

**PUBLIC MATTER****FILED**

DEC 21 2004

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**THE STATE BAR COURT****HEARING DEPARTMENT -SAN FRANCISCO**

In the Matter of

ARNOLD CHIN,**Member No. 95797,**A Member of the State Bar.**Case No. 03-O-02981-PEM****Decision****I. INTRODUCTION**

In this disciplinary matter which proceeded by default, Maria J. Oropeza and Mark Hartman appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Arnold Chin, did not appear in person or by counsel.

Respondent is charged with failing to perform with competence, improperly withdrawing from employment, failing to inform a client of a significant development, and failing to cooperate with the State Bar's investigation of the matter. After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating all counts as charged.

Accordingly, the court recommends that Respondent be suspended for one year, that the suspension be stayed including 60 days actual suspension and until the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

II. SIGNIFICANT PROCEDURAL HISTORY

On July 14, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case number 03-O-02981. On that same date the State Bar properly served the NDC on Respondent at his official membership records address, by certified mail, return receipt requested, as provided in Business and

1 Professions Code section 6002.1 (c).

2 On July 21, 2004, Respondent was properly served at his official membership records address
3 with a notice advising him, among other things, that an initial status conference would be held on
4 August 23, 2004. Respondent did not appear at the August 23, 2004, status conference.

5 Respondent did not file a responsive pleading to the NDC. On September 1, 2004, the State
6 Bar filed and properly served a motion for entry of default on Respondent at his official membership
7 records address. The motion advised Respondent that minimum discipline of 90 days actual
8 suspension would be sought if he was found culpable. Respondent did not respond to the motion.

9 On September 20, 2004, the court entered Respondent's default and enrolled him inactive
10 effective three days after service of the order. The order was properly served on Respondent at his
11 official membership records address on that same date by certified mail, return receipt requested.

12 On October 8, 2004, the State Bar filed a request for waiver of default hearing and a brief on
13 culpability and discipline. On October 12, 2004, the court took this matter under submission for
14 decision.

15 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16 Unless ordered by the court based on contrary evidence, the factual allegations set forth in
17 the NDC are deemed admitted upon entry of default and no further proof is required to establish the
18 truth of such facts. (Bus. & Prof. Code, section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)
19 The court's factual findings are based on the allegations contained in the NDC.

20 **A. Jurisdiction**

21 Respondent was admitted to the practice of law in California on December 16, 1980, and has
22 been a member of the State Bar at all times since.

23 **B. Facts**

24 On or about September 1, 2001, Debby Sue hired Respondent to represent her regarding
25 damages Sue claimed resulted from discrimination she suffered while employed with the United
26 States Postal Service. Sue paid Respondent \$840 for attorney's fees.

27 On September 24, 2001, Respondent sent Sue a letter stating he had notified the United
28 States Equal Employment Opportunity Commission that he was representing her in the matter. On

1 February 6, 2002, the EEOC sent Respondent and Sue a scheduling order stating that a pre-hearing
2 telephone conference was scheduled for March 5, 2002. On February 14, 2002, the EEOC sent a
3 revised scheduling order stating that the pre-hearing telephone conference was changed to March 21,
4 2002.

5 The revised scheduling order also ordered that Respondent advise the EEOC representative,
6 Ms. Gilmore, whether Sue would be participating in the pre-hearing conference. Respondent never
7 contacted Ms. Gilmore to advise the EEOC whether Sue would be participating in the pre-hearing
8 conference.

9 On March 21, 2002, the EEOC representative, Ms. Gilmore, attempted to contact Respondent
10 to initiate a conference call but was unable to reach him. Ms. Gilmore left a recorded message on
11 Respondent's telephone answering machine. Respondent never responded to Ms. Gilmore's
12 telephone message of March 21, 2002.

13 On March 21, 2002, the EEOC issued an order requiring Respondent to show cause by March
14 31, 2002, as to his availability and why he was not available to participate in the pre-hearing
15 conference of March 21, 2002. Respondent never complied with the order.

