DISTRICT OF COLUMBIA COURT OF APPEALS

No. 97-BG-1991

IN RE: LIANG-HOUH SHIEH, RESPONDENT,

A Member of the Bar of the District of Columbia
Court of Appeals

On Report and Recommendation of the Board
on Professional Responsibility

(Argued September 14, 1999 Decided October 7, 1999)

Hamilton P. Fox, III, for respondent, by appointment of the Board on Professional Responsibility.

Michael S. Frisch, Senior Assistant Bar Counsel, with whom *Leonard H. Becker*, Bar Counsel at the time the brief was filed, was on the brief, for the Office of Bar Counsel.

Elizabeth J. Branda for the Board on Professional Responsibility.

Before TERRY, FARRELL, and RUIZ, *Associate Judges.*

FARRELL, *Associate Judge*: Over a period of three years, respondent, a member of the Bars of California, New York, and the District of Columbia, "was at war with the courts, individual judges, his former law firms and attorneys who were his ex-employees." As a result, according to the California

State Bar Court, he established himself as "the benchmark by which all vexatious litigants in the state of California will be judged." Concluding that "[n]othing the attorney discipline system can do will prevent respondent from continuing to abuse the legal system as a litigant, if he so chooses," the California court nonetheless determined that it must "at least prevent him from continuing his abusive course of conduct under the cloak of authority conferred on him by his membership in the bar,"[1] and it recommended his disbarment. The Supreme Court of California disbarred him. New York followed suit reciprocally on the basis of the California order. The matter is before this court on reciprocal discipline,[2] specifically on the recommendation of the Board on Professional Responsibility ("the Board") that respondent *not* be disbarred but, rather, that he be suspended from the practice of law in the District of Columbia for two years and required to show fitness to resume practice. Bar Counsel objects to the downward departure from the sanction ordered by California. For his part, respondent contends that the manner in which California imposed discipline — in part by way of a default adjudication — violated due process, thus rendering its decision an invalid basis for reciprocal discipline. See D.C. Bar Rule XI, Sec. 11 (c)(1).

We reject respondent's procedural challenge, and we order respondent disbarred. The Board

---

[1] Each of the above three sentences quotes from the written opinion of the California State Bar Court. Each quoted passage includes internal quotation marks that are omitted here.

[2] Technically, it is on reciprocal discipline from both California and New York, but, as we have noted, the New York disbarment was a reciprocal matter, not a *de novo* determination that respondent should be disbarred. Nevertheless, New York's defenses to the imposition of reciprocal discipline (*see* 22 NYCRR 806.19 [c]) do not differ markedly from this jurisdiction's. It is therefore noteworthy that two states have found disbarment to be commensurate with the gravity of respondent's misconduct, and that — apropos of respondent's due process argument, *see* part II, *infra* — neither California nor New York has perceived a due process concern in the default basis partly underlying his disbarment by California.

agreed with Bar Counsel that respondent's "disregard for the administration of justice surpasses our disciplinary experience"; its refusal to recommend disbarment stemmed chiefly from what it considered to be a lack of "unequivocal direction from th[is c]ourt" as to the proper sanction for conduct prejudicial to the administration of justice unaccompanied by other misconduct such as dishonesty or neglect of client affairs. If our decision that follows does not supply that direction for most, or even many, future disciplinary matters of this kind, it is only because respondent's abuse of the legal system in California may well be in a class by itself. *Not* to disbar him would defile that system and bring deserved discredit upon the authority by which he has been allowed to practice law.

I.

The sheer volume of respondent's abusive filings and other sanctioned behavior makes synopsis of it in a few paragraphs impossible.[3] We therefore attach the State Bar Court's opinion hereto as an appendix. It reveals a history of lawsuits (many duplicative), frivolous motions (including for removal of

[3] The bare skeleton of the conduct is depicted in Bar Counsel's summary to the Board which the Board in turn adopted:

> The [California] State Bar Court concluded that Respondent had engaged in a series of acts that involved moral turpitude in that he deliberately violated court orders that were the subject of numerous contempt citations and sanction orders in civil litigation. He was found repeatedly to have filed and pursed baseless, vexatious litigation. He was sanctioned repeatedly for pursuing meritless, duplicative, frivolous motions and appeals. Further, he failed to report to the California Bar over $500,000 in sanctions imposed in the many lawsuits at issue. [Record citations omitted.]

