

[LETTERHEAD]

December 12, 2014

Hon. Lucy Armendariz
State Bar Court
The State Bar of California
180 Howard Street
San Francisco, CA 94105

*** VIA FACSIMILE (415) 538-2043 ***

Re: In the Matter of Charles Dodgson, CSB # 999999
Case No. 13-O-1741506
ENEC December 12, 2014, 12:00 p.m.

Dear Judge Armendariz:

Set forth below please find Respondent's statement in anticipation of the Early Neutral Evaluation Conference scheduled for December 12, 2014.

Background

I have been practicing law in California for over 17 years with no history of discipline. In 2011, I was approached by Jack Singh to take over the handling of what he called an employment case. He sought new counsel because he had fired and filed a State Bar complaint against his previous attorney.

As an employment lawyer, I agreed to take on the case. Unfortunately, it would turn out to be a disastrous decision for several reasons. Mr. Singh's case was not truly an employment case, as he had never been an employee of the company he was suing. He claimed to be a law enforcement professional when in fact his highest-paid position to date had been a \$12/hour security guard position. He sought damages for a lifetime of lost wages after being in a pre-employment training program for 19 days. He wanted to pursue theories of damages based on a "fear of work" which prevented him from obtaining gainful employment after his brief experience with the defendant. Moreover, he was homeless the majority of the time that I knew him, making it impossible for me to reasonably communicate with him or obtain necessary documents to litigate his matter.

I likely should have withdrawn from the representation immediately upon learning the above-listed facts, but I felt a duty to help Mr. Singh as much as I could.

I helped Mr. Singh obtain a \$2,000 non-recourse loan against his potential recovery in the litigation. I labored under very difficult circumstances in representing Mr. Singh, but there is only so much counsel can do when the case does not add up to a winning claim. Ultimately, the case was dismissed upon the granting of summary judgment for the defense. Mr. Singh's loan

against the potential recovery was forgiven since he lost, and I was not paid because it was a contingency matter.

This complaint followed. The complaint is unsurprising, not because of my conduct, but because Mr. Singh has a lengthy history of filing complaints. The underlying lawsuit follows several others in which he sued over lost employment; following that, he filed a State Bar complaint against his previous counsel, then expressed his intention to approach in a threatening manner the Federal judge who granted summary judgment, and then filed the instant complaint. (Each of these facts is demonstrated in the discovery documents provided by the State Bar.) The problem now is that the State Bar is giving credence to Mr. Singh's angry and baseless allegations, bringing this action against me on unsupportable charges of failing to act with competence, failing to keep the client informed, and failure to obey a court order.

The Draft Notice of Disciplinary Charges

The three-count NDC contains completely unsupportable charges. In fact, the charges are belied by the face of the evidence provided by the State Bar without even needing to get into actual testimony on the merits.

Count One: Failure to Perform with Competence

The State Bar alleges that I failed to perform with competence in violation of Rule 3-110(A). It presents eight allegations of such failure. None can be supported.

- (A) Failing to interview witnesses: This allegation is simply not true. I did contact and interview witnesses, including individuals beyond those Mr. Singh identified. I also spoke with range experts, firearms experts, and police officers.
- (B) Failing to appear at April 17, 2012 deposition: Documents produced by the State Bar make it clear that there was a misunderstanding as to the scheduling and location of this particular deposition. It was rescheduled a number of times, and I appeared at the location at which I believed it was taking place on the correct date and at the correct time. The location turned out to be elsewhere, and it took some communication to rectify this error. I did arrive at the correct location, albeit late, and the deposition went forward. This is not in any way a violation of the duty to act competently.
- (C) Failing to oppose motion to compel: I am obligated to abide by the Rules of Professional Conduct, including refraining from filing frivolous and unsupported documents and refraining from harming my clients. Mr. Singh wanted me to file an opposition to the motion to compel, but there was no justification I could put forth for him failing to provide me with information necessary to produce discovery to the defendant that would not have made his situation worse. In fact, opposing the motion would likely have led to sanctions. Thus, there was no position I could ethically take

in opposition to the motion to compel discovery. I did not violate my duty to act competently by abiding by my other duties.