16 In or about March 2002, without notifying Sue, Respondent ceased all work on Sue's matter.
17 From March 2002 to the conclusion of Sue's matter, Respondent did not take affirmative steps to
18 ensure that Sue would be represented in her EEOC matter. Respondent also did not notify Sue that
19 he did not appear at the pre-hearing conference or comply with the orders issued in her matter.

20 Between March 21, 2002, through June 5, 2002, Sue attempted to contact Respondent
21 telephonically and left telephone messages requesting Respondent to contact her. Respondent did
22 not return any of Sue's telephone calls.

23 On May 31, 2002, the opposing party filed a motion for a decision without a hearing. On
24 June 5, 2002, Sue filed a written response which was prepared without benefit of counsel.

25 On June 17, 2002, an administrative law judge for the EEOC issued a ruling dismissing Sue's
26 action.

27 On or about July 28, 2003, the State Bar opened an investigation, case no. 03-O-02981, based
28 on information received from Sue.

On October 1, 2003, and October 15, 2003, two State Bar investigators each mailed a letter to Respondent requesting him to respond in writing to allegations of misconduct being investigated. The State Bar investigators mailed the letters to Respondent at his official membership records address. The United States Postal Service did not return the letters as undeliverable or for any other reason. Respondent received the letters. Respondent did not respond to the letters or otherwise communicate with the State Bar.¹

Legal Conclusions

Count One: Rule 3-110(A) (Failing to Perform Competently)

Rule 3-110(A) of the Rules of Professional Conduct² prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not responding to the message left by the EEOC representative on March 21, 2002, and by placing Sue in a position where she had to file a response without benefit of counsel, ultimately resulting in the dismissal of her matter, Respondent intentionally, recklessly or repeatedly did not perform legal services competently, in wilful violation of rule 3-110(A).³

Count Two: Rule 3-700(A)(2) (Improper Withdrawal from Employment)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

By ceasing all work on Sue's matter, Respondent constructively withdrew from representation of Sue. By ceasing all work without notification, Respondent denied Sue a reasonable opportunity to retain new counsel.

By failing to give notice to Sue that he was ceasing all work on the case and by failing to

¹A State Bar investigator sent a third letter to Respondent on April 19, 2004, which the United States Postal Service returned marked "Attempted Not Known."

²Unless otherwise noted, all further references to "rule(s)" refer to the Rules of Professional Conduct.

³The Court declines to find that Respondent's failure to comply with the orders issued on February 14, 2002, and March 21, 2002, support Respondent's culpability for this violation since there are no allegations that either of these orders were served on Respondent.

1 provide Sue with a reasonable opportunity to employ other counsel, Respondent withdrew from
2 employment without taking reasonable steps to avoid foreseeable prejudice, in wilful violation of
3 rule 3-700(A)(2).

4 **Count Three: Section 6068(m) (Failure to Inform of Significant Development)**

5 Section 6068(m) of the Business and Professions Code⁴ requires an attorney to respond
6 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of
7 significant developments in matters with regard to which the attorney has agreed to provide legal
8 services.

9 By not notifying Sue that he was ceasing all work on her matter, Respondent did not keep
10 Sue reasonably informed of a significant development in a matter with regard to which he agreed
11 to provide legal services, in wilful violation of section 6068(m).⁵

12 **Count Four: Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

13 Section 6068(i) requires an attorney to cooperate and participate in any disciplinary
14 investigation or proceeding pending against him.

15 By not responding to the State Bar investigators' letters regarding the allegations under
16 investigation, Respondent did not cooperate in a disciplinary investigation, in wilful violation of
17 section 6068(i).

18 **IV. LEVEL OF DISCIPLINE**

19 **A. Aggravation**

20 Respondent's multiple acts of misconduct are an aggravating factor. (Rules Proc. of State
21

22
23 ⁴Unless otherwise noted, all further references to "section" refer to the Business and
24 Professions Code.

