PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **JOHN RAYMOND LABRUCHERIE,** **Member No. 141051,** A Member of the State Bar.	**Case No. 04-O-11372-JMR** **04-O-11919** **DECISION**

I. INTRODUCTION

In this disciplinary matter, Jean Cha appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent John Raymond LaBrucherie did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be suspended for three years, that the suspension be stayed on conditions including one year of actual suspension and until he complies with rule 205 of the Rules of Procedure of the State Bar of California.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on April 12, 2005, 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[1] 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.) A courtesy copy was also sent by first-class mail,

[1]Further references to section are to the Business and Professions Code.

postage prepaid, to an alternate address. The copy served at the official address was returned by the United States Postal Service ("USPS") bearing a stamp stating: "Returned to sender: Attempted, not known." The courtesy copy was not returned as undeliverable.

On April 19, 2005, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on May 9, 2005. It was returned as undeliverable. A courtesy copy was also properly served on respondent at the alternate address. It was not returned as undeliverable.

Respondent did not appear at the May 9 status conference. An order was properly served on him that same date at his official and alternate addresses. The order indicated that the State Bar would file an order for entry of default.

The State Bar made efforts to locate and contact respondent. There were telephone conversations between respondent and the State Bar on May 11 and June 3, 2005, and a meeting, held at respondent's request, on May 18, 2005. During these interactions, respondent confirmed that he lived with his mother at the alternate address and also confirmed his telephone number. He was granted two extensions of time to respond to the NDC, as well as opportunities to resolve the matter and to provide documentation addressing the allegations of misconduct. He did not avail himself of these opportunities.

Respondent did not file a responsive pleading to the NDC. On July 7, 2005, a motion for entry of default was served on respondent at his official address by first-class mail. This method of service does not meet the requirements for service of an initial pleading. (Rules Proc. of State Bar, rules 60 and 200.) Accordingly, on July 11, 2005, a motion for entry of default was properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of two years' stayed suspension and 90 days' actual suspension would be sought if he was found culpable. He did not respond to the motion.

On July 27, 2005, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was properly served on him at his official address on that same date by certified mail, return receipt requested. This correspondence was returned as undeliverable and unable to be forwarded. A courtesy copy of

the order sent to the alternate address was not returned as undeliverable.

The matter was submitted for decision without hearing on August 16, 2005.[2]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 9, 1989, and has been a member of the State Bar at all times since.

B. Carotenuti Matter - State Bar Court Case no. 04-O-11372

Facts

In February 1999, Joseph A. Carotenuti retained respondent to represent him in a pending civil matter regarding a disputed debt. (*Gloria Wall v. Hefco Inc., et al*, Los Angeles Superior Court case no. FOC151842 ("Hefco matter").) Carotenuti was an officer of Hefco.

On March 13, 1999, respondent sent a letter of representation to plaintiff's counsel asking that all further communication regarding the Hefco matter be addressed to him. After this letter was sent, respondent did not defend or take any legal action on Carotenuti's behalf. As a result, a default judgment was entered against the defendants in the Hefco matter on February 8, 2001. Respondent took no action to set aside the default judgment nor did he tell Carotenuti that a judgment had been entered against him. He also did not tell his client that he was withdrawing from employment or take any other steps to avoid foreseeable prejudice to Carotenuti.

Between March 1999 through 2001, Carotenuti asked respondent about progress on the Hefco matter on several occasions. Each time, respondent assured him that he was pursuing

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[2]The order entering respondent's default notified the parties that the matter would be submitted for decision on August 16, 2005, and that further evidence or briefs were due by that date. The State Bar filed a brief on August 19, 2005, which was not considered as it was untimely filed and no explanation was offered for the delay.

Carotenuti's defense and that Carotenuti was not responsible for the disputed debt.

In early December 2003, Carotenuti received a notice from a collection agency advising him that a money judgment been entered against him and that the amount of the judgment, including interest, had increased to $58,864.15 as of December 8, 2003.

