

Filed April 15, 2024

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) 19-R-10150
)
ANTHONY AANAND PATEL,) OPINION
)
Petitioner for Reinstatement.)
_____)

In 2017, petitioner Anthony Aanand Patel resigned from the practice of law without charges pending. On January 10, 2019, Patel filed a petition for reinstatement (petition), and the hearing judge issued a decision making a recommendation to grant his petition. Shortly thereafter, the Office of Chief Trial Counsel of the State Bar (OCTC) moved to reopen the record and then subsequently moved to dismiss the petition when Patel failed to attend two depositions, one of which was court ordered. On January 24, 2023, the hearing judge dismissed the petition pursuant to rules 5.443(D) and 5.124(I) of the Rules of Procedure of the State Bar¹ due to Patel’s failure to comply with his discovery obligations.

Patel appeals. He challenges the hearing judge’s decisions to reopen the record and to dismiss his petition. He also seeks for this court to reinstate him to the practice of law. OCTC does not appeal and requests that we affirm the judge’s decisions. After independently

¹ All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

reviewing the record (Cal. Rules of Court, rule 9.12), we find the judge did not abuse her discretion in reopening the record or dismissing Patel's petition. We affirm the judge's conclusions on both issues and dismiss the petition with prejudice.

I. SIGNIFICANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Patel was admitted to practice law in California on December 6, 1999. He maintained a discipline-free record and resigned without charges pending, effective February 10, 2017. After Patel's resignation in California, he became licensed to practice law in Nevada on May 9, 2018.

Patel filed his petition on January 10, 2019. OCTC filed its response on May 17, requesting to waive any hearing and stating it did not oppose the petition. The hearing judge filed her decision on July 29, recommending that Patel's petition be granted.

A. Investigation and Discovery

On August 27, 2019, OCTC filed a motion to reopen the record, pursuant to rule 5.113(B), based on newly discovered evidence. The newly discovered evidence included numerous emails sent by Patel to various members of the legal community with profanity-laden insults and disparaging remarks. Patel opposed the motion on September 25. The hearing judge granted OCTC's motion to reopen the record on October 29. Patel sought reconsideration, which the judge denied. Patel then sought to disqualify the judge and also another judge assigned to decide the disqualification motion, but he was unsuccessful in these challenges.

On June 30, 2020, pursuant to a court order, Patel filed an amended petition and OCTC filed its opposition on November 6. On December 14, the hearing judge abated the reinstatement proceeding. The abatement was due to a related proceeding, entitled *Anthony Patel v. Sonya Bhatia Patel*, Los Angeles County Superior Court, No. BD585163 (S265082), where Patel

sought Supreme Court review of an order declaring him a vexatious litigant.² The Supreme Court ultimately denied Patel's petition for review. On October 28, 2022, the judge issued an order terminating the abatement and provided Patel and OCTC an opportunity to supplement their pleadings by November 14 and December 5, respectively.

B. Petition Dismissal

On November 22, 2022, OCTC properly noticed Patel's deposition for December 15. The following day, Patel emailed the Hearing Department and stated he did not plan to continue with the reinstatement if OCTC still opposed his petition. On December 14, one day prior to his scheduled deposition, Patel filed a motion to quash or protect deposition and subpoena (motion to quash) and requested that the court take his deposition and trial "off-calendar." He also filed a notice of withdrawal of the petition on December 14. Patel failed to appear at the December 15 deposition.

On December 27, 2022, OCTC filed its motion to dismiss the petition or, in the alternative, compel petitioner's testimony at deposition (motion to compel). On January 3, 2023, OCTC filed a belated request to oppose Patel's motion to quash.³ On January 5, the hearing judge granted OCTC's motion to compel and ordered Patel to appear for his deposition within five court days of service of the order.⁴ The order also stated that Patel's "failure to comply with this order will result in sanctions pursuant to rule 5.69(C), up to and including, dismissal of

² In its brief, OCTC states it is aware of another vexatious litigant order filed against Patel in *Patel v. Miller*, United States District Court for the Central District of California, No. CV-19-0090-CBM. In his reply brief, Patel admits the existence of two vexatious litigant orders.

