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In the Matter of)	Case No. 04-O-10024-PEM
ROGER DANIEL PRICE,)	DECISION
Member No. 106203,)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this disciplinary matter, Robin Haffner appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent Roger Daniel Price did not appear in person or by counsel, except as otherwise stated below.

After considering the evidence and the law, the Court recommends, among other things, that respondent be suspended for one year; that the suspension be stayed; and that he be actually suspended for 90 days and until he pays specified sanctions and until he complies with rule 205, Rules Proc. of State Bar ("rule").

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on June 7, 2004, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section ("section") 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt was signed by "Roger Price" and indicated delivery on June 15, 2004.

On June 9, 2004, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on July 19, 2004. On

1 June 10, 2004, he was properly served at his official address with a notice advising him that the
2 status conference would, instead, be held on June 28, 2004.

3 Respondent participated at the June 28 status conference. On June 29, 2004, he was
4 properly served at his official address with an order memorializing the status conference,
5 including a discussion about respondent filing a response to the NDC and setting a further status
6 conference to be held on August 2, 2004.

7 Respondent did not file a responsive pleading to the NDC. On July 15, 2004, a motion
8 for entry of default was properly filed and served on respondent at his official address by certified
9 mail, return receipt requested. The motion advised him that minimum discipline of actual
10 suspension of 90 days "and until respondent demonstrates his rehabilitation, present fitness and
11 learning and ability to practice law pursuant to Rule 204(b)" would be sought if he was found
12 culpable.¹ (Default motion, page 3, lines 20 - 22.) He did not respond to the motion.

13 Respondent participated at the August 2 status conference. On August 3, 2004, he was
14 properly served at his official address with an order memorializing the status conference,
15 including a discussion about his filing a response to the NDC. Respondent indicated at the status
16 conference that he had mailed the response for filing the previous week; however, the Court's
17 case administrator indicated that it had not been received. The Court notes that it still has not
18 been received. As of August 9, 2004, the State Bar had not received a copy of a response either.

19 On August 13, 2004, the Court entered respondent's default and enrolled him inactive
20 effective three days after service of the order. The order was properly served on him at his
21 official address on that same date by certified mail, return receipt requested. The return receipt
22 indicates that this correspondence was received on August 30, 2004, by "Roger D. Price."

23 The matter was submitted for decision without hearing on August 23, 2004.
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26 ¹Perhaps the reference to this rule was intended to be a reference to standard
27 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct ("standard")
28 since rule 204 addresses interlocutory review of orders denying or granting relief from
default. It is more likely a reference to rule 205 which addresses defaults.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 The Court's findings are based on the allegations contained in the NDC as they are
3 deemed admitted and no further proof is required to establish the truth of those allegations.
4 (Section 6088; Rule 200(d)(1)(A), Rules Proc. of State Bar.) The findings are also based on any
5 evidence admitted.

6 It is the prosecution's burden to establish culpability of the charges by clear and
7 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
8 163, 171.)

9 **Jurisdiction**

10 Respondent was admitted to the practice of law in California on December 3, 1982, and
11 has been a member of the State Bar at all times since.

12 **Facts**

13 On February 15, 2003, Christine Sanchez was served with documents seeking a
14 dissolution of marriage. She retained respondent to handle the case on February 18, 2003, and
15 paid him a \$300 retainer. On March 14, 2003, he filed a response to the action on her behalf.

16 On May 8, 2003, Ward R. Stringham, opposing counsel, wrote to respondent asking that
17 Sanchez execute some documents with regard to the sale of her house. Although respondent
18 received this letter, he did not answer it.

19 On April 30, 2003, Stringham wrote respondent another letter seeking responses to
20 discovery that was due on April 24, 2003. Although respondent received this letter, he did not
21 answer it.

22 Respondent did not inform Sanchez about either of the letters nor did he take any action
23 with regard to the letters. He did not respond to Stringham's discovery requests.

24 At a July 2, 2003, hearing on Stringham's motion for an order requiring Sanchez to
25 provide a verified response to discovery and to produce documents, respondent promised that
26 Sanchez would execute escrow documents within 15 days and respond to discovery within 10
27 days. The court ordered Sanchez to provide a complete response to the discovery without
28 objection within five days of the hearing and to pay sanctions of \$500 to Stringham. Respondent

1 received this order but did not tell Sanchez about it. Respondent did not prepare, file or serve
2 responses to the discovery as ordered by the court.