cases to federal court and recusal of judges), meritless appeals,[4] and disobedience of court orders, resulting at one point in his conviction on three counts of criminal contempt for which he escaped punishment by fleeing to his native Taiwan, where he remains a fugitive from justice in California. As the State Bar Court summed up:

> There was a pattern of repeated abuse of the judicial process and multiple acts of wrongdoing. Significant harm resulted to the many defendants involved in Respondent's vexatious litigation "war" who, because of Respondent's flight and concealment of assets, will never recover the sanctions and costs owed to them. The judicial system was stymied by Respondent's wasteful and meritless litigation, and he proceeded undeterred by enormous sanctions and stay orders. His actions were in bad faith and motivated by base and improper aims. His tactics as a whole are devoid of any consideration for the victims of his "war." He is defiant and unrepentant. [Citations omitted.]

II.

Respondent contends that the California proceedings resulting in his disbarment were "so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." D.C. Bar Rule XI, § 11 (c)(1). He cites the failure of the State Bar to serve him with the Notice to Show Cause (the initiating document equivalent to a petition for discipline under D.C. Bar Rule XI, § 8 (c)) in Taiwan, including its

---

[4] As to a single 131-page document filed in just one of these appeals, the California Court of Appeals stated: "No attorney of reasonable competence could have thought this massive mountain of paper had any arguable merit whatsoever." *Say & Say v. Castellano*, 27 Cal. Rptr. 2d 270, 273 (Cal. App. 2d Dist. 1994).

failure to follow up after an unsuccessful first mailing or to engage process servers in Taiwan. The result of the failure to effect service, respondent argues, was that California treated him in default and so deemed the facts alleged in the Notice to Show Cause to be admitted. Moreover, it resulted in the absence of an evidentiary hearing and thus a disbarment entered without sworn testimony, itself, in respondent's view, a reason to disregard the California discipline. *See* D.C. Bar Rule XI, § 11 (c)(2) ("infirmity of proof" grounds for refusing to impose reciprocal discipline); *In re Williams*, 464 A.2d 115, 119 (D.C. 1983) ("the hearing of evidence by the [Hearing] Committee was a legal prerequisite to its findings").

We begin by noting the obvious connection between the claimed failure to serve respondent and the fact, found by the California court, that six months earlier he had fled to Taiwan to avoid criminal sentencing and remained there at the time of the disciplinary proceeding. California had only a post office box in Taiwan as respondent's latest address shown in Bar records; and although he initiated phone calls to Bar officials from Taiwan, he refused to give them his telephone number. The express mailing to him with return receipt requested, sufficient under California law, was unsuccessful since apparently the box rental had been terminated. The Board here concluded that respondent had "either failed or refused to accept service." Although respondent contends there is no record support for this suggestion that he purposely avoided service, his flight from the jurisdiction provides support for the inference that that is indeed what he was doing.

In any case, we agree with the Board's rejection of respondent's due process argument because

he had actual notice of the California disciplinary proceedings and adequate opportunity to appear and contest the charges. First, respondent concedes that he learned by telephone three months before the charges were filed of the State Bar's intent to file them if he did not resign. Certainly that provided him with an opportunity to learn the nature of the proposed charges and, perhaps more importantly, with notice of the need to insure that he received any subsequent written communications from the state Bar directed to him. Second, after the Notice to Show Cause was filed and he did not respond, the State Bar filed a written motion for entry of default which warned him that disbarment was being sought and that default would be entered unless he filed a timely response. Respondent does not dispute that he learned of this default notice and did not immediately respond to it; instead he attempted to remove the proceedings to federal district court. Only when the federal court summarily remanded the case to the State Bar Court — a month after the default notice had been sent — was default entered, and by that time he still had not responded to the charges or taken steps to overcome his claimed ignorance of their nature. Finally, California law affords relief from an entered default upon a showing of (*inter alia*) reason for the failure to respond and an offer of proof of facts going to the merits and/or mitigation. Cal. State Bar Rule 203 (c)(4). Although respondent moved to vacate the default, he made neither of these showings, as the State Bar Court found. Respondent simply has not demonstrated that he lacked notice of and a fair opportunity to defend against the disciplinary charges.

