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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT -LOS ANGELES

In the Matter of)	Case No. 04-O-11880-JMR
RICHARD GARY TARLOW,)	
Member No. 72889,)	DECISION
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary proceeding, which proceeded by default, Deputy Trial Counsel Jean Cha (DTC Cha) appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Richard Gary Tarlow did not appear in person or by counsel.

In the notice of disciplinary charges (NDC), the State Bar charges respondent with four counts of misconduct. The first three counts charge respondent with misconduct in a single client matter, and the fourth count charges respondent with failure to cooperate in a disciplinary investigation. The State Bar asserts that the appropriate level of discipline is one year's stayed suspension, two years' probation, and ninety days' actual suspension.

For the reasons stated below, the court finds respondent culpable on three of the four counts and recommends that respondent be placed on one year's stayed suspension and thirty days' actual suspension that will continue until he makes and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

II. RELEVANT PROCEDURAL HISTORY

The State Bar filed the NDC in this case on June 16, 2005. On June 15, 2005, the day before, the State Bar properly served a copy of the NDC on respondent by certified mail, return

1 receipt requested, at his latest address shown on the official membership records of the State Bar
2 (official address). (Bus. & Prof. Code, § 6002.1, subd. (c);¹ Rules Proc. of State Bar, rule 60(a);
3 see also *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [such service is deemed complete
4 when mailed regardless of whether the respondent attorney receives it].) Soon thereafter, the
5 State Bar received, from the United States Postal Service (Postal Service), a return receipt for
6 that copy of the NDC, which receipt was signed by Casey Macpherson at respondent's official
7 address on June 16, 2005.

8 Respondent was required to file a response to the NDC no later than July 11, 2005, but he
9 did not do so. Accordingly, on July 11, 2005, and again on July 25, 2005, DTC Cha telephoned
10 respondent at his latest telephone number shown on the official membership records of the State
11 Bar. On each of those occasions, Cha received a recorded voice mail statement identifying the
12 telephone number as that of respondent's law office, and Cha left a voice mail message for
13 respondent asking him to call her at her direct dial number at the State Bar. Thereafter, Cha
14 learned that respondent's official address is a mail box owned by Mail Box Etc. in Calabasas,
15 California, and on July 28, 2005, Cha telephoned that store and spoke with store clerk Casey
16 Macpherson. Even though Macpherson could not confirm that respondent was the registered
17 user of a Mail Box Etc. mail box, he did take a message with Cha's "name, number, title, and
18 case number . . . and made the message out to respondent."²

19 Respondent, however, did not respond to either of the voice mail messages that DTC Cha
20 left on respondent's voice mail; nor did respondent respond to the message that Cha left for
21 respondent with Macpherson at Mail Box Etc. On August 2, 2005, the State Bar filed and
22 properly served on respondent, by certified mail, return receipt requested at his official address, a
23 motion for entry of default. Respondent never filed a response to that motion.

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25 ¹Unless otherwise noted, all further statutory references are to this code.

26 ²In addition to leaving these messages for respondent, the State Bar took other steps in an
27 attempt to provide respondent with actual notice of this proceeding. Those other steps are set
28 forth in the declaration of DTC Cha that is attached to the State Bar's August 2, 2005, motion for
entry of default.

1 On August 16, 2005, this court filed an order in which it granted the State Bar's motion,
2 entered respondent's default, placed respondent on involuntary inactive enrollment (§ 6007,
3 subd. (e)). The clerk properly served a copy of that order on respondent at his official address by
4 certified mail, return receipt requested. Soon thereafter, the clerk received, from the Postal
5 Service, a return receipt for that copy of the court's order, which receipt was signed by Casey
6 Macpherson at respondent's official address on August 22, 2005.

7 On September 6, 2005, following the filing of the State Bar's request for waiver of default
8 hearing and brief on culpability and discipline, the court took this matter under submission for
9 decision without a hearing.

10 III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

11 The factual allegations in the NDC are deemed admitted by the entry of respondent's
12 default. (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)

13 A. Jurisdiction

14 Respondent was admitted to the practice of law in California on December 22, 1976, and
15 has been a member of the State Bar since that time.