3 On September 17, 2003, Stringham moved the court for an order striking Sanchez's
4 response, entering her default and seeking discovery sanctions. In his declaration in support of
5 the motion, Stringham noted that, on September 7, 2003, he called respondent and asked for a
6 response to the discovery. Respondent stated that he thought the responses had already been
7 mailed and, if they had not been, he would see to it that it was done. Stringham received no
8 responses. Respondent did not attend the motion hearing. The court granted the motion and
9 struck Sanchez's response as a terminating sanction for not responding to discovery as ordered
10 on July 2, 2003. Sanctions of \$537 were awarded to Stringham. Respondent received a copy of
11 this order.

12 Sanchez later learned that a settlement conference was scheduled in her case on October
13 30, 2003. This was the first court date of which she was aware. On October 23, 2003, she
14 stopped by respondent's office to confirm the time and date of the settlement conference.
15 Respondent informed her for the first time that he had resigned from the case and was no longer
16 representing her. Sanchez then requested that all documents regarding her case be returned to
17 her. Respondent said that he did not have time to do it at the moment but would return the file to
18 her the following Monday. Although Sanchez made several calls to respondent's office and left
19 messages with his receptionist, Sanchez never received her papers.

20 Sanchez attended the October 30 settlement conference. Respondent did not attend.
21 Sanchez learned for the first time that she was in default due to respondent's failure to respond to
22 discovery requests and his failure to attend a scheduled court appearance. The dissolution of
23 marriage was resolved by default judgment in early November 2003 since Sanchez's answer
24 previously had been stricken.

25 On December 2, 2003, Sanchez wrote respondent a letter asking for the return of her file
26 by December 15, 2003. Respondent never returned the file to Sanchez.

27 Sanchez complained to the State Bar. A State Bar investigator called respondent and left
28 a message with his receptionist. Respondent did not call back.

1 On January 13, 2004, the investigator sent respondent a letter requesting that Respondent
2 answer in writing specific allegations of misconduct regarding the Sanchez complaint and to
3 provide certain documents. The letter was not returned to the State Bar as undeliverable.
4 Although he received the letter, respondent did not answer it or to supply the requested
5 documents.

6 On January 29, 2004, the investigator called respondent to determine why he had not
7 responded to the requests for information. Respondent stated that he had not responded because
8 his file was in shambles but that he had reconstructed it and was ready to release it to his client.
9 Respondent did not return the file to Sanchez.

10 **Conclusions of Law**

11 **Count One - Section 6068(m) (Failure to Communicate)**

12 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries
13 of clients and to keep clients reasonably informed of significant developments in matters with
14 regard to which the attorney has agreed to provide legal services.

15 By not informing Sanchez about correspondence, motions and court orders as set forth
16 above, respondent did not keep Sanchez reasonably informed of significant developments in
17 wilful violation of section 6068(m).

18 **Count Two - RPC 3-700(D)(1) (Failure to Return Client Papers or Property)**

19 RPC 3-700(D)(1) requires an attorney whose employment has been terminated to
20 promptly release to the client, at the client's request, all client papers and property, subject to any
21 protective order or non-disclosure agreement. This includes correspondence, pleadings,
22 deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably
23 necessary to the client's representation, whether the client has paid for them or not.

24 By not returning Sanchez's file although asked to do so, respondent wilfully violated
25 RPC 3-700(D)(1).

26 **Count Three- RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

27 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or
28 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,

1 including giving due notice to the client, allowing time for employment of other counsel,
2 complying with RPC 3-700(D) and with other applicable laws and rules.

3 Respondent effectively withdrew from employment. He did not tell Sanchez that he had
4 withdrawn from employment until a week before the October 30 settlement conference.
5 Respondent's withdrawal prejudiced the client. His inaction and failure to communicate with her
6 resulted in a default judgment being taken against her. By not informing the client of his intent
7 to withdraw from employment, Respondent failed to take reasonable steps to avoid reasonably
8 foreseeable prejudice to the client in wilful violation of RPC 3-700(A)(2).

9 **Count Four - RPC 3-110(A) (Failing to Perform Competently)**

10 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to
11 perform legal services competently.

12 By not responding to discovery and by not appearing at a motion hearing, respondent
13 intentionally, recklessly or repeatedly did not perform competently in wilful violation of RPC 3-
14 110(A).

15 **Count Five - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

16 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary
17 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

18 By not responding to the State Bar's telephone call and letter, respondent did not
19 participate in the investigation of the allegations of misconduct regarding the Sanchez case in
20 wilful violation of 6068(i).

21 **Count Six - Section 6103 (Violation of Court Order)**

22 In relevant part, section 6103 makes it a cause for disbarment or suspension for an
23 attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act
24 connected with or in the course of his or her profession, which he or she ought in good faith to do
25 or forbear.

26 By not providing verified responses to discovered as ordered on July 2, 2003, respondent
27 wilfully disobeyed a court order in wilful violation of section 6103.