Carotenuti immediately called respondent's office and learned from the receptionist that he had closed the office and left no forwarding address or telephone number. Respondent moved his office without providing Carotenuti new contact information.

On February 13, 2004, Carotenuti sent a letter by certified mail, return receipt requested, to respondent's home address. Although two notices were left for respondent, he did not retrieve the letter from the USPS.

On March 25, 2004, the State Bar opened an investigation in case no. 04-O-11372 pursuant to a complaint filed by Carotenuti regarding allegations of misconduct by respondent in this matter. On September 12, 2004, a State Bar investigator called respondent regarding the Carotenuti complaint. Respondent asked the investigator to write to him at his home address, which was different than his official address.

On September 13, 2004, the State Bar sent respondent a letter requesting that he answer in writing specific allegations of misconduct regarding the Carotenuti complaint. The letter was addressed to respondent's home address as requested and sent by first-class mail, postage prepaid. It was not returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letter.

The State Bar sent a follow-up letter on October 19, 2004, to respondent's official address. It was sent by first-class mail, postage prepaid. On October 26, 2004, it was returned to the State Bar marked "not deliverable as addressed - unable to forward."

Conclusions of Law

Count One - Rule 3-110(A), Rules of Professional Conduct[3] (Failure to Perform)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to

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[3]Further references to rule are to this source.

perform legal services competently.

By not defending Carotenuti or taking steps to set aside the default judgment against him, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Two - Section 6068(m) (Failure to Communicate)

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

By not advising Carotenuti that a money judgment been entered against him, respondent did not keep Carotenuti reasonably informed of significant developments in wilful violation of section 6068(m).

Count Three - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) and with other applicable laws and rules.

By moving his office without providing Carotenuti new contact information, respondent effectively withdrew from employment. He did not tell the client that he was withdrawing from employment. By not informing the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

Count Four - Section 6106 (Moral Turpitude - Misrepresentation)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106. He misrepresented to Carotenuti that he was pursuing the defense of the Hefco matter when, in reality, he had not taken any steps in that regard since March 13, 1999. Accordingly, he

committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

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

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

By not responding to the State Bar's September 13, 2004, respondent did not participate in the investigation of the allegations of misconduct regarding the Carotenuti case in wilful violation of 6068(i).

C. Base Matter - State Bar Court Case no. 04-O-11919

Facts

In January 1998, Michael L. Base retained respondent to represent him in a civil dispute.

On January 23, 1998, Base sent respondent a facsimile transmission including a demand letter from Robert W. Snyder, an attorney whose client, Irene Ching, bought a gemstone from Base. Base asked respondent to send him a copy of his response to the demand letter.

In late January 1998, respondent called Snyder to discuss the demand letter.

On February 19, 1998, Snyder sent Base a letter advising him of his client's intention to file suit and asking that respondent contact him.

On June 9, 1998, Snyder filed a complaint in the matter entitled *Ching, et al v. Base, et al*, San Bernardino County Superior Court case no. RCVRS34617 ("Ching matter"). The complaint was served on Base in July 1998.

On July 31, 1998, Base brought the complaint to respondent and respondent wrote Snyder a letter requesting "an agreed upon [*sic*] time to answer the complaint." Thereafter, respondent did not answer the complaint on Base's behalf. As a result, a default judgment was entered against Base on June 2, 1999. Respondent did not take any action to set aside the default judgment.

Between July 1998 and January 1999, Base called respondent on numerous occasions asking for an update on the Ching matter. Each time, respondent assured Base that he was pursuing his defense although he knew that he was not doing so.

On January 15, 1999, respondent called Base and told him that there was no hearing or

trial date set; that he would take the plaintiff's deposition; and that he would seek dismissal of the Ching matter. Respondent did not depose Ching or seek dismissal of the case.

On January 27, 1999, Base received a copy of a request for entry of default against him. He immediately faxed it to respondent, who assured him that same day that he would take care of it and told him not to worry. Respondent did not move to set aside the request for entry of default.

