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PUBLIC MATTER

FILED

JAN 27 2004

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 03-O-00376-AIN
LAWRENCE A. HEISLER,)	
Member No. 110657,)	Decision
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, Respondent **LAWRENCE A. HEISLER** is found culpable, by clear and convincing evidence, of failing to return client file and failing to cooperate with the State Bar.

In view of Respondent's misconduct, 19 years of practice without a prior disciplinary record, and the aggravating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for six months, stayed, and that he be placed on probation for one year with conditions.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) on August 1, 2003 at his official membership records address. (Rules Proc. of State Bar, rule 60.) A courtesy copy was also sent to 5757 W. Century Blvd., Suite 700, Los Angeles, California. Both copies of the NDC were returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On State Bar's motion, Respondent's default was entered on October 23, 2003. The motion was sent to Respondent's new official membership records address at 335 N. Maple Dr., #222,



1 Beverly Hills, California 90210, which became effective September 30, 2003. The mailing was not
2 returned. Respondent was enrolled as an inactive member under Business and Professions Code
3 section 6007(e)¹ on October 26, 2003. Following the State Bar's filing brief, the matter was
4 submitted November 3, 2003.

5 Respondent did not participate in the disciplinary proceedings.

6 **III. Findings of Fact and Conclusions of Law**

7 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
8 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
9 200(d)(1)(A).)

10 **A. Jurisdiction**

11 Respondent was admitted to the practice of law in California on December 12, 1983, and has
12 since been a member of the State Bar of California.

13 **B. The Goldsmith Matter**

14 On June 5, 2002, Stephen Goldsmith hired Respondent to represent him in a fee dispute
15 matter against Goldsmith's attorney and paid Respondent \$2,000 as an advanced fee. Goldsmith
16 agreed to pay Respondent at an hourly rate of \$200.

17 By July 19, 2002, Goldsmith provided Respondent with all the necessary documents for the
18 fee dispute matter. On August 7, Respondent sent an email to Goldsmith, describing the work he
19 had been performing. On September 10, Respondent provided an accounting of the services,
20 claiming he had worked a total of 13 hours and that an outstanding balance of \$600 was due.

21 On October 4, 2002, Goldsmith terminated Respondent's employment. He sent Respondent
22 an email and requested that all the files he had brought to Respondent's office be made available to
23 him. Respondent did not respond.

24 A month later, on November 4, Goldsmith followed up with a letter, again requesting the
25 return of his files and reiterating the termination of Respondent's employment. Respondent received
26

27 ¹All references to section are to the Business and Professions Code, unless otherwise
28 indicated.

1 the correspondence but did not respond. At no time did Respondent make the file available to
2 Goldsmith.

3 On February 6 and 25, 2003, the State Bar wrote to Respondent, inquiring about the
4 Goldsmith matter and requesting a written response. The letters were properly sent to Respondent
5 at his official address. They were not returned as undeliverable or for any other reason. Respondent
6 did not respond to the letters or communicate with the State Bar.

7 ***Count 1: Rule 3-700(D)(1) of the Rules of Professional Conduct² (Failure to Promptly Return***
8 ***Client File)***

9 Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release
10 to the client, at the request of the client, all the client papers and property. Upon Respondent's
11 termination of employment, Respondent failed to return Goldsmith's documents as requested by his
12 client in October and November 2002, in wilful violation of rule 3-700(D)(1).

13 ***Count 2: Section 6068(i) (Failure to Cooperate With the State Bar)***

14 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
15 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
16 letters or participate in the investigation of the Goldsmith matter, Respondent failed to cooperate
17 with the State Bar in wilful violation of section 6068(i).

18 **IV. Mitigating and Aggravating Circumstances**

19 **A. Mitigation**

20 Respondent has no prior disciplinary record in 19 years of practice at the time of his
21 misconduct in 2002, which is a significant mitigating factor. (Rules Proc. of State Bar, tit. IV, Stds.
22 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).³) "Absence of a prior disciplinary record is an
23 important mitigating circumstance when an attorney has practiced for a significant period of time."
24 (*In re Young* (1989) 49 Cal.3d 257, 269.)

