

PUBLIC MATTER

FILED

JAN 11 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

THE STATE BAR COURT HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

LISA D. COPREN,

Member No. 171022,

A Member of the State Bar.

Case No. 04-O-10584-PEM

DECISION

I. INTRODUCTION

In this default matter, Respondent **LISA D. COPREN**, is found culpable, by clear and convincing evidence, of misconduct in a single client matter involving failure to perform services, an act of moral turpitude, improper solicitation to a prospective client, failure to return unearned fees of \$750 and failure to cooperate with the State Bar.

The court recommends, among other things, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for 60 days and until she makes restitution and until the State Bar Court grants a motion to terminate Respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges was properly served and filed on Respondent at her official membership records address on August 16, 2004. (Rules Proc. of State Bar, rule 60.) The mailing was returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

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1 On September 13, 2004, the State Bar sent a courtesy copy of the NDC to Respondent at 174
2 October Street, Lincoln, California 95648-2153. On the same day, the State Bar attempted to
3 telephone Respondent at her membership records telephone number and at an alternative phone
4 number. Both numbers were disconnected or were no longer in service.

5 On motion of the State Bar, Respondent's default was entered on October 4, 2004.
6 Respondent was enrolled as an inactive member under Business and Professions Code section
7 6007(e)¹ on October 7, 2004.

8 Respondent did not participate in the disciplinary proceedings. The court took this matter
9 under submission on October 21, 2004, following the filing of a brief on culpability and discipline.

10 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
12 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
13 200(d)(1)(A).)

14 A. Jurisdiction

15 Respondent was admitted to the practice of law in California on June 3, 1994, and has since
16 been a member of the State Bar of California.

17 B. The Swing Matter

18 In April 2003, Respondent sent an "Advisory Letter," addressed to "Dear Homeowner," to
19 Barbara Swing, offering assistance to stop the foreclosure process of her property by filing a Chapter
20 13 bankruptcy petition. The letter contained numerous guarantees, warranties and predictions
21 regarding the result of any representation by Respondent, including the following:

- 22 1. "The Foreclosure Process can be STOPPED;"
- 23 2. "The Chapter 13 Plan Confirmation Process will allow you to keep your home;"
- 24 3. "The Chapter 13 Bankruptcy will create an Automatic Stay (similar to a restraining
25 order), which Stops all Proceedings, Actions and Harassment;" and
- 26 4. "If your Wages are being Garnished, it automatically Stops all Garnishments and

27
28 ¹References to section are to the Business and Professions Code, unless otherwise noted.

1 Collections.”

2 On April 29, 2003, after receiving the letter, Swing went to Respondent’s office for an initial
3 consultation; she did not meet Respondent but met with Respondent’s assistant, Everett King, who
4 was not an attorney. At the meeting, Swing told King that she was experiencing financial difficulties
5 and that her home was scheduled to be sold at a foreclosure auction on July 30, 2003. Swing then
6 signed a retainer agreement employing Respondent and paid Respondent \$750 as advanced attorney
7 fees. King gave her a package of documents to be signed and returned to the office as soon as
8 possible.

9 Two days later, Swing returned the signed documents to Respondent’s office as instructed,
10 including a blank bankruptcy court amendment cover sheet and an undated petition for bankruptcy.

11 Swing had no contact with Respondent until July 1, 2003 when she received a letter from
12 Respondent seeking \$185 for bankruptcy court filing fees. Swing immediately sent Respondent a
13 cashier’s check for \$185 on July 2, 2003.

14 On July 14, 2003, Swing telephoned Respondent to inquire about the status of her bankruptcy
15 matter. Respondent told Swing that she knew nothing about her bankruptcy matter. Swing reiterated
16 to Respondent that she was experiencing financial difficulties and that her house was scheduled for
17 foreclosure sale on July 30.

18 The following day, Swing faxed to Respondent a copy of the Notice of Trustee’s Sale which
19 provided the specifics of the foreclosure auction.