³ In its opposition, OCTC requested that the hearing judge consider its motion to compel as the pleading opposing Patel's motion to quash.

⁴ At the time, the hearing judge denied OCTC's motion seeking dismissal of the petition.

[Patel's] petition for reinstatement." Later that day, OCTC noticed Patel's court-ordered deposition for January 10, 2023, and Patel was served with the notice.

On January 6, 2023, Patel filed a motion for an extension of time to "prepare and attempt to make himself available for the deposition." OCTC opposed Patel's motion, and, on January 10, the hearing judge denied the motion for lack of good cause. On January 9, Patel filed a motion to continue the pretrial hearing and trial date for 30 days or more, which the judge also denied. Patel failed to appear at the January 10 deposition. Also on January 10, Patel filed an amended notice of withdrawal of the petition, which stated, "if [California State Senate President pro Tempore] Senator [Toni] Atkins does not believe that Petitioner should be duly reinstated, the petition, originally filed January 10, 2019, can be immediately withdrawn"⁵ On January 12, OCTC filed a motion to dismiss the petition with prejudice. On January 23, Patel filed an opposition. On January 24, the hearing judge dismissed Patel's petition for failure to comply with his discovery obligations pursuant to rule 5.443(D) and rule 5.124(I) (dismissal order).

C. Reconsideration and Request for Review

On February 8, 2023, Patel filed a motion to reconsider the dismissal order, which the hearing judge denied on March 7. On March 22, Patel sought reconsideration of that order, which was denied on May 10. On June 9, Patel filed a request for review of the reinstatement proceeding. On January 19, 2024, Patel filed a waiver of oral argument pursuant to rule 5.154 and did not appear at the January 24 oral argument. OCTC proceeded with its oral argument, and the matter was submitted the same day.

⁵ In Patel's motion to continue, Patel stated he included a reference to Senator Atkins because she appointed the hearing judge who was presiding over his reinstatement proceeding.

II. DISCUSSION

A. Patel's Obligations Upon Filing for Reinstatement

Reinstatement proceedings are governed under rule 5.440 et seq. Specifically, rule 5.443(C) allows OCTC to conduct discovery and investigate for 120 days after OCTC's response to a petition is filed. As part of its investigation, rule 5.443(D) provides that OCTC may take a petitioner's deposition. Under rule 5.445(B), a petitioner who resigns without charges pending and is seeking reinstatement must (1) pass a professional responsibility exam within one year prior to filing the petition; (2) establish present moral qualifications for reinstatement; and (3) establish present ability and learning in the general law.

B. OCTC's Motion to Reopen the Record Was Properly Granted

Patel argues that the hearing judge abused her discretion by granting OCTC's motion to reopen the record after she issued the July 29, 2019 decision that recommended the granting of Patel's petition. The standard of review to apply to procedural rulings is generally abuse of discretion, and the test is whether the court "exceeded the bounds of reason, all of the circumstances before it being considered." (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368; see also *In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461 [hearing judge's procedural ruling reviewed under abuse of discretion standard].)

Patel argues that the hearing judge had no basis to reopen the record. He further states that the record and facts support his reinstatement, and no new evidence is present that could change the judge's initial determination that he be reinstated. OCTC argues that the judge properly reopened the record for good cause based on detailed evidence of concerning behavior related to Patel's fitness and qualifications to practice law.

We find no merit to Patel’s challenge. In a State Bar Court proceeding, a party may make a motion for the Hearing Department to reopen the record to present additional evidence at any time before the period to request review by the Review Department expires.

(Rule 5.113(A).) Given that the hearing judge issued her recommendation to reinstate Patel on July 29, 2019, OCTC’s August 27 motion to reopen was within the 30-day period to request review as provided in rule 5.151(B). Additionally, rule 5.113(B) requires a motion to reopen the record be accompanied by a declaration showing that the evidence is (1) newly discovered and could not have been reasonably produced earlier; (2) the best available evidence on the issue; and (3) likely to lead to a different result after being considered. As discussed below, all three requirements set forth in rule 5.113(B) were satisfied.

