School registration form. During the disciplinary trial, Goffney testified that he did not receive the letter because he does not use email and has never accessed his State Bar profile page. Goffney's testimony is undisputed and supported by the record because he has no email on file with the State Bar. OCTC also admitted during the pretrial conference that Goffney has never accessed his State Bar profile. Further, the record reveals that on November 18, 2016, Goffney submitted a letter to the State Bar requesting an exemption from email communication due to a lack of adequate computer support systems, which appears to have been granted.

Cheung testified that she believed the May 2018 reminder letter, drafted by Hawkins, was mailed to Goffney. She based her belief on notations within Probation's case file, which she stated indicated the letter was mailed. The hearing judge found insufficient evidence to support a finding that the letter was mailed because Cheung did not participate in the mailing, Hawkins did not testify at trial, and the letter itself did not reflect any indication to support it was mailed. Also, the judge found that Goffney credibly testified that he never received the mailed letter.

On May 10, 2019, Goffney filed a motion to waive or extend the time to pay the disciplinary costs awarded in the Reproval Order based on his financial hardship—he was unemployed and receiving food stamps at the time. The Hearing Department granted the motion in part on June 18, 2019. Goffney's motion did not seek to modify or extend the time to complete the Ethics School condition of his public reproval. On June 13, Goffney called

Probation inquiring about Ethics School and a fee waiver. He ultimately spoke with Cheung, and she advised him that his proof of successful completion of Ethics School was overdue. That same day, after the telephone call, Cheung prepared a letter of noncompliance with reproval terms and mailed it to Goffney. Cheung also included, with the noncompliance letter, the May 2018 reminder letter and attachments.

After speaking with Cheung, Goffney registered for the next available Ethics School session, and, on August 6, 2019, he took and passed the course with a score of 90 percent. A passing score for Ethics School is 75 percent or better. During the disciplinary trial, Goffney testified that he acted swiftly to satisfy the requirement as quickly as possible. However, Goffney did not submit evidence to Probation of his successful completion of Ethics School until February 14, 2020.

III. CULPABILITY[4]

The NDC charged Goffney with willfully violating rule 8.1.1 by failing to comply with the conditions attached to his public reproval by not timely submitting satisfactory evidence of his successful completion of Ethics School by the June 6, 2019 deadline. Rule 8.1.1 requires an attorney to comply with the terms and conditions attached to a reproval. The hearing judge found Goffney culpable as charged and concluded that Goffney received the Reproval Order but failed to read it closely and, therefore, did not timely comply with the condition of reproval in violation of rule 8.1.1. We agree.

In probation revocation matters—and attorney disciplinary proceedings in general—willful misconduct is established by a purpose or willingness to commit an act or to make an

[4] The culpability finding in this opinion is supported by clear and convincing evidence which 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.)

omission. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) The law does not require a bad purpose or evil intent to support a willful violation of probation conditions. (*In the Matter of Potack* (Review Dept.1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) On review, Goffney argues he should not be held culpable for failing to timely comply with the Ethics School compliance deadline because Probation failed to inform him of the exact due date. He further contends this proves that his conduct was not willful because the date was not communicated as a deadline. He claims that Probation was "responsible for calculating . . . the deadline for [his] compliance with Ethics School . . . AND communicating that deadline to [him]." He is mistaken because willfulness does not require any intent to violate the probation condition. Moreover, Goffney's attempt to shift responsibility onto Probation is misplaced.

Goffney's argument fails because the Reproval Order provided him with complete notice of his compliance obligations. Goffney received the order and testified that upon reviewing it he understood that the Review Department affirmed the public reproval. The order explicitly stated it was effective 15 days after service, which was May 31, 2018, and adding five days for service by mail,[5] the effective date of the Reproval Order was June 6, 2018. The order also specified that "[w]ithin one year of the effective date of this public reproval," Goffney was required to submit satisfactory evidence of successful completion of Ethics School to Probation. Thus, the compliance deadline was June 6, 2019.