20 On July 22, 2003, Respondent filed Swing’s bankruptcy petition and schedules with the
21 United States Bankruptcy Court for the Eastern Division of California (Modesto Division), case No.
22 03-92981-A-13.

23 Respondent filed the petition and schedules without verifying their accuracy with Swing.
24 They contained inaccurate information. The petition was dated July 1, 2003 but Swing had signed
25 it on May 1. On Schedule I, the amount of \$1,067 listed as Social Security Disability monthly
26 payment was incorrect. On Schedule J, the total projected monthly income, expenses, excess income
27 and total amount to be paid into a monthly plan were also wrong.

28 Because Respondent did not file with the bankruptcy court a completed Class 1 Checklist,

1 the Trustee filed a motion to dismiss Swing's bankruptcy petition on August 12, 2003. Upon receipt,
2 Swing immediately telephoned Respondent and asked about the dismissal motion. Respondent
3 assured her that she would take care of the matter and would appear at the September 3, 2003
4 hearing.

5 Respondent never provided to Swing the required "Authorization to Release Information to
6 the Trustee Regarding Secured Claims Being Paid by the Trustee" form.

7 On September 2, 2003, Swing telephoned Respondent but no one answered. She left a
8 message, reminding Respondent of the hearing.

9 Swing attended the September 3 hearing; Respondent did not. During the hearing,
10 Respondent left Swing a voice mail, indicating that she was working on her case. At the hearing,
11 the bankruptcy court judge provided Swing with a continuance to obtain another attorney. The
12 Trustee later withdrew the motion as a result of the efforts of Swing's new counsel.

13 On September 4, 2003, Swing sent Respondent a certified letter terminating her services.
14 Respondent replied to Swing's letter by calling her at home and leaving a voice mail message in
15 which she accused Swing of being, among other things, "an emotional mess."

16 On September 10, 2003, Swing attended a meeting of the creditors in her bankruptcy matter.
17 An attorney, Ann Friend, approached Swing and told her that Respondent requested her to represent
18 Swing. Swing declined the representation since she did not know attorney Friend.

19 On October 20, 2003, Swing sent Respondent a certified letter requesting the refund of her
20 legal fees. A Jill Hinsdale signed the return receipt. Respondent did not respond to the letter or
21 refund any of the advanced legal fees. Respondent performed work that had no value to Swing.

22 On January 30 and March 26, 2004, a State Bar investigator wrote to Respondent regarding
23 the Swing matter and requested a written reply. The January letter was properly sent to Respondent
24 at her official address. It was not returned as undeliverable or for any other reason. The March letter
25 was faxed to Respondent. Respondent did not respond to the letters.

26 On March 23, 2004, the State Bar investigator telephoned Respondent to remind her to
27 respond to the January letter. Respondent told the investigator that she would send a response via
28 facsimile on or before March 26, 2004. Respondent never responded as promised.

1 ***Count 1: Failure to Perform (Rule 3-110(A) of the Rules of Professional Conduct)***²

2 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail
3 to perform legal services with competence.

4 Respondent intentionally, recklessly, and repeatedly failed to perform legal services with
5 competence, in wilful violation of rule 3-110(A), by failing to file a completed Class 1 Checklist
6 with the bankruptcy court; by failing to provide to Swing the required "Authorization to Release
7 Information to the Trustee Regarding Secured Claims Being Paid by the Trustee" form; by failing
8 to appear at the September 3, 2003 dismissal hearing; and by failing to verify with Swing the
9 accuracy of the information on the bankruptcy petition before filing.

10 ***Count 2: Misleading the Court (§ 6068(d))***

11 Section 6068(d) provides that an attorney shall never seek to mislead the judge by an artifice
12 or false statement of fact or law. The Supreme Court has held that "[t]he presentation to a court of
13 a statement of fact known to be false presumes an intent to secure a determination based upon it and
14 is clear violation of [section 6068(d)]." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.) "Actual
15 deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney
16 knowingly presents a false statement which tends to mislead the court. [Citation.]" (*Davis v. State*
17 *Bar* (1983) 33 Cal.3d 231, 240.)