On November 2, 1999, Base called respondent, who told him that he would "cancel" the abstract of judgment recorded against Base. On November 9, 1999, respondent called Base and told him that he would "vacate" the judgment. Respondent did not take any action on Base's behalf regarding the abstract of judgment.

On January 25, 2000, Base called respondent, and respondent stated that the abstract of judgment had been "vacated" although respondent knew or should have known that was untrue.

In June 2003, Base attempted to refinance his home and discovered that there was still a lien against his house for the judgment. On June 20, 2003, Base faxed respondent a letter asking that he promptly take action to remove the lien against Base's home. On June 26, 2003, respondent called Base and promised to resolve the matter and have the lien removed within a week. Respondent took no action concerning the Ching matter or the lien against Base's home.

In December 2003, Base again attempted to refinance his home and discovered that respondent had not taken action to remove the lien. Throughout that month, Base called respondent, seeking his assistance. Each time, respondent told Base that he would promptly resolve the problems resulting from the Ching matter. Respondent did not take any action concerning the Ching matter or the lien against Base's home.

From July 1998 through December 2003, respondent misrepresented to Base that he was taking legal action to defend him and then working to remove the lien against his home.

On April 30, 2004, the State Bar opened an investigation in case no. 04-O-11919 pursuant to a complaint filed by Base regarding allegations of misconduct by respondent. On October 19 and November 7, 2004, a State Bar investigator sent respondent letters regarding the Base complaint. The letters were addressed to respondent's official address and sent by first-

class mail, postage prepaid. Neither letter was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

Conclusions of Law

Count Six - Rule 3-110(A) (Failure to Perform Competently)

By not defending Base or taking steps to set aside the default judgment against him, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Seven - Section 6106 (Moral Turpitude - Misrepresentation)

There is clear and convincing evidence that respondent violated section 6106. He repeatedly misrepresented to Base that he was taking legal action to defend Base and was working to remove the lien against his home, when, in reality, he had taken no action on Base's behalf since July 1998. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

Count Eight - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)

There is not clear and convincing evidence that respondent did not participate in the investigation of the allegations of misconduct regarding the Base case in wilful violation of 6068(i). The NDC does not aver that either letter from the State Bar asked respondent to answer in writing specific allegations of misconduct regarding the Base complaint.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

Respondent's multiple acts of misconduct are an aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(ii).[4]) The court notes that respondent's course of misconduct in the Carotenuti and Base matters, excluding the time in which the State Bar was investigating the allegations, spanned nearly six-and-one-half years, from approximately July 1998 through November 2004.

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[4]All further references to standards are to this source.

Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Carotenuti had a default judgment entered against him in February 2001and was unaware of it until December 2003 when he was contacted by a collection agency. In the meantime, the judgment accrued interest. Moreover, a lien was placed against Carotenuti's home. Base had to make repeated calls to respondent to ascertain the status of his case and to try to have respondent take appropriate action. A default judgment was entered against him which he learned about when he received a copy of the request to enter default. He discovered that an abstract of judgment had been recorded in June and again in December 2003 when he tried to refinance his home.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Since respondent did not participate in these proceedings and he bears the burden of establishing mitigation by clear and convincing evidence, the court has been provided no basis for finding mitigating factors, except for 11 years of discipline-free conduct at the time the misconduct commenced (approximately July 1998), a significant mitigating factor. (Standard 1.2(e)(i).)

C. Discussion

The purpose of 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable

sanctions. (Standard 1.6(a).) The standards, however, are guidelines from which the court may deviate in fashioning the most appropriate discipline considering all the proven facts and circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Standards 2.3, 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found at standard 2.3, which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

Respondent has been found culpable, in two client matters, of not performing or communicating with clients or cooperating with the state Bar's investigation; client abandonment; and making misrepresentations to a client. The misconduct occurred over six-and-one-half years. Aggravating factors include multiple acts of misconduct, significant client harm and failure to participate in the disciplinary proceedings.