Although Probation had previously sent him a reminder letter in 2017 as a *courtesy*, it was solely Goffney's responsibility to satisfy the conditions attached to his public reproval. (See, *e.g.*, *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 149

[5] Rule 5.28 of the Rules of Procedure of the State Bar specifies that in State Bar Court proceedings, Code of Civil Procedure section 1013, subdivision (a), applies to service by United States mail, which extends the time period by five days.

[attorney obligated to comply with disciplinary order's probation conditions].) The hearing judge determined Goffney credibly testified that he never received Probation's May 2018 reminder letter uploaded to his State Bar profile because he does not use email or have access to his profile. This fact does not affect his culpability because he received the Reproval Order, which put him on notice of his obligations. Goffney's reliance on the fact that he did not receive a courtesy reminder from Probation does not discharge his duty to timely comply with the conditions of his reproval that he knew or should have known he would have to fulfill. (See *In the Matter Taggart*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 309 [bad faith not required to establish willfulness].) Also, Goffney's claim regarding him being in a "not eligible" status does not diminish or excuse his culpability.

Without citing any authority, Goffney argues that Probation's failure to provide him, at a minimum, with notification of the compliance date deprived him of due process and fundamental fairness. This argument is unavailing. Contrary to his assertion, the Reproval Order explicitly warned Goffney that a failure to comply with his reproval conditions may constitute a "willful breach of [rule 8.1.1]" and subject him to discipline in a separate proceeding. Further, his due process argument fails because in disciplinary proceedings, "adequate notice requires only that the attorney be fairly apprised of the precise nature of the charges before the proceedings commence." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929.) Goffney received adequate notice regarding the effective date of the order, the timeline for complying with his reproval conditions, and the potential consequences for failing to comply.

Goffney argued that Probation's failure to withdraw its June 2017 reminder letter created confusion and led him to believe the deadline would be in late July 2019. In any event, after he called Probation on June 13, 2019, he took the next available ethics school course. He also asserts that he was "unfamiliar with the State Bar Court rules regarding the computing of such a

date." Even if true, ignorance of the law is no defense for his failure to timely comply with conditions of his reproval. (*See In the Matter of Rubin* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797, 808 [rejecting ignorance defense because inappropriate to reward attorney for ignorance of ethical responsibilities].) And to the extent that he was genuinely confused regarding his ability to timely comply with the Ethics School requirement, Goffney has offered no reasonable justification for not obtaining legal advice or seeking a modification with the court. Accordingly, his arguments are rejected as lacking merit, and we affirm the hearing judge's conclusion that Goffney willfully violated rule 8.1.1.

IV. ADMONITION SERVES PRIMARY PURPOSE OF DISCIPLINE[6]

Our disciplinary analysis normally begins with the standards provided in the Rules of Procedure of the State Bar, which are entitled to great weight.[7] (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) However, an analysis of the standards is not required where a non-disciplinary disposition, such as an admonition, is imposed. (Std. 1.1 [standards do not apply to non-disciplinary dispositions such as admonitions].) Nonetheless, we may consider the standards to aid us in promoting consistency (*In re Silverton, supra*, 36 Cal.4th at pp. 91-92), in addition to looking to case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Goffney is culpable of violating rule 8.1.1 for failing to comply with a condition of his public reproval. The hearing judge relied on standard 2.14, which provides that actual suspension is the presumed sanction for failing to comply with a condition of discipline and that

[6] 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.)