First, the newly discovered evidence included numerous emails sent by Patel to members of the legal community between July 29 and August 17, 2019, in which he made disparaging remarks about specific judges and attorneys that contained profanity-laden insults and baseless assertions. The evidence also included an ex parte application Patel filed on August 17, in *Patel v. Robinson et al.*,⁶ requesting that the district court order the University of California “to declare that Patel has not been suffering from any form of mental illness” and “to correct this misdiagnosis,” and, additionally, order the State Bar not to delay his reinstatement to practice law or allow any lawyer or judge in California to use “this false health misdiagnosis” or his ongoing civil litigation to his detriment. As the hearing judge noted in her October 29, 2019 order reopening the record, the additional evidence relied upon did not exist until after the petition was submitted for decision in the Hearing Department. Next, the emails and the ex parte application are the best evidence as they contain the statements written by Patel himself. Finally,

⁶ *Patel v. Robinson et al.*, United States District Court for the Central District of California, No. CV-19-2851-DOC.

as the judge properly found, the evidence of Patel’s conduct in sending numerous concerning emails and filing the ex parte application lowers the persuasiveness of his present moral character qualifications that Patel is required to establish under rule 5.445(B)(2). With respect to moral qualifications, the question before the court is “whether petitioner is a fit and proper person to practice law at this time.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1051.) As OCTC points out in its arguments, Patel’s writings call into question his fitness to practice law and whether he possesses good moral character.⁷ Good moral character includes qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience of the law, and respect for others and the judicial process. (*In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 634-635.) Any act bearing on those qualities “is relevant in a reinstatement proceeding.” (*Id.* at p. 635.) Based upon our review of the record, we find that OCTC presented sufficient evidence to reopen the record pursuant to rule 5.113. Accordingly, we find no abuse of discretion and agree with the judge’s decision on this issue.

C. Dismissal of Patel’s Petition Was Also Properly Granted

Notwithstanding our discussion of the hearing judge’s decision to reopen the record, the determinative issue we consider is whether the judge’s dismissal of Patel’s petition as a sanction

⁷ In its August 27, 2019 motion to reopen the record, OCTC detailed multiple examples of Patel’s written statements that call into question his fitness to practice law, particularly his respect for the law and for the judicial process, and these examples were provided as attachments to the motion. In them, Patel insulted a Los Angeles superior court judge, the then-general counsel of the State Bar, his former family law attorney, along with multiple other attorneys, and often used profanity to emphasize his points. Beyond his insults to these individuals, he also labeled the family court system in California a “joke,” stated that the State Bar, attorneys, and judges in general were “inept” and “incompetent,” and that his actions would “become more fun if I can just tell lawyers and judges in [California] how fucking stupid they are all day since their entire [s]tate government is dumb as hell” Almost all of these emails were copied and sent by Patel to dozens of individuals, either attorneys or other members of the public.

for violating the January 5, 2023 discovery order was appropriate, which is also reviewed under the abuse of discretion standard. (*H. D. Arnaiz, Ltd. v. County of San Joaquin, supra*, 96 Cal.App.4th at p. 1368; *In the Matter of Respondent L, supra*, 2 Cal. State Bar Ct. Rptr. at p. 461; see also *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [review of discovery order on appeal of hearing judge's decision that fully disposes of entire proceeding is under abuse of discretion standard].)

The hearing judge dismissed Patel's petition because he failed to attend a properly noticed deposition scheduled for December 15, 2022, and a court-ordered deposition on January 10, 2023. Disobeying a court order to provide discovery is a misuse of the discovery process under the Civil Discovery Act. (Code Civ. Proc., § 2023.010, subd. (g); see also rule 5.69(C) [Civil Discovery Act provisions about misuse of discovery and sanctions applicable in State Bar Court proceedings].) A permissible sanction in the State Bar Court under the Civil Discovery Act is a terminating sanction that dismisses the action. (Code Civ. Proc., § 2023.030, subd. (d)(3); rule 5.69(C) [court must consider effect on public protection when ordering dismissal as discovery sanction]; rule 5.124(I) [dismissal as discovery sanction].)

