

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: DEMAS W. YAN, Esq., Admitted to
the Bar of the Ninth Circuit: June 29, 2016

No. 16-80097

Respondent.

FINAL ORDER

Before: GRABER and TALLMAN, Circuit Judges, and RAKOFF,* District
Judge.

On July 28, 2016, the panel ordered respondent, Demas Wai Yan, Esq., to show cause why his membership in this Court's bar should not be rescinded because of false statements he provided in his application for membership on June 29, 2016. The panel referred the order to show cause (OSC) and Yan's response to the Appellate Commissioner for a report and recommendation to the panel for the disposition of the OSC. *See* 9th Cir. R. 46-2(f).

On October 7, 2016, the Commissioner filed a report and recommendation finding "a clear basis for rescinding Yan's membership in the bar of the Ninth Circuit." Comm'r's R&R at 7 (ECF No. 6). For the reasons stated below, the panel adopts the Commissioner's recommendation and rescinds Yan's membership

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

in the bar of the Ninth Circuit.¹

I. LEGAL STANDARD

Federal Rule of Appellate Procedure 46(a)(1) provides that “[a]n attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character.” Fed. R. App. P. 46(a)(1). “A member of the court’s bar is subject to suspension or disbarment by the court if the member . . . is guilty of conduct unbecoming a member of the court’s bar.” *Id.* R. 46(b)(1)(B). “A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule.” *Id.* R. 46(c).

Ninth Circuit Rule 46-2(a) provides that “[t]his Court may impose discipline on any attorney practicing before this Court who engages in conduct violating applicable rules of professional conduct, or who fails to comply with rules or orders of this Court.” 9th Cir. R. 46-2(a). “The discipline may consist of disbarment . . . or any other action that the Court deems appropriate and just.” *Id.*

¹ The panel finds this disposition appropriate without further hearing pursuant to Yan’s waiver of a hearing in his response to the OSC. *See* 9th Cir. R. 46-2(d); Resp. to OSC (ECF No. 4) (“Respondent waives hearing . . .”). The panel also declines Yan’s request “to voluntarily withdraw [his] application of June 29, 2016.” Resp. to OSC.

II. DISCUSSION

Demas Wai Yan was admitted to practice law in California on December 1, 2008. Although he was previously suspended from the State Bar from October 11, 2013 to October 11, 2014, currently Yan is an active member of the State Bar of California, Bar No. 257854. *See* OSC, Attach. 2 (ECF No. 2). On June 29, 2016, Yan filed an Application and Oath for Admission to the bar of the Ninth Circuit. *See* OSC, Attach. 1. The application form contained four “Yes” or “No” questions. Question 3 asked whether there were any actions for disbarment or suspension “pending against” Yan. Question 4 asked whether Yan was “currently under investigation by . . . any court or government agency.” *Id.* Yan answered “No” to Questions 3 and 4, and he certified his answers under penalty of perjury. *Id.* His answers, however, were false.

A. Yan Submitted a False Application for Admission

California State Bar Court records show that, on December 30, 2014, the State Bar filed a “Notice of Disciplinary Charges”² against Yan in Case No. 13-O-17331, which alleged that Yan had filed a Chapter 7 bankruptcy petition “in bad faith and for an improper purpose of frustrating a creditor’s efforts to foreclose

² A “Notice of Disciplinary Charges” is “the initial pleading that provides notice of the rules, statutes, or orders the member is alleged to have violated” and begins a State Bar disciplinary proceeding. State Bar Rule 5.4(37); *see id.* R. 5.20.

on a property that was not owned by the debtor, in violation of rule 9011(b) of the Federal Rules of Bankruptcy Procedure.” OSC, Attach. 2 at 4.

In his response to the OSC, Yan provided a copy of a May 23, 2016 status conference order in Case No. 13-O-17331, which noted that Yan’s disciplinary action was in “Abatement pending [a] new case.” Resp. to OSC, Ex. A. Yan states that he assumed a “pending” disciplinary action in Question 3 meant an “active” disciplinary action. He contends that he answered “No” because he assumed that his disciplinary action was “not active during abatement.” Resp. to OSC.

