

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of) **Case No. 05-O-01465-RAP**
)
CARLETON SAUNER MILLS,) **DECISION**
)
Member No. 84854,)
)
A Member of the State Bar.)

INTRODUCTION

The above-entitled matter was submitted for decision on December 7, 2005, after the State Bar of California, Office of the Chief Trial Counsel (“OCTC”) did not request a hearing in this matter and submitted a brief on the issues of culpability and discipline. After the filing of the Notice of Disciplinary Charges (“NDC”) in this matter, the OCTC was represented in this matter by Deputy Trial Counsel Eric H. Hsu (“DTC Hsu”). Respondent Carleton Sauner Mills (“respondent”) failed to participate in this matter either in-person or through counsel and allowed his default to be entered.

In light of respondent’s culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding respondent’s misconduct, the court recommends, inter alia, that respondent be suspended from the practice of law for one year and until he makes and provides satisfactory proof of specified restitution, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 30 days and until he makes and provides satisfactory proof of specified restitution; and until the State Bar Court grants a motion to terminate respondent’s actual suspension at its conclusion of upon such later date ordered by the court. (Rules Proc. of State Bar, rule 205(a)-(c).)

PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the OCTC's filing of a NDC against respondent on September 27, 2005.¹

A copy of the NDC was properly served upon respondent on September 27, 2005, by certified mail, return receipt requested, addressed to respondent at his official membership records address ("official address") maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a), and to an alternate address of 28392 La Pradera, Laguna Niguel, California 92677 ("alternate address").² The copy of the NDC served upon respondent at his official address was returned by the U.S. Postal Service bearing the return label "FORWARD TIME EXP RTN TO SEND: CARLETON MILLS ATTY 28392 LA PRADERA, LAGUNA NIGUEL, CA 92677-4425."

The copy of the NDC served upon respondent at his alternate address was returned by the U.S. Postal Service bearing the stamp "UNCLAIMED; 2nd Notice 10/7; Return 10/17."

On September 28, 2005, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for November 7, 2005. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on September 28, 2005, addressed to respondent at his official address. The copy of said notice was

¹On September 6, 2005, a 20-day letter was mailed to respondent at respondent's official membership records address. The 20-day letter was returned by the United States Postal Service ("U.S. Postal Service") bearing the return label "FORWARD TIME EXP RTN TO SEND: CARLETON MILLS ATTY 28392 LA PRADERA, LAGUNA NIGUEL, CA 92677-4425."

²Exhibit 1, attached to the OCTC's motion for the entry of respondent's default, is a print out of respondent's address history as of October 31, 2005. However, this exhibit is not competent evidence to establish respondent's official membership records address. It is not a certified copy of respondent's official membership records address history. Furthermore, it does not establish that documents served after October 31, 2005, were properly served upon respondent. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h). These records reflect that as of January 29, 1997, respondent's official address has been, and remains as of the date of this decision, 444 W 10th St #100, Santa Ana, CA 92701-3403.

returned to the State Bar Court by the U.S. Postal Service bearing the return label:

FORWARD TIME EXP RTN TO SEND
: CARLETON MILLS ATTY
28392 LA PRADERA
LAGUNA NIGUEL CA 92677-4425

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), on November 1, 2005, the OCTC filed a motion for the entry of respondent’s default. The motion also contained a request that the court take judicial notice, pursuant to Evidence Code section 452, subdivision (h), of all respondent’s official membership addresses, the declaration of Eric H. Hsu and Exhibits 1 and 2. A copy of said motion was properly served upon respondent on November 1, 2005, by certified mail, return receipt requested, addressed to respondent at his official address.

On October 28, 2005, DTC Hsu attempted to reach respondent by telephone at his official membership records telephone number: (714) 550-9393, but that call was answered by a recorded message, stating that the number has been disconnected or is no longer in service.

On October 28, 2005, DTC Hsu attempted to reach respondent by telephone at another membership records number: (714) 550-0665, which was his facsimile number, but that call was answered by a person who informed DTC Hsu that there was no Carleton Mills at that number.³

On October 28, 2005, DTC Hsu attempted to reach respondent by telephone at another telephone number contained in the case file: (949) 249-8409, but that call was answered by a person who informed DTC Hsu that, “There is no Carleton Mills here.”⁴

On October 28, 2005, DTC Hsu consulted with www.411.com and Yahoo!® People Search for online directory assistance for the area which includes respondent’s official membership records address and sought all telephone and address listings for respondent. Neither of the aforementioned websites provided a listing for respondent. DTC Hsu also

³In DTC Hsu’s declaration attached to the motion for the entry of respondent’s default, respondent’s last name appears as “Milles.” This appears to be merely a typographical error.

⁴DTC Hsu’s review of the case file did not reveal an electronic-mail address for respondent.

consulted with ZABAsearch online, and that search did not yield any new information for respondent.