- (D) Failing to propound discovery: As demonstrated in the documents provided to the State Bar, a settlement offer existed in Mr. Singh's case, and that offer was predicated upon Mr. Singh not pursuing discovery. The defendant made it clear that upon propounding of discovery, the offer would be withdrawn. It was several months into the case when Mr. Singh confirmed to me that he wanted to pursue discovery even though he would lose the offer. I used my judgment as an experienced employment litigator aware of the facts in the case and determined the best course of action for prosecuting the case. Mr. Singh was never employed by the defendant, so the typical materials that a terminated employee would seek from the defendant employer would not have existed; for example, he had no personnel file. Thus, it was a strategic decision not to propound fruitless discovery. It was not a violation of the duty to act competently.
- (E) "Making inadmissible statements in court pleadings regarding purported settlement agreements": This allegation is non-sensical. First, the State Bar has not identified to what statements the allegation refers. More importantly, however, there were no evidentiary hearings in Mr. Singh's case; thus no statements could ever have been "inadmissible." Statements relating to settlement agreements may be admissible evidence depending on the circumstances under which they are introduced. Finally, even losing an evidentiary ruling when such a ruling is made does not indicate an ethics violation. This clause cannot support any allegation of failure to perform with competence.
- (F) Failing to appear at October 14, 2012 hearing: This hearing was the motion to compel referred to above in item (C). The non-appearance was deemed non-opposition to the motion, which was correct given the facts as they existed. The non-appearance was not a violation of the duty to act competently.
- (G) Failing to adequately respond to discovery and resulting sanctions: The discovery produced by the State Bar is replete with communications between Mr. Singh and me in which I sought information which would allow me to complete the discovery directed toward Mr. Singh. As noted above, objecting to the motion to compel was not advisable under the circumstances, and that did result in the imposition of \$5,000 in discovery sanctions against Mr. Singh. The consequence of my difficult position in discovery was sanctions, but that does not amount to a violation of the duty of competence.
- (H) "Failing to oppose motion for terminating sanctions": No motion for "terminating sanctions" was made in Mr. Singh's case, making this allegation void on its face. The only filing on the docket which might be so described is a motion to dismiss filed on

June 12, 2012, to which I filed a response on Mr. Singh's behalf on July 16, 2012. Having responded to the only motion which could be interpreted as one for terminating sanctions, this allegation simply cannot support a charge of failing to act with competence.

Count Two: Failure to Inform Client of Significant Development

The State Bar alleges that I failed to advise Mr. Singh of the December 26, 2012 order granting summary judgment against him until January 11, 2013, and states that this amounts to a violation of Bus. & Prof. Code § 6068(m).

There is no reason to believe and no evidence to support an allegation that a "delay" of approximately 2.5 weeks over a holiday period in notifying Mr. Singh of the order was a violation of my ethical obligations. The motion had been pending for many months, and the order came down in the middle of a vacation period. I alerted Mr. Singh to the order as soon as I knew of it, and it did not impact his ability to pursue an appeal should he have desired to do so. His response to my notification was even to note that the appeal deadline had not yet arrived and to ask me to file an appeal (a task beyond the scope of my representation). I kept him "reasonably informed" in compliance with Bus. & Prof. Code § 6068(m).

Count Three: Failure to Obey a Court Order

The State Bar alleges that I violated Bus. & Prof. Code § 6103 by failing to comply with an order of the Court in Mr. Singh's case pertaining to discovery. The order is dated June 29, 2012 (not June 28 as alleged in the NDC) and is the order on the motion to compel and for sanctions referenced above in Count One items (C), (F) and (G). The order states as follows: "Plaintiff is directed to respond to defendant's discovery requests and to serve his initial disclosures within thirty (30) days from the date of this order." Nowhere in the order am I ordered "to do or forbear an act connected with or in the course of [my] profession." Without an order directing me to do something, I cannot violate § 6103.

Mitigation

Standard for Attorney Sanctions for Professional Misconduct 1.6(a) provides that it is a mitigating factor when an attorney has practiced for many years without a record of discipline and the present conduct is deemed not serious. I have actively practiced for 17 years. My career includes holding the position of Assistant Attorney General in the Office of the Attorney General of California, associate and in-house trial attorney positions, and now my solo practice. As described above, my conduct here is not even sanctionable, let alone "serious." Substantial credit should be given in mitigation for my excellent history.

Hon. Lucy Armendariz
State Bar Court
December 12, 2014
Page 5

Requested Resolution

The State Bar posits that I should be subject to a public reproof. Its justification for this particular level of discipline is that there was only one client involved in my conduct and the order allegedly violated was a discovery order.

In fact, no discipline is appropriate. The order allegedly violated was not directed to me, so I could not have violated it. I did not fail to handle my client's matter competently. The very worst item of conduct the State Bar may be able to demonstrate is that I notified my client of the granting of summary judgment against him 2.5 weeks after the order was issued, an act which caused him no prejudice as it was still in time to file an appeal should he have chosen to do so. That alone is inadequate to warrant discipline, particularly in light of the mitigating circumstance of my lengthy record of discipline-free practice.

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At the appointed time, I can be reached at (510) 555-1212.

Respectfully submitted,

Charles Dodgson

cc: Rebecca Carlson, Office of Chief Trial Counsel (via email)