Yan’s contentions are not credible. His public profile on the California State Bar website explicitly states that Case No. 13-O-17331 is “pending.” *Demas W[.] Yan*, THE STATE BAR CALIFORNIA, <http://members.calbar.ca.gov/fal/Member/Detail/257854> (last visited October 27, 2016). In addition, the May 23, 2016 status conference order had set the disciplinary matter for a *further* status conference on August 29, 2016.

Furthermore, neither the State Bar Rules of Procedure nor the Rules of Practice provide that an abated case is no longer “pending” or “active.” *See* State Bar Rules, tit. 5. Rather, State Bar Rule 5.50 provides: “On any party’s motion or on its own motion after notice to the parties, the [State Bar] Court may abate any proceeding in whole or in part. Abatement stays the proceeding in the State Bar

Court and tolls all time limitations in the proceeding, but the Court may grant a motion for perpetuation of evidence.” State Bar Rule 5.50(A). “Evidence is perpetuated by obtaining depositions or stipulations as to facts.” *Id.* R. 5.423(B). “[T]he evidence perpetuated may be admitted in evidence in any future proceeding pertaining to the member’s conduct or qualifications to practice law.” *Id.* R. 5.425. Abatement thus contemplates that the proceeding will continue. *See* R. 5.50(B) (providing a list of “relevant factors” that the State Bar Court considers in determining whether to abate an action, all of which contemplate that the action will continue).

Yan’s purported ignorance of State Bar disciplinary procedures is even more implausible given his experience in previous disciplinary proceedings that resulted in his one-year suspension from the State Bar on October 11, 2013. We therefore conclude that Yan submitted a false answer to Question 3.

We are also informed that Yan’s disciplinary action was abated because the State Bar anticipates opening a new case against Yan, with which his pending disciplinary action will be consolidated. *See* Comm’r’s R&R at 6. State Bar Rule 5.50 indeed provides that, in determining whether to abate a proceeding, relevant factors include the extent to which “the issues in the proceeding are substantially the same as in a related proceeding” and “evidence to be adduced in a related proceeding would aid in determining the [present] proceeding.” State Bar Rule

5.50(B)(1), (4); *see also id.* R. 5.50(C) (defining a “related proceeding” as a “civil, criminal, administrative, or State Bar Court proceeding that involves the same subject matter,” parties, or witnesses).

Because Yan’s disciplinary proceeding was abated on a duly noticed motion, *see id.* R. 5.50(A), Yan was aware that his case was in abatement because more disciplinary charges were in the offing. Yan therefore submitted a false answer to Question 4, which asked whether he was “currently under investigation by . . . any court or government agency.” OSC, Attach. 1.

We thus adopt the Commissioner’s finding that “it is not credible that [Yan] answered ‘No’ to both [Questions 3 *and* 4] in the good faith belief that there was no need to disclose either Case No. 13-O-17331 or any ‘new case’ he knew to be forthcoming.” Comm’r’s R&R at 7. Accordingly, Yan has failed to show cause why we should not rescind his membership to the Ninth Circuit bar for submitting a false application.

B. Yan’s Conduct in Cheuk Tin Yan v. Lombard Flats, LLC

In addition to submitting a false application, Yan “engage[d] in conduct violating applicable rules of professional conduct.” 9th Cir. R. 46-2(a). In the bankruptcy appeal underlying this disciplinary matter, Yan represented his father against his former client, Martin Eng. *See Cheuk Tin Yan v. Lombard Flats, LLC*, No. 14-16624. However, Yan admitted during oral argument that he did not obtain

a conflict of interest waiver from Eng or refer Eng to separate counsel to advise him on whether to waive the conflict of interest. *See* Oral Argument at 2:30 (July 20, 2016), http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000009995. “California Rule of Professional Conduct 3-310(C) prohibits the representation of clients with actual or potential conflicts of interest absent an express waiver.” *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1167 (9th Cir. 2013); *see also* Cal. R. Prof’l Conduct 3-310(E) (“A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client . . .”).