On October 31, 2005, DTC Hsu checked the 2003 edition of Parker Directory. Parker's provided the following address for Respondent: "444 W. Tenth St, Ste. 100, Santa Ana (92701-3403)." This address is respondent's official membership records address.⁵

On November 7, 2005, the court held a status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel. Thereafter, on November 7, 2005, the court filed a Status Conference Order. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on November 7, 2005, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing the handwritten notation, "Return to Sender – No longer Here" and bearing the return label:

FORWARD TIME EXP RTN TO SEND
: CARLETON MILLS ATTY
28392 LA PRADERA
LAGUNA NIGUEL CA 92677-4425

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on November 17, 2005, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁶ A copy of said order was properly served upon respondent on November 17, 2005, by certified mail, return receipt requested, addressed to respondent at his official address.⁷ The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing the return label:

⁵As of October 31, 2005, the OCTC has not had any contact with respondent since it began attempting to contact respondent in September 2005.

⁶Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order.

⁷Although the envelope bearing the copy of said order did not include the four digit zip code extension which is part of respondent's official address, the Court finds this error de minimus. No due process concerns are raised by this error.

FORWARD TIME EXP RTN TO SEND
: CARLETON MILLS ATTY
28392 LA PRADERA
LAGUNA NIGUEL CA 92677-4425

On December 7, 2005, the OCTC filed a brief on the issues of culpability and discipline.

As the OCTC did not request a hearing in this matter, this matter was submitted for decision on December 7, 2005.⁸

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁹

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 27, 1978, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Facts - Counts One and Two - Case No. 05-O-01465 - The Allen Matter

In or about March 2004, Dee Allen (“Allen”) employed respondent to represent her in a bankruptcy matter. On the date of employment, Allen paid respondent \$500.00. On or about June 9, 2004, Allen paid respondent an additional \$1,000.00.

Respondent failed to perform any legal services in the bankruptcy matter.

Immediately after agreeing to represent Allen, respondent ceased performing work on Allen’s behalf in the bankruptcy matter, effectively abandoning his client. At no time did respondent inform Allen that he was withdrawing from employment.

On or about February 7, 2005, Allen mailed a letter which respondent received. The letter was mailed to 28392 La Pradera, Laguna Niguel, CA 92677, which was the address respondent provided to Allen at the time of respondent’s employment. Allen’s correct return address was on the envelope used to mail the letter to respondent, along with the correct first-class postage. Allen’s letter to respondent was not returned to her by the U.S. Postal Service as

⁸Exhibits 1 and 2 attached to the OCTC’s motion for the entry of respondent’s default are admitted into evidence.

⁹As respondent’s default was entered in this matter, pursuant to rule 200(d)(1)(A) of the Rules of Procedure, the factual allegations contained in the NDC are deemed admitted.

undeliverable, or for any other reason. In the letter, Allen requested that respondent refund the \$1,500.00 to her.

Respondent did not provide any services of value in the bankruptcy matter. Respondent did not earn any of the advance fees paid by Allen. Respondent failed to refund any of the \$1,500.00 paid by Allen.

Conclusions of Law - Counts One & Two - Case No. 05-O-01465 - The Allen Matter - Rules 3-700(A)(2) and 3-700(D)(2) of the Rules of Professional Conduct¹⁰

The OCTC proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including complying with rule 3-700(D). By ceasing to perform work on Allen's behalf, respondent effectively abandoned his client and thus constructively terminated his employment. Respondent was therefore required by take steps to avoid reasonably foreseeable prejudice to his client's rights, including giving due notice to the client and complying with rule 3-700(D), which includes refunding unearned fees. However, respondent failed to inform his client that he was withdrawing from employment and failed to refund her \$1,500.00 in advanced fees. Respondent therefore failed, upon termination of employment, to take steps to avoid reasonably foreseeable prejudice to his client's rights in wilful violation of section 3-700(A)(2).

Although there is clear and convincing evidence that respondent wilfully failed to return unearned fees in wilful violation of rule 3-700(D)(2), the court declines to find respondent culpable of wilfully violating rule 3-700(D)(2), as the court has already found respondent culpable of wilfully violating rule 3-700(A)(2). Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees. The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), however, is more comprehensive than rule 3-700(D)(2). (Cf. *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.)

¹⁰Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of unearned fees and the prompt release of all the client's papers and property at the client's request. Thus, an attorney's failure to return unearned fees may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*) Because the court will rely on respondent's failure to return unearned fees as part of the basis for finding that respondent violated the rule prohibiting prejudicial withdrawal, the court rejects a separate finding of culpability under rule 3-700(D)(2), and count two is dismissed with prejudice.

Facts - Count Three - Case No. 05-O-01465 - Failure to Cooperate in State Bar Investigation

On or about March 24, 2005, the State Bar opened an investigation, Case No. 05-O-01465 pursuant to a complaint filed by Allen ("the Allen matter").