[7] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

the degree of sanction depends on the nature of the condition violated and the lawyer's unwillingness or inability to comply with disciplinary orders. The judge determined that the record supported a downward deviation from standard 2.14 due to the limited nature of Goffney's violation, his demonstrated willingness to comply with the reproval condition (though belated), and not receiving a courtesy reminder from Probation.[8] The judge also considered *Conroy v. State Bar* (1990) 51 Cal.3d 799, and ultimately determined that a one-year stayed suspension was appropriate discipline. In *Conroy*, an attorney received a 60-day actual suspension for failing to pass the MPRE, a condition of his reproval. OCTC supports the judge's one-year stayed suspension discipline recommendation. Goffney seeks dismissal and asks that we impose a private reproval at most.

Considering the unique facts of this case, we find that Goffney's current misconduct was mitigated, with no aggravating factors.[9] As discussed *ante*, Goffney's minimal misconduct in his prior disciplinary proceeding for his UPL, while he was attempting to avoid the practice of law and seeking a continuance for his client, resulted in a public reproval. Goffney is a seasoned practitioner who practiced law for decades before he committed relatively minor misconduct in his prior matter due to him being in a not eligible status for his inability to pay a binding sanctions award. Goffney has not been eligible to practice law since 2015, and he has suffered substantial financial hardship over the last seven years because of his unemployment.

Goffney's culpability in the current matter—which stems from his prior discipline—involves one count of misconduct for a minor probation violation by failing to timely comply

[8] Although the hearing judge considered progressive discipline under standard 1.8(a) based on Goffney's prior discipline, we do not; an admonition is a non-discipline disposition and therefore application of the standards is not required. (Std. 1.1)

[9] We note that consideration of aggravating and mitigating circumstances is not required for a disposition by admonition under rule 5.126 of the Rules of Procedure of the State Bar, as discussed *post*.

with Ethics School requirements. Goffney was exempted from using email and did not receive the reminder letter from Probation regarding the deadline to comply, but when he contacted Probation by phone and was informed of his noncompliance, he quickly registered for Ethics School and passed with 90 percent. He has cooperated during these proceedings by verbally stipulating to relevant facts and the admission of some documents during his disciplinary pretrial conference. Also, no client or significant harm resulted from his misconduct. In these circumstances, discipline is unnecessary and would be punitive. An admonition under rule 5.126 is appropriate.

Rule 5.126(A) of the Rules of Procedure of the State Bar allows us to resolve a matter by admonition if (1) it does not involve a Client Security Fund matter or serious offense,[10] (2) the violation either was not intentional or occurred under mitigating circumstances, and (3) no significant harm resulted. Each requirement is satisfied here. Goffney's failure to timely comply with his Ethics School requirement did not involve the Client Security Fund, was not serious misconduct, was not done intentionally, occurred after not being entitled to practice law due to financial difficulties, and is unlikely to recur. We find that an admonition is appropriate and supported by similar case law. (See *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, 445 [admonition appropriate where single violation of permitting improper solicitation letter to be mailed was not intentional and no harm resulted]; *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439, 444, 455 [admonition

[10] Rule 5.126(B) of the Rules of Procedure of the State Bar defines a serious offense as one involving dishonesty, moral turpitude, or corruption.

appropriate for single violation of failing to communicate with client where no harm resulted, and misconduct mitigated by lengthy discipline-free record].)[11]

V. ORDER OF ADMONITION

Keith Goffney, State Bar Number 175821, is admonished upon the filing of this Opinion and Order. (Rules Proc. of State Bar, rule 5.126(A).) Because an admonition does not constitute the imposition of discipline (Rules Proc. of State Bar, rule 5.126(D)), the State Bar is not entitled to an award of costs under Business and Professions Code section 6086.10, subdivision (a). In addition, because Keith Goffney has not been exonerated of all charges, he is not entitled to an award of costs under Business and Professions Code section 6086.10, subdivision (d).

HONN, P.J.

WE CONCUR:

McGILL, J.

RIBAS, J.

[11] Rule 5.126(F) of the Rules of Procedure of the State Bar permits OCTC to file a motion to reopen this proceeding if, within two years after the effective date of this admonition, Goffney is alleged to commit misconduct that results in another disciplinary proceeding.