16 B. Squier Client Matter

17 In 2000, Arthur Squier retained respondent to represent him as a plaintiff in a cross-
18 complaint filed in an action pending in the Sacramento Superior Court. In August 2002, Squier
19 and respondent disagreed over how to proceed on that cross-complaint. Between August 2002
20 and December 12, 2002, Squier mailed respondent four letters in which he asked respondent to
21 sign a substitution of attorney form. Even though respondent received each of those letters
22 (Evid. Code, § 641), he did not respond to them in any manner. Nor did he otherwise stop
23 representing Squier. In fact, on December 12, 2002, and again on March 20, 2003, respondent
24 appeared for and represented Squier at a status conference on the cross-complaint. And, at the
25 March 20, 2003 status conference, the superior court continued the status conference until May 8,
26 2003. Respondent, however, failed to appear at the status conference on May 8, 2003, and the
27 superior court dismissed Squier's cross-complaint. Respondent was properly served with notice
28 of the dismissal of the cross-complaint.

1 Respondent never informed Squier of any of the foregoing status conferences or of the
2 dismissal of his cross-complaint. Nor did respondent take any steps to have the dismissal set
3 aside.

4 **C. Failure to Cooperate with State Bar Disciplinary Investigation**

5 In March 2004, the State Bar opened a disciplinary investigation with respect to the
6 complaint Squier filed against respondent. On June 25, 2004, and again on July 14, 2004, a State
7 Bar investigator sent respondent a letter asking respondent to respond, in writing, to specific
8 allegations that Squier made against him. Even though he received both of those letters (Evid.
9 Code, § 641), respondent did not respond to them. Nor did respondent otherwise communicate
10 with the State Bar investigator.

11 ***Count 1: Failure to Perform (Rules Prof. Conduct, rule 3-110(A))***³

12 Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail
13 to perform legal services with competence. The record does not indicate whether Squier
14 expressly terminated respondent's employment in any of his four letters to respondent. However,
15 even if Squier expressly terminated his employment in one of those letters, respondent still had a
16 duty, under rule 3-110(A), to competently perform at least until a proper substitution of attorney
17 was filed or an order replacing or removing respondent as Squier's attorney of record was
18 entered. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115; see also
19 Official Discussion, rule 3-700.)

20 By failing to sign a substitution of attorney in accordance with Squier's letters, by failing
21 to appear at the May 8, 2003 status conference, and by failing to take any steps to set aside the
22 dismissal of Squier's cross-complaint, respondent recklessly and repeatedly failed to perform
23 legal services competently in willful violation of rule 3-110(A).

24 ***Count 2: Failure to Communicate (§ 6068, subd. (m))***

25 Section 6068, subdivision (m) provides that it is the duty of an attorney "To respond
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28 ³Unless otherwise noted, all further references to rules are to these Rules of Professional
Conduct.

1 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of
2 significant developments in matters with regard to which the attorney has agreed to provide legal
3 services.”

4 In count 2, the State Bar charges that, when respondent failed “to respond in any manner
5 to Squier's four requests that he sign a substitution of attorney, Respondent failed to respond
6 promptly to Squier's reasonable status inquiries” and thereby violated section 6068, subdivision
7 (m). The court disagrees. First, the State Bar never alleged, in the NDC, that Squier made a
8 status inquiry in his four letters to respondent or otherwise. Second, even if the State Bar had
9 alleged that Squier made a status inquiry, the court would still not find a section 6068,
10 subdivision (m) violation because it relied on the deemed allegation that respondent failed to
11 respond to Squier's four letters in any manner as a basis for finding respondent culpable under
12 rule 3-110(A). To rely on that same failure again to find culpability under section 6068,
13 subdivision (m) would be duplicative. Therefore, count 2 is dismissed with prejudice. (*In the*
14 *Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 536.)

15 ***Count 3: Failure to Communicate (§ 6068, subd. (m))***

16 Respondent willfully violated his duty under section 6068, subdivision (m) to keep his
17 client reasonably informed of significant developments when he failed to inform Squier that the
18 superior court dismissed the cross-complaint and when he failed to inform Squier of the
19 December 2002, March 2003, and May 2003 status conferences. Even if routine status
20 conferences do not rise to the level of “significant developments” of which a client must be
21 informed, it is clear that these three status conferences rose to the level of “significant
22 developments” because they occurred after Squier sent respondent four letters asking respondent
23 to sign a substitution of attorney form. Those letters, if not expressly, implicitly terminated
24 respondent’s employment.

25 ***Count 4: Failure to Cooperate with State Bar (§ 6068, subd. (i))***

26 Section 6068, subdivision (i) requires an attorney “To cooperate and participate in any
27 disciplinary investigation or other regulatory or disciplinary proceeding pending against himself
28 or herself. . . .”

