FILED APRIL 20, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **PATRICE A. REITZ, a/k/a PATRICE A. REITZ-BRAZE**, **Member No. 82606**, A Member of the State Bar.	)	**Case No. 05-O-00616-PEM** **Decision**

I. INTRODUCTION

In this disciplinary proceeding, which proceeded by default, Deputy Trial Counsel Tammy M. Albertsen-Murray appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Patrice A. Reitz, also known as Patrice A. Reitz-Braze, did not appear in person or by counsel.

The court finds that respondent is culpable on three of the four counts of charged misconduct. In light of respondent's culpability and after considering the aggravating circumstances surrounding respondent's misconduct (there are no mitigating circumstances), the court recommends, among other things, that respondent be placed on two years' stayed suspension and six months' actual suspension continuing until the State Bar Court grants a motion to terminate her actual suspension (Rules Proc. of State Bar, rule 205).

II. PERTINENT PROCEDURAL HISTORY

On October 26, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges ("NDC"). On that same

day, in accordance with Business and Professions Code section 6002.1, subdivision (c),[1] the State Bar properly served a copy of it on respondent at her latest address shown on the official membership records of the State Bar (official address) by certified mail, return receipt requested. That service was deemed complete when mailed even if respondent did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

Thereafter, on November 14, 2005, the State Bar received, from the United States Postal Service (Postal Service), a return receipt for that copy of the NDC. That receipt establishes that the service copy of the NDC was actually delivered to respondent's official address on November 4, 2005, and signed for by Nicole Paglio. Respondent's response to the NDC was due no later than November 21, 2005. (Rules Proc. of State Bar, rule 103(a).) Respondent, however, never filed a response.

Even though the State Bar fully complied with its duty, under section 6002.1, subdivision (c), to serve respondent with a copy of the NDC, it did not immediately move for the entry of respondent's default when she did not file a response to the NDC before or on the November 21, 2005, due date. Instead, a State Bar deputy trial counsel, as a courtesy to respondent, commendably took a *number* of steps to contact respondent about the matter. Those additional steps, which were all unsuccessful, are set forth in the declaration of DTC Tammy M. Albertsen-Murray that is attached to the State Bar's motion for entry of default, which was filed on December 2, 2005.

Even though the State Bar properly served a copy of its December 2, 2005, motion for entry of default on respondent, respondent did not file a response either to that motion or to the NDC. Accordingly, on December 21, 2005, the court filed an order entering respondent's default and, as mandated in section 6007, subdivision (e)(1), placing her on involuntary inactive enrollment. The Clerk of the State Bar Court properly served a copy of that order on respondent.

After the State Bar filed its brief on discipline and waiver of default hearing, this court took the matter under submission for decision on January 20, 2006, without a hearing.

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[1]Unless otherwise noted, all further statutory references are to the Business and Professions Code.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the well-pleaded factual allegations (not the legal contentions) contained in the NDC, which are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)); on the facts in this court's official file in this proceeding; and on the certified copy of respondent's prior record of discipline, which is attached as exhibit 1 to the State Bar's January 20, 2006, brief on discipline and waiver of hearing and which this court admits into evidence in this proceeding (Rules Proc. of State Bar, rule 202(c)).[2]

A. Findings of Fact

Jurisdiction

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar since that time.

Rangel Client Matter

In September 2003, Marie Rangel retained respondent to prepare and file a qualified domestic relations order (QDRO) with respect to her former husband's pension plan at the Western Conference of Teamsters Pension Trust (Western Conference). The NDC alleges that Rangel paid respondent a total of $500 in attorney's fees.[3] However, those allegations are negated because, as the State Bar admits in its January 20, 2006, brief of discipline, Rangel paid respondent a total of only $250 in attorney's fees. (Cf. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 571 [when the evidence conflicts with the allegations that have been deemed admitted, it is the evidence that controls]; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55.)

Between September 2003 and July 2004, Rangel telephoned respondent's office numerous times and left messages with respondent's secretarial staff asking that respondent return her phone calls and provide her with the status of her matter. Respondent did not respond to any of Rangel's

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[2]Because respondent's prior record of discipline has been admitted into evidence, the State Bar's request for judicial notice of this same exhibit 1 is dismissed as moot.

[3]The NDC alleges that Rangel paid respondent $250 in advanced attorney's fees in September 2003 and an additional $250 in attorney's fees in November 2003.

requests for a return phone call and status update.

In early July 2004, Rangel spoke with a Western Conference pension adjuster. The adjuster wrote to Rangel and provided her with an exemplar of a QDRO that Western Conference would accept. The adjuster also noted that her office (i.e., Western Conference) had not received any correspondence from any attorney representing Rangel.