On review, OCTC asserts its right to investigate Patel's petition through discovery, which includes taking Patel's deposition as provided under rule 5.443(D). OCTC's position is that Patel's refusal to appear at two properly noticed depositions, while simultaneously stating an intention to withdraw his petition, obstructed the discovery process. Patel argues that the hearing judge abused her discretion by ordering his deposition because *he* believes that OCTC cannot uncover any useful information from his deposition. He further claims that, because his profanity-laden emails and vexatious litigant orders are not in dispute, a deposition would not clarify any issues or provide facts that would change the outcome, and, hence, no good cause exists for a deposition. His arguments are unavailing.

OCTC cites in its brief, *In the Matter of Applicant C* (Review Dept. 2022) 5 Cal. State Bar. Ct. Rptr. 989, 995, which states, “In analyzing a discovery ruling, we are guided by long-standing California public policy favoring disclosure and the objectives that discovery rules were enacted to accomplish.” Under rule 5.443(C), OCTC has the authority to conduct discovery as provided under rule 5.65. Additionally, as stated *ante*, rule 5.443(D) specifically permits OCTC to take Patel’s deposition. Patel’s subjective belief that OCTC cannot show a need to depose him or establish good cause for the deposition is irrelevant.⁸

Patel argues the hearing judge’s dismissal order “exceed[ed] the bounds of reason and resulted in a miscarriage of justice.” We disagree. The judge correctly determined discovery sanctions were appropriate when Patel failed to appear for a properly noticed deposition and subsequently failed to appear for a second court-ordered deposition. As OCTC points out in its brief, this court concluded in *In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19, 25 that terminating sanctions are warranted against a litigant who persistently refuses to comply with discovery obligations, which includes a party who refuses to appear for scheduled depositions. We recently came to the same conclusion and affirmed a dismissal of a moral character case where an applicant failed to attend a deposition after a court order, asserting her

⁸ We also reject Patel’s claim that OCTC waived the opportunity to depose him in 2019. Upon our review of the record, the record was reopened on October 29, 2019, and Patel’s motion for reconsideration was denied on February 6, 2020, and Patel then sought to disqualify the hearing judge and also another hearing judge assigned to decide the disqualification motion. Pursuant to a court order, Patel filed an amended petition on June 30. OCTC filed its opposition on November 6. The reinstatement proceeding was abated from December 14 through October 28, 2022, as detailed *ante*. Once the abatement was terminated on October 28, the judge ordered Patel to file any supplemental pleading by November 14, and OCTC to file its supplemental response by December 5. On November 22, OCTC noticed Patel’s deposition, which was scheduled for December 15. Because rule 5.443(D) provides that a scheduled deposition must be held no later than 45 days after OCTC’s response to the petition is due, the deposition was timely scheduled because December 15 is within the 45-day time period that began to run from OCTC’s supplemental response due date of December 5.

own subjective belief that it was not necessary to attend a deposition. (*In the Matter of Applicant C, supra*, 5 Cal. State Bar Ct. Rptr. at p. 993.)

The discretion afforded to a hearing judge in determining appropriate discovery sanctions is broad. (*In the Matter of Torres, supra*, 5 Cal. State Bar Ct. Rptr. at p. 23.) Two requirements must be met when a court imposes a discovery sanction: (1) failure to comply with court-ordered discovery and (2) the failure must be willful. (*Ibid.*, citing *Valbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.) Despite Patel's arguments to the contrary, the judge was not required to choose a less "draconian outcome" than imposing terminating sanctions. The day prior to Patel's properly noticed deposition, he submitted filings attempting to move the deposition and trial "off-calendar," while also indicating an obscure intention to withdraw his petition only if OCTC still opposed the petition at the time of trial or if Senator Atkins believed he should not be reinstated. After Patel failed to appear for his deposition and OCTC moved to compel his testimony, the judge issued an order for him to appear for his deposition within five court days and warned that a failure to appear "would result in sanctions pursuant to rule 5.69(C) . . . including dismissal of [Patel's] petition." Patel was given an opportunity to comply with the court's order and notice, which clearly stated that his failure to appear at the deposition could lead to the dismissal of his petition, but he willfully failed in his obligation by electing not to attend the court-ordered deposition. Patel has not articulated any justifiable reason as to why he failed to appear for two properly noticed depositions and we find none in the record. His assertions that he has not refused to cooperate with *written* discovery does not justify or excuse his refusal to comply with his court-ordered discovery obligations under rule 5.443(D).