1 By failing to respond to the State Bar investigator's June 25 and July 14, 2004, letters or
2 to otherwise participate in the State Bar's investigation of the Squier's complaint, respondent
3 failed to cooperate with a State Bar disciplinary investigation in wilful violation of section 6068,
4 subdivision (i).

5 IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

6 A. Mitigation

7 No mitigating circumstance was proffered into evidence. (Rule Proc. of State Bar, tit. IV,
8 Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴ Nonetheless, respondent's lack of a
9 prior record of discipline in his almost 22 years of practice is a very strong mitigating
10 circumstance. (Std. 1.2(e)(1).)

11 B. Aggravation

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

13 Respondent's misconduct in the present proceeding involves multiple acts of wrongdoing.
14 (Std. 1.2(b)(ii).)

15 Respondent's misconduct caused, at least, some harm to his client Squier because
16 Squier's cross-complaint was dismissed. (Std. 1.2(b)(iv).) Because the record fails to establish
17 that the cross-complaint was dismissed with prejudice, the court presumes that it was not. Thus,
18 the extent of harm appears limited to unnecessary delay and expense, but not loss of his cross-
19 claims.

20 Respondent's failure to participate in this disciplinary proceeding before the entry of his
21 default is an aggravating factor. (Std. 1.2(b)(vi).) However, because the conduct relied on for
22 this aggravating factor closely equals the misconduct relied on to find respondent culpable of
23 violating section 6068, subdivision (i) and to enter respondent's default, it too warrants little
24 weight. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

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28 ⁴All further references to standards are to this source.

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V. 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court first looks to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) However, the standards are not to be applied in a talismanic fashion. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Next, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent's misconduct is found in standard 2.6(a), which provides that an attorney's violation of section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard for the purposes of imposing discipline set forth in standard 1.3."

To support its assertion that 90 days' actual suspension is appropriate, the State Bar cites to *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608 and *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 as offering guidance. *Sullivan*, however, provides little guidance because it involved much more misconduct. For example, in *Sullivan*, the attorney failed to respond to status inquires and to communicate significant developments in *two* client matters and failed to competently perform in *four* client matters. *Johnston* offers only little guidance because, even though it involved a single client matter, it involved more misconduct (including moral turpitude), more aggravation, and significantly less mitigation.

In prior decisions of the Supreme Court and review department involving abandonment of a single client matter, where the attorney has no prior record of discipline, the discipline ranges from no actual to 90 days' actual suspension. In *Van Sloten v. State Bar* (1989) 48 Cal.3d

1 921, the Supreme Court imposed six months' stayed suspension, one years' probation, and no
2 actual suspension. In that case, the attorney, with five years of discipline free practice, failed to
3 use reasonable diligence in pursuing the client's case, failed to withdraw from the case, and
4 almost completely stopped communicating with the client for a year. Even though the attorney
5 participated in the hearing department, he failed to appear without explanation at the hearing
6 before the former volunteer review department. Moreover, the record in *Van Sloten* established
7 that the client did not suffer any serious consequences as result of Van Sloten's misconduct
8 because the client retained a new attorney who took over the case and obtained a favorable result
9 for the client. The record in the present case, however, does not indicate, much less establish,
10 that Squier hired a new attorney who obtained a favorable result on Squier's cross-complaint.

11 In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Supreme Court imposed three years'
12 stayed suspension, three years' probation, and 30 days' actual suspension. In that case, the
13 attorney, with more than 30 years of discipline free practice, engaged in misconduct while acting
14 as the attorney for a trust and an estate and as the trustee and executor, respectively, of that trust
15 and estate. There the attorney failed, through neglect and inattention, to fulfill important and
16 material requirements of his office as executor for over five years and was ultimately removed by
17 the probate court. There was significant harm to the beneficiary of the trust and the estate. Even
18 thought the attorney in that case cooperated with the State Bar, the mitigating weight of that
19 cooperation was undercut by the attorney's contradictory explanations for his misconduct. In
20 addition, the attorney was indifferent towards rectification and atonement. In mitigation, there
21 was no personal gain, and the attorney was under emotional and physical strain as his mother was
22 suffering with terminal cancer.