28 ///

1 **LEVEL OF DISCIPLINE**

2 **Aggravating Circumstances**

3 Respondent's multiple acts of misconduct are an aggravating factor. (Standard 1.2(b)(ii),
4 Rules of Procedure of the State Bar of California, tit. IV, Standards for Attorney Sanctions for
5 Professional Misconduct ("standards").)

6 In relevant part, standard 1.2(b)(iii) makes consideration as an aggravating circumstance
7 whether respondent's misconduct was surrounded or followed by bad faith, dishonesty,
8 concealment, overreaching or other violations of the State Bar Act or Rules of Professional
9 Conduct. In the instant case, respondent misrepresented to the Court that he had mailed a
10 response to the NDC in this matter, a violation of section 6068(d). Neither the Court nor the
11 prosecutor received a response.

12 Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Sanchez
13 suffered sanctions orders and terminating sanctions and her case proceeded as a default matter
14 due to respondent's misconduct. Sanchez attended the settlement conference without having
15 access to her file.

16 **Mitigating Circumstances**

17 Since respondent did not participate in these proceedings and he bears the burden of
18 establishing mitigation by clear and convincing evidence, the Court has been provided no basis
19 for finding mitigating factors other than his over 10 years of law practice with no prior instances
20 of discipline. (Standard 1.2(e)(i).)

21 **Discussion**

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

26 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
27 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
28 imposing discipline. If two or more acts of professional misconduct are found in a single

1 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
2 sanctions. (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The
3 standards, however, are guidelines from which the Court may deviate in fashioning the most
4 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*
5 *re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They
6 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*
7 (1988) 44 Cal.3d 820, 828.)

8 Standards 2.4(b) and 2.6 apply in this matter. The most severe sanction is found at
9 standard 2.6 which recommends, in relevant part, suspension or disbarment for violations of
10 sections 6068 and 6103, depending on the gravity of the offense or harm, if any to the victim,
11 with due regard to the purposes of imposing discipline.

12 Respondent has been found culpable of abandoning a client, not complying with a
13 discovery court order and not cooperating with the State Bar's investigation of his conduct. He
14 presented no mitigating factors. Aggravating factors were multiple acts of misconduct, client
15 harm and making a misrepresentation to this Court.

16 The State Bar recommends one year stayed suspension, two years probation², and actual
17 suspension of six months and until respondent makes specified restitution; and until he pays
18 specified sanctions; and until he complies with rule 205.

19 In decisions of the Supreme Court and State Bar Court involving abandonment of a
20 client's case, where the attorney has no prior record of discipline, the discipline ranges for no
21 actual to 90 days actual suspension, depending on the nature and extent of misconduct,
22 aggravating and mitigating factors. (See, *i.e.*, *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 (no
23 actual suspension); *Layton v. State Bar* (1990) 50 Cal.3d 889 (30 days actual suspension); *Wren*
24 *v. State Bar* (1983) 34 Cal.3d 81 (45 days actual suspension); and *Harris v. State Bar* (1990) 51
25 Cal.3d 1082 (90 days actual suspension).)

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28 ²In a default case, a period of probation and conditions are not recommended until
respondent's motion to terminate actual suspension pursuant to rule 205 is granted.

1 In this case, however, the Court must also consider respondent's misleading of this Court
2 with regard to the filing of his response to the within action. The Supreme Court has repeatedly
3 noted "that deception of the State Bar may constitute an even more serious offense than the
4 conduct being investigated." (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 712.)

5 The Court found *Wren v. State Bar* (1983) 34 Cal.3d 81, *Olguin v. State Bar* (1980) 28
6 Cal.3d 195, and *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269,
7 instructive.

8 In *Wren*, the attorney, in practice for 22 years without a disciplinary record, represented a
9 client in a dispute over a mobile home sold by his client. Over almost two years, the attorney had
10 two meetings with the client, misrepresented the status of the case to the client (claimed a trial
11 had been set when no trial date existed), and did nothing to prepare the case for filing. Moreover,
12 the Review Department found that the attorney attempted to mislead the State Bar by giving false
13 and misleading testimony. Respondent Wren participated in the disciplinary proceedings. The
14 attorney was suspended for two years, stayed, with two years of probation and 45 days of actual
15 suspension. *Wren* presents more mitigating factors than the present case.