Neither are we persuaded by his argument that when the State Bar Court then proceeded on the basis of the default, the resulting absence of sworn testimony resulted in an "infirmity of proof" undermining the California discipline. D.C. Bar Rule XI, § 11 (c)(2). The decisive consideration here, as

the Board found, was that "[t]he State Bar Court based its decision on both the facts deemed to have been admitted by Respondent's default *and* on the additional documentary evidence submitted by the State Bar — 65 binders of documentary evidence" (emphasis by the Board). Respondent argues that these documents — consisting in large part of public court records swollen with respondent's filings — could not answer the "central factual issue" of whether he, rather than the attorneys routinely representing him, should be held responsible for the abusive filings and other vexatious litigation tactics that resulted in discipline. That question, however, has been resolved against respondent over and over again by the California courts, which repeatedly sanctioned him individually — either apart from and more seriously than his attorneys, or "jointly and severally" with them — for litigation abuses. The California Bar Court took special note of the "[t]hree tactics" by which respondent "direct[ed] his attorneys." And in August 1993 the California Court of Appeals had addressed this issue directly in holding respondent to be "a vexatious litigant" under California law (who therefore could be barred from filing new litigation without leave of court) despite the fact that he had appeared in both *pro se* and represented capacities:

> It is apparent from syntax, grammar, style and tone that, both in the trial courts and in this court, many — if not most — of the pleadings and other documents filed by Shieh or on his behalf have been written by the same person. This is the case even though Shieh has filed many of the initial pleadings in propria persona and then associated in co-counsel or substituted in a variety of replacement counsel, some of whom in turn become defendants in new litigation Shieh initiates. It is patently obvious that *every* writ petition, notice of appeal, appellant's brief and opposition to orders to show cause filed in this division has been drafted by the same hand, even though Shieh ostensibly has appeared in propria persona and through two separate attorneys . . . .
>
> In short, it is clear that Shieh does not engage attorneys as

> neutral assessors of his claims, bound by ethical considerations not to pursue unmeritorious or frivolous matters on behalf of a prospective client. *Rather, these attorneys who ostensibly "represent" Shieh serve as mere puppets.* [Emphasis added.]

In re Shieh, 21 Cal. Rptr. 2d 886, 895 (Cal. App. 2d Dist. 1993). Like the Board, "we do not see the need for sworn testimony as to [respondent's behavior], in the absence of any factual issues as to which sworn testimony might be necessary or even relevant."[5] This court in *Williams*, on which he relies, was concerned about attorneys in disciplinary proceedings being adjudged culpable on "default judgments unsupported by proof." *Williams*, 464 A.2d at 119. We held there that, even though the attorney had not answered the specification of charges, the Hearing Committee "should have proceeded with an *ex parte* hearing to establish by sworn evidence that the . . . charges [were] true." *Id. See also, In re Pearson*, 628 A.2d 94, 98-99 (D.C. 1993). No such infirmity existed here, where the State Bar Court took proper judicial notice of the countless filings and flouted court orders that made up respondent's misconduct.

III.

Respondent was found to have violated, repeatedly, numerous ethical standards under California law. As the Board pointed out, a number of these provisions have no direct counterpart in District of

[5] We observe, moreover, that respondent's written argument to the Board never raised the point that testimony was needed to resolve the issue of responsibility.

Columbia law.[6] The Board thus concluded that, "in substance," respondent has been disbarred by California for behavior that violated Rule 8.4 (d) of this jurisdiction's Rules of Professional Conduct, which makes it misconduct for an attorney to "[e]ngage in conduct that seriously interferes with the administration of justice." We agree with this characterization except that we believe the Board took inadequate account of one violation which California found: that respondent had committed repeated "acts of moral turpitude" (Cal. Bus. Prof. Code § 6106). The State Bar Court found moral turpitude revealed by respondent's defiance of criminal contempt proceedings instituted against him[7] and his repeated willful violations of court orders which, altogether, amounted to "a pattern of serious, habitual abuse of the judicial system." The Board disregarded this finding on the ground that "'[m]oral turpitude' is relevant under our Rules only to criminal convictions as to which disbarment is automatic under D.C. Code § 11-2503."[8] While that is strictly true, we are not willing to discount entirely for that reason California's judgment that respondent's habitual, bad faith misuse of the judicial process — resulting in

---

[6] These include "failing to report [to the Bar] substantial sanctions" (Cal. Bus. Prof. Code § 6068 (o)(3)); "pursuing unjust litigation" (*id.* § 6068 (c)); "commencing or continuing legal actions from a corrupt motive of passion or intent" (*id.* § 6068 (g)); and failure to maintain "respect for courts" (*id.* § 6068 (b)).