25 ⁵Similar to count one, the Court declines to find that Respondent's failure to notify Sue of
26 his failure to comply with the orders issued on February 14, 2002, and March 21, 2002, support
27 Respondent's culpability for this violation since there are no allegations that either of these
28 orders were served on Respondent.

29 The Court also notes that although the allegations of paragraph eleven in the NDC might
30 support a violation of section 6068(m), the State Bar did not allege Respondent's failure to
31 respond to Sue's telephonic inquiries as a specific basis for a violation of section 6068(m).

1 Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).⁶

2 Respondent's conduct resulted in the dismissal of Sue's matter which significantly harmed
3 her. (Standard 1.2(b)(iv).)

4 Respondent made no attempt to rectify or atone for the consequences of his misconduct.
5 (Standard 1.2(b)(v).)

6 Respondent's lack of candor and cooperation with the State Bar during a disciplinary
7 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating
8 circumstance. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.) The court
9 notes that the conduct relied on for this finding closely equals the misconduct giving rise to the
10 finding of culpability under 6068(i) and correspondingly assigns little weight to this factor in
11 aggravation. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225
12 [Respondent's failure to participate in disciplinary proceeding before entry of default found to be
13 aggravating factor warranting little weight since conduct relied upon for the finding in aggravation
14 so closely resembled the conduct relied upon for culpability finding under section 6068(i)].)

15 **B. Mitigating Circumstances**

16 Respondent bears the burden of establishing mitigation by clear and convincing evidence,
17 and since he did not participate in these proceedings, no mitigating evidence was presented.
18 (Standard 1.2(e).) However, for the purpose of mitigation, the court takes judicial notice, pursuant
19 to Evidence Code section 452(h), of the membership records of the State Bar and the fact that
20 Respondent has no prior record of discipline. (Standard 1.2(e)(i).) Respondent had been in practice
21 for over twenty-one years prior to the start of his misconduct. The court, therefore, affords
22 significant mitigating weight to the absence of a prior record of discipline. (*Friedman v. State Bar*
23 (1990) 50 Cal.3d. 235, 245 [Attorney's unblemished practice of law for a little more than 20 years
24 is highly significant for purposes of discipline].)

25 **Discussion**

26 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
27

28 ⁶All further references to standards are to this source.

1 public, to preserve public confidence in the profession, and to maintain the highest possible
2 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard
3 1.3.)

4 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
5 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
6 imposing discipline.

7 Standard 2.4(b) provides for reproof or suspension for failing to perform services or
8 communicate with a client not demonstrating a pattern of misconduct.

9 Standard 2.6(a) provides for disbarment or suspension for violations of section 6068.

10 The standards, however, are guidelines from which the court may deviate in fashioning the
11 most appropriate discipline considering all the proven facts and circumstances of a given matter.
12 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
13 or mechanical manner.” (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

14 In a single client matter, Respondent has been found culpable of failing to perform,
15 improperly withdrawing from employment, failing to communicate, and failing to cooperate with
16 the State Bar’s investigation. There is significant mitigation due to Respondent’s twenty-one years
17 of practice without prior discipline. In aggravation, the court has found client harm, multiple acts
18 of misconduct, indifference toward rectification, and a lack of candor and cooperation.

19 The court finds the following cases instructive in determining the appropriate level of
20 discipline:

21 In *Gold v. State Bar* (1989) 49 Cal.3d 908, discipline consisting of a 30-day actual suspension
22 was imposed. In two client matters the attorney was found culpable of failing to perform, improperly
23 withdrawing from employment, and failing to communicate. The attorney also committed an act of
24 moral turpitude and dishonesty by intentionally misrepresenting case status to one of the clients. The
25 attorney received significant mitigation for having no record of prior discipline over 25 years of
26 practice. Although no aggravating factors were discussed, the attorney’s misconduct involved
27 multiple acts of wrongdoing.