In its motion for entry of default, the State Bar indicated it would seek minimum discipline of two years' stayed suspension and 90 days' actual suspension.

The court found *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631 instructive. In two client matters, Respondent Bach was found culpable of two counts each of failing to communicate, to perform and to cooperate in the State Bar's investigation and of one count each of improper withdrawal from representation and failing to return an unearned fee. In aggravation, it was found that he had a lack of insight as to his misconduct as well as harm to both clients, multiple acts of misconduct and a prior instance of discipline for similar misconduct.[5] In mitigation, the court afforded mid-range weight to respondent's pro bono work.

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[5]The aggravating effect of the prior misconduct was diluted because the misconduct in the present case occurred prior to service of the notice to show cause in the prior case and so did not reflect a failure on the part of Bach to learn from his prior discipline. (*Id.* at p. 646.)

The discipline imposed included actual suspension of nine months and until he made specified restitution. *Bach* is distinguishable from the instant case in that the attorney participated in the proceedings and did not engage in the lengthy course of misrepresentations, that respondent herein did, and thereby merited lesser discipline.

In *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, the attorney was found culpable, in one client matter, of failing to perform and communicate, improperly withdrawing from representation and committing an act of moral turpitude, namely misrepresenting to an insurance adjuster that his client no longer wanted to pursue her claim. In aggravation, the court found multiple acts of misconduct, one prior instance of discipline, client harm and lack of candor toward the court and the State Bar investigator. The lack of candor was "more egregious than the misconduct found against him in this proceeding." (*Id.* at p. 282.) It included presenting a false telephone log entry prepared for purposes of trial; presenting to the State Bar investigator a falsified stipulation purporting to resolve his client's case; and misrepresenting to the investigator that he appeared before a judge at the time his client's claim was settled. In mitigation, the court afforded slight weight to pro bono services rendered because his involvement was not great and was remote in time. Discipline consisted of stayed suspension for four years and until he complied with standard 1.4(c)(ii) and four years probation on conditions including one year actual suspension. Respondent Dahlz participated in the proceedings. *Dahlz* is also distinguishable from the present case because it involved only one client matter; however, the misconduct included multiple misrepresentations and a substantial lack of candor. Balancing these factors, the present case merits a similar level of discipline.

Respondent's misconduct and lack of participation in this matter raises concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can glean none. The court is especially concerned about the respondent's course of dishonest and unethical conduct during more than six years. "[D]eceit by an attorney is reprehensible misconduct whether or not harm results and without regard to any motive or personal gain." (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 793.) In this case, respondent's misconduct did

result in serious harm to clients. Having considered the evidence and the law, the court believes that a one-year actual suspension to remain in effect until he explains to this court the reasons for not participating herein and demonstrates his willingness to comply fully with probation conditions that may hereafter imposed, among other things, is adequate to protect the public and proportionate to the misconduct found.

V. DISCIPLINE RECOMMENDATION

Accordingly, it is hereby recommended that respondent be suspended from the practice of law for three years, that said suspension be stayed, and that he be actually suspended from the practice of law for one year and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court pursuant to rule 205 of the Rules of Procedure of the State Bar of California.

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

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and to file the affidavit provided for in paragraph (c) of the rule within 40 days of the effective date of the order.[6]

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners

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[6]Failure to comply with rule 955 of the California Rules of Court could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file an affidavit pursuant to rule 955(c) even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

within one year from the effective date of the Supreme Court's order or during the period of his actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

VI. COSTS

The court recommends that costs be awarded to the State Bar pursuant to section 6086.10, and that those costs be payable in accordance with section 6140.7.

Dated: November 14, 2005

JOANN M. REMKE
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 of California. 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 November 14, 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:

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

JOHN R. LABRUCHERIE
3350 SHELBY ST #200
ONTARIO CA 91764

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

JEAN CHA, *Enforcement, Los Angeles*

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 14, 2005.**

Laine Silber
Case Administrator
State Bar Court