18 "Whether respondent violated section 6068, subdivision (d), 'depends first upon whether his
19 representation to the . . . court was in fact untrue, and secondly, whether he knew that his statement
20 was false and he intended thereby to deceive the court.'" (*In the Matter of Chestnut* (Review Dept.
21 2000) 4 Cal. State Bar Ct. Rptr. 166, 174-175.)

22 The State Bar alleges that Respondent employed means inconsistent with the truth and sought
23 to mislead a judge by a false statement of fact in violation of § 6068(d) by never verifying the
24 information contained in Swing's bankruptcy petition and its attachments with Swing and filing the
25 petition without first verifying their contents.

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

1 However, there is no clear and convincing evidence that Respondent deliberately sought to
2 mislead the bankruptcy court or that she knew the information to be false and intended thereby to
3 deceive the court. (See *In the Matter of Chestnut*, *supra*, 4 Cal. State Bar Ct. Rptr. 166, 174-175.)
4 Further, there is no clear and convincing evidence that Respondent provided the wrong financial
5 information with the intent to secure an advantage. More appropriately, her failure to verify the
6 petition and its attachments with her client violates her duty to perform services with competence
7 and such failure was committed with gross negligence, which constitutes an act of moral turpitude,
8 as discussed below.

9 Therefore, absent clear and convincing evidence, Respondent did not violate § 6068(d).

10 ***Count 3: Moral Turpitude (§ 6106)***

11 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,
12 dishonesty or corruption.

13 By having Swing sign a blank bankruptcy petition form and then completing and filing the
14 petition without first confirming with the client the accuracy of the information, Respondent
15 committed an act of moral turpitude in wilful violation of § 6106. (See *In the Matter of Dixon*
16 (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 29.)

17 ***Count 4: Improper Solicitation (Rule 1-400(E)(1))***

18 Rule 1-400(E)(1) prohibits an attorney from providing a communication to a prospective
19 client which contains guarantees, warranties, or predictions regarding the result of the representation.

20 Respondent's advisory letter to Swing, promising that her foreclosure process could be
21 stopped, that the Chapter 13 Plan Confirmation Process would allow Swing to keep her home, that
22 the Chapter 13 bankruptcy would create an automatic stay, and that the garnishment of Swing's
23 wages, if any, would automatically stop, is a prohibited communication to a prospective client. By
24 clear and convincing evidence, Respondent wilfully violated rule 1-400.

25 ***Count 5: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

26 Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly
27 any part of a fee paid in advance that has not been earned.

28 When Swing terminated Respondent's employment on September 4, 2003, Respondent was

1 obligated to refund any unearned portion of the \$750 advanced fees; her services were of no value
2 to Swing. Respondent's failure to do so was a wilful violation of rule 3-700(D)(2).

3 ***Count 6: Failure to Cooperate With the State Bar (§ 6068(i))***

4 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
5 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
6 January and March 2004 letters or participate in the investigation of the Swing matter, Respondent
7 failed to cooperate with the State Bar in wilful violation of section 6068(i).

8 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

9 **A. Mitigation**

10 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
11 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

12 However, Respondent's lack of a prior record in nine years of practice is a mitigating factor.
13 (Std. 1.2(e)(i).)

14 **B. Aggravation**

15 There are several aggravating factors. (Std. 1.2(b).)

16 Respondent committed multiple acts of wrongdoing. (Std 1.2(b)(ii).) She failed to perform
17 services competently, committed an act of moral turpitude, improperly solicited a prospective client,
18 and failed to return unearned fees of \$750.