Then, on July 19, 2004, Rangel and her former husband signed a QDRO that respondent prepared. The NDC alleges that, respondent ceased to perform any work on Rangel's matter after July 19, 2004. However, that allegation is negated because as, the State Bar admits in its January 20, 2006, brief on discipline, respondent submitted the QDRO that she drafted to Western Conference in late September 2004. (Cf. *In the Matter of Taylor, supra*, 1 Cal. State Bar Ct. Rptr. 563 at p. 571; *In the Matter of Heiser, supra*, 1 Cal. State Bar Ct. Rptr. at p. 55.) Thereafter, in late October 2004, Western Conference sent respondent a letter notifying her that the QDRO she submitted to it was deficient and that, because of that deficiency, Rangel would not receive her full share of her former husband's retirement benefits. Thus, Western Conference suggested, in its letter, that respondent amend the QDRO before she filed it with the court. Even though respondent actually received Western Conference's October 2004 letter, she did not respond to it. Nor did she inform Rangel of the deficiency.

Between July 2004 and January 2005, respondent closed her office and disconnected the phone number that Rangel had used to communicate with respondent. Respondent did not provide Rangel with her new office location or phone number.[4] Nor did respondent ever notify Rangel that she intended to terminate their attorney-client relationship.

In mid-November 2004, Western Conference sent Rangel a letter notifying her that, in October 2004, it sent respondent a letter in which it notified respondent of the deficiency in the QDRO she submitted to it on Rangel's behalf. In this letter to Rangel, Western Conference stated

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[4]The fact that respondent received the letter Western Conference sent her in October 2004 establishes that, even though respondent did not notify Rangel of her new address and phone number, respondent could be located.

that the only contact it had with respondent was when it received the QDRO from respondent.

In late January 2005, Rangel filed a substitution of counsel listing herself as an in pro per litigant. Thereafter, in February 2005, the court approved a QDRO that Rangel filed herself.

Failure to Cooperate with State Bar Disciplinary Investigation

In February 2005, the State Bar opened a disciplinary investigation with respect to the complaint Rangel filed against respondent. On May 9, 2005, and again on May 27, 2005, a State Bar investigator sent respondent a letter asking respondent to respond, in writing, to specific allegations of misconduct involving Rangel. Even though she received both of those letters (Evid. Code, § 641 [mailbox rule]), respondent did not respond to them.

B. Conclusions of Law

Count 1: Rule 3-110(A) of the Rules of Professional Conduct[5] — Failure to Perform

The record establishes, by clear and convincing evidence, that respondent willfully violated rule 3-110(A), which provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Even though the factual allegations of the NDC, which are deemed admitted by respondent's default, do not establish the full nature and extent of respondent's failure to competently perform, they do clearly establish: (1) that, in September 2003, Rangel retained respondent to prepare and file a QDRO; (2) that, even though respondent prepared a QDRO, which Rangel and her former husband signed, it was, at least according to Western Conference, defective; (3) that respondent was not substituted out as Rangel's attorney of record until January 2005; and (4) that, in February 2005, the court approved a QDRO that Rangel (not respondent) filed.

Respondent had a duty, under rule 3-110(A), to competently perform at least until a proper substitution of attorney was filed or an order replacing or removing her as Rangel's attorney of record was entered. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115; see also Official Discussion, rule 3-700.) Thus, it is clear that respondent had a duty, from September 2003

[5]Unless otherwise indicated, all further references to rules are to the Rules of Professional Conduct of the State Bar of California.

until January 2005, to prepare and file a non-defective QDRO for Rangel. Under the facts of this case, respondent's failure to competently provide this basic legal service during that time period of one and one-half years was both reckless and repeated and, thus, a willful violation of rule 3-110(A).

Count 2: Section 6068, Subdivision (m) — Failure to Communicate

The record establishes, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (m), which provides that it is the duty of 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. Respondent willfully violated section 6068, subdivision (m) by failing to respond to the telephone calls Rangel made to her between September 2003 and July 2004; by failing to provide Rangel with her new office address and telephone number after July 2004; and by failing to inform Rangel that she received a letter from Western Conference in October 2004 stating its view that the QDRO she prepared for Rangel was defective.

Count 3: Rule 3-700(A)(1) — Failure to Obtain Court Permission to Withdraw[6]

Rule 3-700(A)(1) provides that "If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission." Count 3 charges that respondent willfully violated rule 3-700(A)(1) by withdrawing from employment in a proceeding before a tribunal without its permission because respondent ceased to perform any work on Rangel's behalf after July 19, 2004, and because respondent never notified Rangel that she intended to terminate their attorney-client relationship.