23 In *Harris v. State Bar* (1990) 51 Cal.3d 1082, the Supreme Court imposed three years'
24 stayed suspension, three years' probation, and ninety days' actual suspension. In that case, the
25 attorney's protracted inattention to a client's case resulted in a large financial loss to the client's
26 estate. Even though the attorney in that case suffered from a debilitating illness, she showed no
27 remorse and very little recognition of wrongdoing.

28 In the present proceeding, there is more misconduct and less mitigation than in *Van*

1 *Sloten*. Accordingly, the court concludes that it is appropriate to recommend at least some period
2 of actual suspension in the present proceeding. Moreover, in the present proceeding there is less
3 misconduct than in either *Layton* or *Harris*. Nonetheless, the court concludes that, on balance,
4 the misconduct in the present proceeding warrants a period of actual suspension equal to the
5 thirty-day actual suspension imposed in *Layton* because in the present proceeding there is
6 substantially less mitigation than in *Layton*, and because respondent defaulted and Layton did
7 not. (*In the Matter of Johnston, supra*, 3 Cal. State Bar Ct. Rptr. at p. 590 [review department
8 increased recommended 45 days' actual suspension to 60 days, in part, because the attorney
9 defaulted in State Bar Court].) Finally, the court concludes that a one-year period of stayed
10 suspension is also warranted in the present proceeding.

11 VI. DISCIPLINE RECOMMENDATION

12 The court recommends that respondent Richard Gary Tarlow be suspended from the
13 practice of law in the State of California for a period of one year, that execution of the one-year
14 suspension be stayed, and that he be actually suspended from the practice of law for thirty days
15 and until he files and the State Bar Court grants a motion, under rule 205 of the Rules of
16 Procedure of the State Bar, to terminate his actual suspension.

17 Further, in accordance with rule 205 of the Rules of Procedure of the State Bar, the court
18 recommends that respondent be ordered to comply with the conditions of probation, if any,
19 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

20 The court also recommends that, if respondent's actual suspension continues for two or
21 more years, he remain actually suspended from the practice of law until he shows proof
22 satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present
23 learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for
24 Attorney Sanctions for Professional Misconduct.

25 VII. PROFESSIONAL RESPONSIBILITY EXAM, RULE 955, AND COSTS

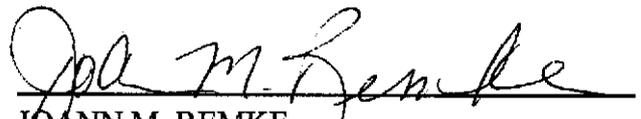
26 The court recommends that respondent be ordered to take and pass the Multistate
27 Professional Responsibility Examination (MPRE) administered by the National Conference of
28 Bar Examiners (MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243,

1 telephone number (319) 337-1287) within the greater of one year after the effective date of the
2 Supreme Court order in this matter or the period of his actual suspension and to provide
3 satisfactory proof of his passage to the State Bar's Office of Probation in Los Angeles within that
4 same time period. Failure to pass the MPRE within the specified time results in actual
5 suspension by the review department without a hearing until passage. (But see Cal. Rules of
6 Court, rule 951(b); Rules Proc. of State Bar, rules 320, 321(a)(1)& (3).)

7 The court further recommends that, if the period of his actual suspension extends for 90
8 or more days, respondent be ordered to comply with California Rules of Court, rule 955 and to
9 perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar
10 days, respectively, after the effective date of the Supreme Court order in this matter.⁵

11 Finally, the court recommends that costs be awarded to the State Bar in accordance with
12 section 6086.10 and that such costs be payable in accordance with section 6140.7.

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16 Dated: November 30, 2005


JOANN M. REMKE
Judge of the State Bar Court

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27 ⁵Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
28 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being a crime, an attorney's
failure to comply with rule 955 is also grounds for disbarment or suspension and for revocation
of any pending probation. (Cal. Rules of Court, rule 955(d).)

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 30, 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:

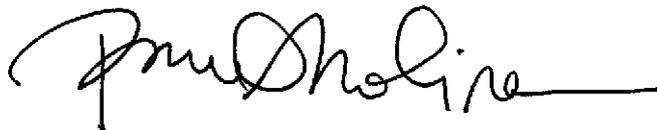
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**RICHARD GARY TARLOW
LAW OFC R TARLOW
23679 CALABASAS RD #543
CALABASAS CA 91302**

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

JEAN H. CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 30, 2005.**



Bernadette C. O. Molina
Case Administrator
State Bar Court