Patel also claims the dismissal unduly benefited OCTC and prejudiced him, relying on *Rail Services of America v. State Comp. Ins. Fund* (2003) 110 Cal.App.4th 323 to support his proposition. His reliance on *Rail Services of America* is not persuasive and is misplaced. *Rail*

Services of America is a civil case where one cause of action remained after summary judgment, and the appellate court held the trial court did not abuse its discretion in imposing a terminating sanction to that final claim when the plaintiff failed to comply with the trial court's discovery order. (*Id.* at p. 331.) The Court of Appeal concluded that the lower court's dismissal of the final cause of action as a sanction was appropriate as the discovery to which plaintiff failed to provide was related to the final cause of action. (*Id.* at pp. 331-332.) Here, the only issue on review is the hearing judge's order that dismissed Patel's petition for his failure to comply with his discovery obligations, which relates to the petition, and it was properly dismissed.

Additionally, he has not established that he suffered any actual prejudice—the depositions were properly noticed, and Patel was aware that his failure to appear could result in dismissal. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [absent actual prejudice, party not entitled to relief].) Under these circumstances, we find the judge did not abuse her discretion by dismissing Patel's petition under rule 5.124(I) for his willful failure to comply with his discovery obligations.

D. Patel's Additional Arguments Lack Merit⁹

Patel's briefs on review raise several repetitive and generalized pronouncements that OCTC and the hearing judge exhibited bias against him for political motives, interfered with his ability to work, and other baseless claims. The record does not support Patel's accusations and we find no misconduct committed by OCTC or the hearing judge.

In this reinstatement proceeding, our sole duty is to determine whether the hearing judge's dismissal of Patel's petition was an appropriate discovery sanction. Patel specifically requests us to immediately reinstate him to practice law in California. To be clear, we cannot

⁹ Having independently reviewed all arguments set forth by Patel, those not specifically addressed have been considered and rejected as without merit.

reinstate Patel’s license to practice law in California—only the Supreme Court has such authority.

Patel also argues this proceeding should have been decided on its merits by the hearing judge. He asserts the record contains all the information necessary for the case to be adjudicated. He further maintains that his lack of any misconduct during the years he had his California license and that he now has a Nevada license in good standing establish that he meets the requirements to practice law again in California. We disagree with his arguments because his actions as discussed in this opinion raise serious concerns that lower the persuasiveness such evidence could provide of his moral character. His failure to comply with discovery obligations under rule 5.443(D) resulted in terminating sanctions that precluded his petition from proceeding to a hearing on the merits. Finally, the fact that he had many years of discipline-free practice in California before he resigned and that he has a Nevada license in good standing is not determinative in reinstating him to the practice of law in California.

III. CONCLUSION

One of the underlying purposes of reinstatement proceedings is to insure only persons of good moral character are reinstated, and therefore the State Bar Court may consider any act or conduct that is relevant to moral character regardless of when or where it occurred. (*In the Matter of Kirwan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 634.) We find Patel’s actions that occurred after he filed his reinstatement petition to be sufficiently concerning. Hence, OCTC was justified in seeking to reopen the reinstatement proceeding, and Patel’s failure to comply with his discovery obligations was sufficient for the hearing judge to dismiss his petition. Therefore, we affirm the judge’s decision to dismiss Anthony Aanand Patel’s petition for reinstatement to the practice of law with prejudice. Rule 5.124(I) states, “Dismissal may be ordered as a discovery sanction. Unless the Court orders otherwise for good cause shown,

dismissal is with prejudice.” Although Patel’s petition is dismissed with prejudice, this opinion does not preclude him from filing a subsequent petition for reinstatement when he chooses to do so. (Rule 5.442(A).)

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.

No. 19-R-10150

In the Matter of
Anthony Aanand Patel

Hearing Judge
Hon. Yvette D. Roland

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