[7] As the court stated:

> Respondent did not submit to the contempt proceedings willingly. In fact, he had been at large for a number of months, was taken into custody pursuant to the court order, and appeared after posting bail. Respondent's failure to appear thereafter at his contempt sentencing, the forfeiture of his bail, and the current warrant for his arrest all corroborate his bad faith. This is clear and convincing evidence of moral turpitude.

[8] And, as to these, it is only automatic in the case of felony convictions. *See In re McBride*, 602 A.2d 626, 635 (D.C. 1992) (en banc).

several convictions for criminal contempt — was suffused with moral turpitude. At the least, that judgment reflects the magnitude and gravity of the interference with the administration of justice which California found, and to which we are bound to give deference. *Cf. In re Velasquez*, 507 A.2d 145, 147 (D.C. 1986) (in reciprocal cases, court "grant[s] due deference — for its sake alone — to the opinions and actions of a sister jurisdiction with respect to attorneys over whom we share supervisory authority").

As we stated at the outset, the Board agreed with Bar Counsel that the magnitude of respondent's contempt for the administration of justice surpasses our disciplinary experience. Significantly, too, the Board agreed "with the general principle expressed [by Bar Counsel] that 'a fundamental lack of regard for the administration of justice' could justify disbarment in an appropriate case." This, we hold, is that case in spades. As the State Bar Court concluded, over a period of three years respondent used the judicial system to carry on "war" with his perceived enemies by other means. Undeterred by legal sanctions and even criminal contempt, he filed suit after suit, motion after frivolous motion, and appeal after frivolous appeal,[9] in the process — as the California court wrote — "greatly harm[ing] individuals and the administration of justice" and ultimately neither "express[ing] . . . remorse" nor exhibiting "any insight into his misconduct." Since filing lawsuits and related motions "lies at the heart of what lawyers do," *In re Goffe*, 641 A.2d 458, 465 (D.C. 1994), it is largely beside the point that

[9] The United States Supreme Court itself, on grounds of abuse of the certiorari process, has entered a conditional order barring prospective filings by respondent. *Shieh v. Kakita*, 517 U.S. 343 (1996).

respondent abused the system in his own behalf and not a client's. Moreover, although he was not charged with "dishonesty" or "deceit," *see* Rule 8.4 (c), he was found repeatedly to have filed lawsuits solely "to harass his opponents," and, given the magnitude of this abuse, the difference seems negligibl

The Board maintains that "[d]isbarment is a blunt instrument, a form of overkill, when entered against a lawyer who engages in vexatious litigation *as a party* out of a sense of wrong and injustice, however misplaced and unjustified" (emphasis by the Board). It reasons that other vexatious litigants who are not lawyers "will scarcely be deterred by disbarment of a lawyer"; that while vexatious litigants who are lawyers may be deterred, there are probably too few of them "to call for this remedy"; and that "[d]isbarment here will not deter Respondent" from continuing to file harassing lawsuits as a *pro se* litigant. The proper remedy, the Board suggests (together with suspension and the requirement to show fitness), lies in an injunction against filing suit without prior court approval, something California has done in respondent's case. *See Say & Say, Inc. v. Ebershoff*, 25 Cal. Rptr. 2d 703, 711 (Cal. App. 2d Dist. 1993).

We think the Board's emphasis on deterrence misapprehends why California disbarred respondent. Quoting from one of its previous opinions — whose conclusions it said were "no less true of Respondent" — the State Bar Court explained why deterrence was not the point:

> Respondent's repeated acts of moral turpitude demonstrate that he is no longer worthy of membership in the bar. Nothing the attorney discipline system can do will prevent respondent from continuing to abuse the legal

> system as a litigant, if he so chooses. But disbarring respondent will at least prevent him from continuing his abusive course of conduct under the cloak of authority conferred on him by his membership in the bar.

Ultimately, whether this court would disbar respondent on similar reasoning were this an original discipline proceeding is something we need not consider. In this matter of reciprocal discipline, he has not begun to persuade us by the required clear and convincing evidence that his misconduct warrants discipline substantially different than disbarment, D.C. Bar Rule XI, § 11 (c)(4), or that adopting California's sanction would result "in grave injustice." *Id*. § 11 (c)(3).

Accordingly, respondent Liang-Houh Shieh is disbarred from the practice of law in the District of Columbia. The sanction will become effective when respondent files an affidavit in compliance with D.C. Bar Rule XI, § 14. In the meantime he shall remain suspended.

So ordered.

A P P E N D I X