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[6]The court disregards, as immaterial, the factual allegations in paragraph number 27 because there is nothing linking them to respondent. Likewise, the court disregards, as immaterial, the charging allegations in paragraph 28 because they are unrelated to any charged violation. Even though the charging allegations in paragraph 28 might relate to a violation of rule 3-700(A)(2) (client abandonment), no such violation is charged. Without question, in default proceedings, uncharged violations cannot be found as misconduct or relied upon as aggravation under principles of due process. (E.g., *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 465, fn. 9; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 316, fn. 32.)

However, as noted above, respondent did, in fact, perform work on Rangel's behalf after July 19, 2004.

Even though the record establishes that respondent failed to competently perform the legal services for which she was retained, there is not clear and convincing evidence of a rule 3-700(A)(1) violation. The failure to competently perform even when accompanied by a failure to communicate does not automatically establish that the attorney has withdrawn from representation. Furthermore, if any thing, the record suggests that respondent did not withdraw until January 2005 when Rangel filed the substitution of attorney and thereby substituted herself (in pro per) in place of respondent. The record does not indicate whether respondent signed that substitution. Nonetheless, in light of the principle that the court must resolve all reasonable doubts in respondent's favor (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1216; *In re Aquino* (1989) 49 Cal.3d 1122, 1130 [when equally reasonable inferences may be drawn from a fact, the court must accept the inference that leads to a conclusion of innocence]), the court must find that respondent signed the substitution of counsel. In sum, count 3 is dismissed with prejudice.

Count 4: Section 6068, Subdivision (i) – Failure to Cooperate with State Bar

Section 6068, subdivision (i) requires an attorney "To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. . . ." By failing to respond to the State Bar investigator's May 9 and May 27, 2005, letters, respondent failed to cooperate with a State Bar disciplinary investigation in willful violation of section 6068, subdivision (i).

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

No mitigating circumstance was proffered into evidence. (Rule Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (standards), std. 1.2(e).)

B. Aggravation

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

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) Respondent's prior record

of discipline is the Supreme Court's March 18, 2005, order in *In re Patrice A. Reitz on Discipline*, case number S130414 (State Bar Court case numbers 02-O-11804-PEM, 02-O-152213-PEM, 03-O-02702-PEM (consolidated)) in which the Supreme Court placed respondent on one year's stayed suspension and two years' probation on conditions, including 60 days' actual suspension (*Reitz* I). The Supreme Court imposed that discipline on respondent in accordance with a stipulation as to facts, conclusions of law, and disposition that she entered into with the State Bar and that this court approved in an order filed on November 8, 2004, case numbers 02-O-11804-PEM, 02-O-152213-PEM, 03-O-02702-PEM (consolidated) (the parties' November 2004 stipulation). The parties' November 2004 stipulation conclusively establishes: (1) that, from May 2000 through September 2000, respondent violated section 6133 by employing a suspended attorney, permitting the suspended attorney to practice law or hold himself out as entitled to practice law, and failing to supervise him; and (2) that, from February 2003 through August 2003, in a single client matter, respondent violated section 6103 by failing to pay $500 in court ordered sanctions, which were imposed on her because she failed to comply with three briefing orders, rule 3-110(A) by failing to perform competently, and section 6068, subdivision (m) by failing to respond to her client's inquires and by failing to advise the client of significant developments in her case.

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

Contrary to the State Bar's contention, it would not be appropriate to find any aggravating circumstance under standard 1.2(b)(iv) (significant harm aggravation). There is no evidence suggesting, much less clear and convincing evidence establishing, that Rangel suffered significant harm by respondent's misconduct. There is noting in the record that suggests that time was of the essence or that Rangel otherwise suffered or will suffer in the future some significant harm because of the delay in getting a court approved QDRO.[7] For example, there is no evidence that Rangel's

[7]Even though the delay is not sufficient to establish significant harm aggravation under standard 1.2(b)(iv), it is sufficient to prevent respondent from being given any mitigation for lack of harm under standard 1.2(e)(iii).

former husband was already retired and collecting retirement benefits without paying Rangel her share of his benefits. Nor is there any evidence that Rangel will suffer harm when he does retire because of a deficiency in the QDRO that respondent prepared, but was not filed. In that regard, because the record does not indicate whether the QDRO that Rangel filed (and which was approved in February 2005) contained any deficiency, this court, resolving all reasonable doubts in respondent's favor (*Young v. State Bar, supra*, 50 Cal.3d at p. 1216; *In re Aquino, supra*, 49 Cal.3d at p. 1130), must find that the QDRO which Rangel filed did not contain a deficiency.

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

V. DISCUSSION

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the review department noted more than 14 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not to do so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The first step in applying the analysis is to note that, under standard 1.6(a), 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 2.4(b), which states: "Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."[8] Also applicable in this proceeding is standard 1.7(a), which provides that, when an attorney has one prior record of discipline, the discipline imposed in the current proceeding shall be greater than that imposed in the prior unless it would be manifestly unjust.