28 In *Wren v. State Bar* (1983) 34 Cal.3d 81, discipline consisting of a two-year stayed

1 suspension, a two-year probation, and a 45-day actual suspension was imposed. The attorney was
2 found culpable of failing to perform, failing to communicate with his client, and knowingly
3 misrepresenting the status of the case to his client. In mitigation, the attorney had no prior record
4 of discipline in approximately sixteen years of practice. Although the Court did not discuss
5 aggravating factors, the attorney's misconduct involved multiple acts of wrongdoing as well as
6 uncharged misconduct for attempting to mislead the State Bar by giving false testimony before the
7 hearing panel.

8 The State Bar recommends consideration of *In the Matter of Johnston* (Review Dept. 1997)
9 3 Cal. State Bar Ct. Rptr. 585, which involved a default proceeding relating to an attorney's
10 misconduct in a single client matter. The attorney was found culpable of failing to perform
11 competently, failing to communicate with his client, failing to cooperate with the State Bar's
12 investigation of the client's complaint, and committing acts of moral turpitude by lying about case
13 status to the client and improperly holding himself out as entitled to practice law while he was
14 suspended. The attorney received a one-year stayed suspension with a two-year probation with 60-
15 days actual suspension. The attorney had no prior record of discipline in 12 years of practice, but
16 his misconduct significantly harmed his client and his failure to participate in the proceeding was
17 considered in aggravation.

18 The State Bar recommends, among other things, a one-year stayed suspension, with an actual
19 suspension of 60 days.

20 In determining its disciplinary recommendation, the court notes that Respondent's
21 misconduct is most analogous to *Johnston* and agrees with the State Bar that Respondent's
22 misconduct warrants imposition of discipline similar to that case.

23 After considering Respondent's misconduct and the law, and balancing the aggravating and
24 mitigating factors, the court recommends, among other things, actual suspension of 60 days and until
25 Respondent complies with rule 205.

26 **V. DISCIPLINE RECOMMENDATION**

27 Accordingly, it is hereby recommended that Respondent ARNOLD CHIN be suspended from
28 the practice of law for one year, that said suspension be stayed, and that he be actually suspended

1 from the practice of law for 60 days and until the State Bar Court grants a motion to terminate
2 Respondent's actual suspension at its conclusion or upon such later date ordered by the court. (Rules
3 Proc. of State Bar, rule 205(a), (c).)

4 It is also recommended that Respondent be ordered to comply with the conditions of
5 probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual
6 suspension.

7 If the period of actual suspension reaches or exceeds two years, it is further recommended
8 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar
9 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to
10 Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (Rules Proc. of
11 State Bar, rule 205(b).)

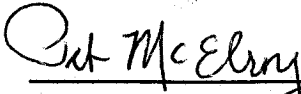
12 If Respondent is actually suspended for 90 days or more, it is recommended that he comply
13 with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions
14 (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme
15 Court order in this matter. Failure to comply with rule 955 could result in disbarment. (*Bercovich*
16 *v. State Bar* (1990) 50 Cal.3d 116, 131). Respondent is required to file a rule 955(c) affidavit even
17 if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

18 It is further recommended that Respondent be ordered to take and pass the Multistate
19 Professional Responsibility Examination given by the National Conference of Bar Examiners within
20 one year of the effective date of the discipline imposed and furnish satisfactory proof of such to the
21 State Bar's Office of Probation within said period.

22 VI. COSTS

23 The court recommends that costs be awarded to the State Bar pursuant to Business and
24 Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7.
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Dated: December 21, 2004


PAT MCELROY
Judge of the State Bar Court

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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 San Francisco, on December 21, 2004, I deposited a true copy of the following document(s):

DECISION

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


- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ARNOLD CHIN
1501 MARIPOSA ST #326
SAN FRANCISCO CA 94107**

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 21, 2004.**


George Hue
Case Administrator
State Bar Court