Yan also admitted to sending an email to Eng on August 18, 2009, which stated: “your family is still liable for fraud. I will tell the judge about your [fraud] . . . your [] is going to jail.” OSC, Attach. 4. These statements constitute a violation of California Rule of Professional Conduct 5-100(A), which provides that “[a] member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.” Cal. R. Prof’l Conduct 5-100(A).

Additionally, Yan did not dispute that, in that very same email, he threatened Eng’s life by writing: “you cheated [W]ong out of money. [H]e wants your [redacted] also. [Y]ou better buy life insurance now.” OSC, Attach. 4; *see* Oral Arg. at 7:10–8:20. Such conduct is patently unbecoming a member of the Court’s

bar, Fed. R. App. P. 46(b)(1)(B), and Yan's responses as to whether he was threatening Eng's life with that email and his apparent lack of contrition undeniably demonstrate a lack of "good moral and professional character," *id.* R. 46(a)(1).

C. Yan's Multiple Frivolous Appeals

Moreover, Yan has filed multiple frivolous appeals in this Court. In *Demas Wai Yan v. Fu (In re Demas Wai Yan)*, No. 12-15204, we imposed sanctions on Yan for filing a frivolous appeal and held that "Yan's position in th[e] appeal [was] wholly without merit." 586 F. App'x 686, 686–88 (9th Cir. 2014) (unpublished decision). We then imposed sanctions on Yan again in a separate appeal in which we also found "Yan's appeal frivolous." See June 23, 2016 Order at 2, *Demas Wai Yan v. Fu*, No. 14-16937 (ECF No. 32). Additionally, in *Demas Wai Yan v. Lombard Flats, LLC*, No. 15-80043, we took judicial notice of a bankruptcy court's "Order Determining Demas Yan to Be a Vexatious Litigant." See June 11, 2015 Order, *id.* (ECF No. 5); *id.* (ECF No. 1 at 27) ("Demas Yan is determined to be a vexatious litigant."). We reiterate that finding here.

D. Yan's Repeated Violations of Circuit Rule 46-1.2

Finally, Yan has repeatedly "fail[ed] to comply with rules or orders of this Court." 9th Cir. R. 46-2(a). Ninth Circuit Rule 46-1.2 provides that "[a]ny attorney who causes a case to be docketed in this Court or who enters an

appearance in this Court, and who is not already admitted to the Bar of the Court, shall simultaneously apply for admission.” 9th Cir. R. 46-1.2. It is undisputed that Yan submitted his first application for membership to the Ninth Circuit bar on June 29, 2016.

On January 30, 2012, however, Yan “cause[d] a case to be docketed in this Court” when he filed a pro se appeal in *In re Demas Wai Yan*, No 12-15204. In that same case, Yan then entered an appearance to represent himself as counsel. *Id.* (ECF No. 9). However, Yan did not “simultaneously apply for admission” either of those times in clear violation of Circuit Rule 46-1.2. On March 18, 2015, Yan again represented himself as counsel in opposing a petition for permission to appeal in *Demas Wai Yan*, No. 15-80043, without applying for admission in violation of Circuit Rule 46-1.2. *See id.* (ECF No. 3).

III. CONCLUSION

Revocation of Yan’s bar membership is warranted because of Yan’s record of persistent misconduct unbecoming a member admitted to practice before our Court. *See Fed. R. App. P. 46(b)(1)(B)*. Yan has “faile[d] to comply with rules . . . of this Court” and has “engage[d] in conduct violating applicable rules of professional conduct.” 9th Cir. R. 46-2(a). It is evident that Yan lacks the “good moral and professional character” for admission to the bar of the Ninth Circuit. *Fed. R. App. P. 46(a)*. Accordingly, it is hereby ORDERED that Yan’s

membership in the bar of the Ninth Circuit be rescinded effective on the date this Order is filed.

A copy of this Order shall be furnished to the State Bar of California in accordance with Circuit Rule 46-2(f).

The Clerk of the Court is directed to send this Final Order to the following:

- (1) Office of Chief Trial Counsel/Intake
The State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017-2515

- (2) Demas W. Yan
300 Frank Ogawa Plaza
Suite 218
Oakland, CA 94612

IT IS SO ORDERED.