The court notes that the State Bar, in its January 20, 2006, brief on discipline makes a number of arguments that are either inconsistent with or have no factual support in the record.[9] The court has not relied on nor considered those arguments in disposition of the present proceeding. The court has, however, relied on the fact that respondent engaged in almost all of the misconduct involving Rangel at the same time she was appearing before this court in *Reitz* I.[10] (Cf. *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 406 [it was very significant that the attorney committed the present misconduct during the pendency of his prior disciplinary proceeding].) The

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[8]Contrary to the State Bar's contention, the record in this proceeding does not establish that respondent is culpable of engaging in a pattern of client abandonments even when combined with the record in respondent's prior record of discipline. Accordingly, standard 2.4(a), which deals with cases involving a pattern of client abandonments, is not applicable in this proceeding.

[9]For example, the State Bar contends "that respondent not only abandoned Rangel, but actually abandoned her entire law office"; "that respondent has simply 'dropped out' and has made no effort to inform the State Bar, let alone her clients, of her whereabouts"; and that "respondent appears to be dealing with - or failing to deal with - some personal or emotional issues that are preventing her from fulfilling her professional responsibilities." Without question, had these and other contentions made in the State Bar's brief been established, they would have supported a recommendation of greater discipline.

[10]In fact, respondent signed the parties' November 2004 stipulation in *Reitz* I in September 2004, which is the same month that she finally submitted the QDRO that she drafted to Western Conference.

fact that respondent engaged in the misconduct involving Rangel (which involved the violation of the most basic of an attorney's professional responsibilities) while she knew her conduct was under scrutiny by the State Bar and this court in *Reitz* I is strong evidence that she is either unwilling or unable to conform her conduct to that required of an attorney and officer of the court and therefore warrants a recommendation of a higher degree of discipline.

The State Bar seeks one year's actual suspension and three years' probation on conditions including restitution of $250 to Rangel. The court, however, declines to recommend probation in this proceeding. The appropriate time to consider imposing probation and its attendant conditions, including restitution, is if and when respondent files a motion to terminate her actual suspension under Rules of Procedure of the State Bar, rule 205. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110; see also Rules Proc. of State Bar, rule 205(c)(4), (f), (g).) Moreover, even though not requested by the State Bar, the court independently recommends that respondent be placed on two years' stayed suspension. (*In the Matter of Stansbury, supra*, 4 Cal. State Bar Ct. Rptr. at p. 110 [in default proceedings, discipline recommendation must include a specified period of stayed suspension].)

In support of its request for actual suspension, the State Bar cites *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 and *Conroy v. State Bar* (1991) 53 Cal.3d 495. In *Johnston*, also a default case, the attorney was found culpable in a single client matter of failing to perform competently, failing to communicate with the client, and lying to the client about the status of the case. In addition, the attorney was culpable of failing to cooperate with the State Bar's investigation of the client's complaints. In that case, the Supreme Court adopted the review department's recommended one year's stayed suspension and sixty days' actual suspension. However, the attorney in that case did not have a prior record of discipline as respondent does in the present case. Accordingly, the court agrees that respondent should receive more than sixty days' actual suspension. However, the court does not agree that *Conroy* supports an increase to one year's actual because the misconduct in *Conroy* also involved misrepresentation to the client (an act involving moral turpitude) and because the attorney in *Conroy* had two prior records of discipline.

In sum, the court concludes that the appropriate level of discipline is two years' stayed suspension and six months' actual suspension continuing until respondent makes and the State Bar Court grants a Rules of Procedure of the State Bar, rule 205 motion to terminate actual suspension. The court does not recommend that respondent be ordered to take a professional responsibility examination because she was recently ordered to do so in *Reitz* I and all of the client misconduct found in this proceeding predates that prior order.

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent Patrice A. Reitz, also known as Patrice A. Reitz-Braze, be suspended from the practice of law in the State of California for two years, that execution of the two-year suspension be stayed, and that she be actually suspended from the practice of law for six months and until:

(1) the State Bar Court grants a motion, under rule 205 of the Rules of Procedure of the State Bar, to terminate her actual suspension; and

(2) if she remains actually suspended for two or more years, she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

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

VII. RULE 955 & COSTS

The court further recommends that respondent be ordered to comply with the provisions of California Rules of Court, rule 955 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[11]

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[11]Respondent is required to file a rule 955(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) Moreover, an attorney's failure to comply with

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April ___, 2006.

PAT McELROY
Judge of the State Bar Court

rule 955 almost always results in disbarment unless there are compelling mitigating circumstances. (See, e.g, *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)