16 In *Olguin*, the Supreme Court increased the recommended attorney's discipline from 90
17 days to six months not only because of his dereliction of duty to a client resulting in the action
18 being dismissed but, particularly, also because of his deceptive conduct on at least two occasions
19 – lying to a State Bar investigator about that client matter, fabricating documents for his defense,
20 and continuing to assert their authenticity after learning of their bogus nature. The attorney had
21 one prior instance of discipline based on a conviction for falsely claiming, under oath, United
22 States citizenship when registering to vote. *Olguin* presents substantially more deception than
23 the present case. Discipline consisted of 18 months stayed suspension and 18 months probation
24 on conditions including six months actual suspension.

25 In *In the Matter of Dahlz*, respondent was found culpable, in one client matter, of failing
26 to perform and communicate, improperly withdrawing from representation and committing an act
27 of moral turpitude, namely misrepresenting to an insurance adjuster that his client no longer
28 wanted to pursue her claim. In aggravation, the Court found multiple acts of misconduct, one

1 prior instance of discipline, client harm and lack of candor toward the Court and the State Bar
2 investigator. The lack of candor was "more egregious than the misconduct found against him in
3 this proceeding." (*Id.* at p. 282.) It included presenting a false telephone log entry prepared for
4 purposes of trial; presenting to the State Bar investigator a falsified stipulation purporting to
5 resolve his client's case; and misrepresenting to the investigator that he appeared before a
6 WCAB judge at the time his client's claim was settled. In mitigation, the Court afforded slight
7 weight to *pro bono* services rendered because his involvement was not great and was remote in
8 time. Discipline consisted of stayed suspension for four years and until he complied with
9 standard 1.4(c)(ii) and four years probation on conditions including one year actual suspension.
10 *Dahlz* presents substantially greater misconduct, including a finding of moral turpitude, and
11 much greater aggravation than that in the present case.

12 Respondent's misconduct and lack of participation in this matter raises concerns about
13 his ability or willingness to comply with his ethical responsibilities to the public and to the State
14 Bar. No explanation has been offered that might persuade the Court otherwise and the Court can
15 glean none. Having considered the evidence and the law, the Court believes that a 90-day actual
16 suspension to remain in effect until he pays the court-ordered sanctions and complies with rule
17 205 is sufficient to protect the public. In order to return to practice, respondent will have to
18 explain to this Court the reasons for not participating herein and proclaim his willingness to
19 comply fully with probation conditions that may hereafter imposed, among other things. The
20 Court believes that this level of discipline is adequate to protect the public and proportionate to
21 the misconduct found and so recommends.

22 DISCIPLINE RECOMMENDATION

23 Accordingly, it is hereby recommended that respondent be suspended from the practice of
24 law for one year; that said suspension be stayed; and that he be actually suspended from the
25 practice of law for 90 days and until he pays to Ward R. Stringham \$500 and \$537 in sanctions
26 ordered on July 2 and September 17, 2003, respectively, in the Sanchez matter, and furnishes
27 satisfactory proof thereof to the Office of Probation; and until the State Bar Court grants a
28 motion to terminate respondent's actual suspension at its conclusion or upon such later date

1 ordered by the Court. (Rule 205(a), (c), Rules Proc. of State Bar.)

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

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

10 It is also recommended that respondent be ordered to comply with the requirements of
11 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the
12 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40
13 days of the effective date of the order showing his compliance with said order.³

14 It is further recommended that respondent be ordered to take and pass the Multistate
15 Professional Responsibility Examination given by the National Conference of Bar Examiners
16 within one year from the effective date of the Supreme Court's order or during the period of his
17 actual suspension, whichever is longer, and furnish satisfactory proof of such to the Office of
18 Probation within said period.

19 **COSTS**

20 The Court recommends that costs be awarded to the State Bar pursuant to Business and
21 Professions Code section 6086.10, and that those costs be payable in accordance with section
22 6140.7.

23
24 Dated: October 25, 2004



PAT McELROY
Judge of the State Bar Court

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26
27 ³Failure to comply with CRC 955 could result in disbarment. (*Bercovich v. State Bar*
28 (1990) 50 Cal.3d 116, 131.) Respondent is required to file a CRC 955(c) affidavit even
if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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 October 27, 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:

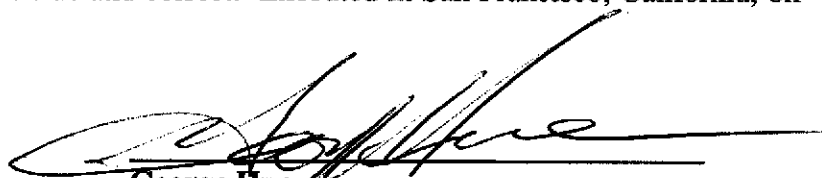
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ROGER DANIEL PRICE
204 N FLORAL #B
VISALIA, CA 92391

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

ROBIN HAFFNER, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 27, 2004.**


George Hue
Case Administrator
State Bar Court