On or about July 27, 2005, State Bar Investigator Chris Doukakis wrote to respondent regarding the Allen matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the U. S. Postal Service in the ordinary course of business. The U. S. Postal Service did not return the investigator's letter as undeliverable for any other reason.

On or about August 4, 2005, State Bar Investigator Chris Doukakis wrote to respondent again regarding the Allen matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the U. S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason.

Both of the letters sent by the investigator requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Allen matter. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator, or participate in the investigation in any way.

Conclusion of Law - Count Three - Case No. 05-O-01465 - Section 6068, Subdivision (i)¹¹

The OCTC proved by clear and convincing evidence that respondent wilfully violated section 6068, subdivision (i). Section 6068, subdivision (i), requires an attorney to cooperate with and participate in a State Bar disciplinary investigation or proceeding. Respondent wilfully violated section 6068, subdivision (i), by failing to respond in writing to the allegations specified in Investigator Doukakis's July 27 and August 4, 2005, letters or otherwise participating or cooperating in the State Bar disciplinary investigation.

MITIGATING/AGGRAVATING CIRCUMSTANCES

As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf. However, pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership records maintained by the State Bar of California which reflect that respondent was admitted to the practice of law in the State of California on December 27, 1978, and has no prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard").) Respondent therefore had been admitted to practice law in this state for over 25 years at the time of his first act of misconduct in this matter.

In aggravation, respondent engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

Respondent's misconduct also harmed Allen, as she has not received a refund of the \$1,500 in attorney fees she paid to respondent. (Standard 1.2(b)(iv).)

Respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of

¹¹Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the Review Department of the State Bar Court 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.)

In this case, the standards provide for the imposition of sanctions ranging from reproof to disbarment. (Standards 2.6 and 2.10.) In addition, standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.” The more severe sanction is found at standard 2.6 which recommends suspension or disbarment for a violation of section 6068, subdivision (i), depending on the harm, if any, to the victim or the gravity of the offense, with due regard to the purposes of imposing discipline.

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

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 OCTC recommends, inter alia, that respondent be actually suspended from the practice of law for 60 days and until he pays specified restitution and complies with rule 205 of

the Rules of Procedure. However, the OCTC's recommendation is premised on a finding of culpability with respect to each of the three violations charged in the NDC, combined with certain aggravating circumstances with no credit in mitigation for respondent's lack of a prior record of discipline. The court therefore does not concur with the OCTC's discipline recommendation.

Respondent has been found culpable in this matter of misconduct involving one client. Respondent has been found culpable of improperly withdrawing from employment and failing to cooperate with a disciplinary investigation. In aggravation, respondent engaged in multiple acts of misconduct; his misconduct harmed his client, and he failed to participate in this disciplinary proceeding prior to the entry of his default. In mitigation, the court finds respondent's lack of a prior record of discipline for over 25 years to be a substantial factor in mitigation.

Nevertheless, of particular concern to this court is respondent's failure to participate in this disciplinary proceeding. Respondent's failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent's misconduct or from learning of any other mitigating circumstances which would justify this court's departure from the discipline recommended by the standards.

Therefore, after considering the nature of respondent's misconduct, the aggravating and mitigating circumstances found by the court, and the OCTC's discipline recommendation, the court finds that it is appropriate to follow the standards and recommend a period of actual suspension, though in an amount less than that recommended by the OCTC, inter alia, as the appropriate disposition in this matter.

RECOMMENDED DISCIPLINE

Accordingly, it is recommended that respondent CARLETON SAUNER MILLS be suspended from the practice of law for a period of one year and until he makes restitution as set forth below and provides satisfactory proof thereof to the State Bar's Office of Probation, that execution of said suspension be stayed, and that he be actually suspended from the practice of law for 30 days and until he makes restitution to Dee Allen in the amount of \$1,500.00 plus 10% interest per

annum from June 9, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Dee Allen, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). Respondent will also remain actually suspended from the practice of law 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. (Rules Proc. of State Bar, rule 205(a)-(c).)

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 his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). (See also, Rules Proc. of State Bar, rule 205(b).)

If respondent remains actually suspended for 90 days or more, it is also recommended that he be ordered to comply with the requirements of rule 955 of the California Rules of Court within 120 calendar days after the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 130 days after the effective date of the order showing his compliance with said order.¹²

It is also recommended that respondent be ordered to comply with any probation conditions reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a condition for terminating respondent's actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the discipline imposed herein or during the period of

¹²Failure to comply with rule 955 of the California Rules of Court ("CRC") could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a CRC 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

his actual suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

COSTS

It is recommended 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: March 6, 2006

RICHARD A. PLATEL
Judge of the State Bar Court