26 ²References to rule are to the current Rules of Professional Conduct, unless otherwise
27 noted.

28 ³All further references to standards are to this source.

1 **B. Aggravation**

2 There are two aggravating factors. (Std. 1.2(b).)

3 Respondent demonstrated indifference toward rectification of or atonement for the
4 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return the client file to Goldsmith.

5 Respondent's failure to participate in this disciplinary matter prior to the entry of his default
6 is a serious aggravating factor. (Std. 1.2(b)(vi).)

7 **V. Discussion**

8 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect
9 the public, to preserve public confidence in the profession and to maintain the highest possible
10 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*
11 *State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

12 Respondent's misconduct involved a failure to return client file. The standards provide a
13 broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the
14 offenses and the harm to the client. (Stds.1.6, 2.6 and 2.10.)

15 The State Bar urges a 30-day actual suspension. In support of its recommendation, the State
16 Bar cited *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476.

17 There, the attorney abruptly abandoned one client in an estate matter, aggravated by harm to
18 the client and a third party, but mitigated by his 13 years in practice without a prior record of
19 discipline. The client was forced to hire another attorney to complete the work. The attorney was
20 actually suspended for 30 days with a one-year stayed suspension and one-year probation.

21 However, the misconduct in *Lilley* was more serious than that of Respondent. The gravamen
22 of Respondent's misconduct was his failure to return the client file and his failure to cooperate with
23 the State Bar. His unblemished record of discipline in 19 years of practice is significant and
24 compelling mitigation.

25 A private or public reproof would have been appropriate but for the culpability finding of
26 failure to cooperate with the State Bar which requires a greater degree of discipline. At the same
27 time, it would be manifestly unjust under the circumstances to recommend an actual suspension.
28

1 (See *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 [the court
2 determined that a public reproof was warranted but not suspension for an attorney who had two
3 prior private reprovals for one client abandonment and contempt of court].)

4 In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed a six-month
5 stayed suspension and one year probation with no actual suspension for the attorney's one client
6 abandonment in a marital dissolution matter. His inattention spanned one year. Although he had
7 no prior record of discipline, his misconduct was aggravated by his failure to participate in the
8 review department proceedings.

9 In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the attorney
10 who had practiced law for about 23 years was publicly reproofed for his one client abandonment. The
11 Review Department discounted his prior record of discipline since the misconduct occurred some
12 17 years before his current misconduct and it was minimal in nature. The attorney did not default
13 in the matter.

14 Here, failing to appear and participate in this hearing shows that Respondent comprehends
15 neither the seriousness of the charges against him nor his duty as an officer of the court to participate
16 in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to
17 participate in this proceeding leaves the court without information about the underlying cause of
18 Respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

19 In view of the case law, Respondent's misconduct, the aggravating evidence and the
20 compelling mitigating factor of Respondent's 19 years of practice without any prior disciplinary
21 record, a period of stayed suspension and probation would be appropriate to protect the public and
22 to preserve public confidence in the profession.

23 VI. Recommended Discipline

24 Accordingly, the court hereby recommends that Respondent **LAWRENCE A. HEISLER**
25 be suspended from the practice of law for six months, that execution of the suspension be stayed,
26 and that Respondent be placed on probation for one year with the following conditions:

27 1. During the probation period, Respondent shall comply with the State Bar Act and the Rules
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of Professional Conduct;

2. Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly, and truthfully, any inquiries of the Probation Unit, which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein;

3. Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Probation Unit, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Within one year of the effective date of the discipline herein, Respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and Respondent shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule

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3201);

5. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

6. At the expiration of the period of this probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent from the practice of law for six months that is stayed shall be satisfied and that suspension shall be terminated.

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Probation Unit, within one year of the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. Costs

The court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and paid in accordance with section 6140.7.

Dated: January 26, 2004


ALBAN I. NILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 27, 2004, I deposited a true copy of the following document(s):

DECISION, filed January 27, 2004

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LAWRENCE ALAN HEISLER
ROSS & BRAM LLP
335 N MAPLE DR #222
BEVERLY HILLS CA 90210**

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JOHN KELLEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 27, 2004.**



Johnnie Lee Smith
Case Administrator
State Bar Court