19 Respondent harmed her client by depriving her of her funds, particularly since she had told
20 Respondent that she was experiencing financial difficulties and had to file for bankruptcy. (Std.
21 1.2(b)(iv).)

22 Respondent's failure to return unearned fees demonstrates indifference toward rectification
23 of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).)

24 Respondent's failure to participate in this disciplinary matter before the entry of her default
25 is also a serious aggravating factor. (Std. 1.2(b)(vi).)

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

V. DISCUSSION

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

Respondent's misconduct involved one client matter. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.3, 2.4(b), 2.6 and 2.10.)

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges two years stayed suspension and 90 days actual suspension and until Respondent makes restitution of \$750 in unearned fees and \$185 in filing fees. In support of its recommended discipline, the State Bar cited *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, and *Harris v. State Bar* (1990) 51 Cal.3d 1082.

A 90-day actual suspension is too harsh for misconduct in a single client matter involving failure to return unearned fees of \$750, failure to perform competently, an act of moral turpitude and improper solicitation. Because there is no alleged fact in the NDC that the filing fee of \$185 was misused, Respondent need not refund that amount.

In *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, the attorney was given a one-year stayed suspension and three-year probation, including 45 days actual suspension and restitution of \$3,000, for his misconduct in a single client matter.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney who had no prior record of discipline in 12 years of practice was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed to perform competently which caused his client to lose her case. He also improperly held himself

1 out as entitled to practice law by misleading his client into believing he was still working on her case
2 while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary
3 proceedings as well.

4 Failing to appear and participate in this hearing shows that Respondent comprehends neither
5 the seriousness of the charges against her nor her duty as an officer of the court to participate in
6 disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Her failure to
7 participate in this proceeding leaves the court without information about the underlying cause of
8 Respondent's misconduct or of any mitigating circumstances surrounding her misconduct.

9 In view of Respondent's misconduct, the case law and the aggravating evidence, placing
10 Respondent on an actual suspension for 60 days and until she makes restitution would be appropriate
11 to protect the public and to preserve public confidence in the profession. It is not recommended that
12 a conditional rule 955 of the California Rules of Court be imposed.

13 VI. RECOMMENDED DISCIPLINE

14 Accordingly, the court hereby recommends that Respondent **LISA D. COPREN** be
15 suspended from the practice of law for one year, that said suspension be stayed, and that Respondent
16 be actually suspended from the practice of law for 60 days and until she makes restitution to Barbara
17 Swing or the Client Security Fund, if appropriate, in the amount of \$750, plus 10% interest per
18 annum from September 4, 2003, and provide proof thereof to the Office of Probation; and until she
19 files and the State Bar Court grants a motion to terminate her actual suspension. (Rules Proc. of
20 State Bar, rule 205.)

21 It is also recommended that Respondent be ordered to comply with any probation conditions
22 hereinafter imposed by the State Bar Court as a condition for terminating her actual suspension.
23 (Rules Proc. of State Bar, rule 205(g).)

24 It is also recommended that if Respondent is actually suspended for two years or more, she
25 will remain actually suspended until she has shown proof satisfactory to the State Bar Court of her
26 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard
27 1.4(c)(ii).

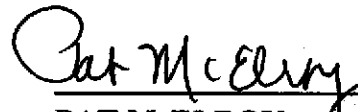
28 It is further recommended that Respondent take and pass the Multistate Professional

1 Responsibility Examination within one year after the effective date of this order or during the period
2 of her actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891,
3 fn. 8.)

4 **VII. COSTS**

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

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11 Dated: January 10, 2005


12 **PAT McELROY**
13 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 January 11, 2005, I deposited a true copy of the following document(s):

DECISION

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 San Francisco, California, addressed as follows:

LISA D. COPREN
7405 GREENBACK LN #192
CITRUS HEIGHTS CA 95610 5603

- ☒ 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 **January 11, 2005**.


Laurretta Cramer
Case Administrator
State Bar Court