

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

In the Matter of)	Case No. 05-O-02773
)	05-O-04128; 05-O-04198
MARGARET ELLEN MONOS,)	05-O-4424
)	DECISION
Member No. 146871,)	
)	
A Member of the State Bar.)	

I. INTRODUCTION

In this disciplinary matter, Christine Souhrada appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Margaret Ellen Monos 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 five years and until she makes restitution, complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct¹ and with rule 205, Rules of Proc. of State Bar²; that the suspension be stayed; and that she be actually suspended for two years and until she makes restitution and complies with standard 1.4(c)(ii) and rule 205 of the Rules of Procedure.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on June 12, 2006, and was properly served on respondent on that same date at her official membership records address, by certified

¹Future references to standard or std. are to this source.

²Future references to the Rules of Procedure are to this source

mail, return receipt requested, as provided in Business and Professions Code section³ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On June 21, 2006, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on July 24, 2006.⁴

Respondent did not file a responsive pleading to the NDC. On July 13, 2006, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that minimum discipline of disbarment would be sought if she was found culpable. Respondent did not answer the motion.

On July 31, 2006, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. It was returned unclaimed.

The State Bar's and the court's efforts to locate and contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The matter was submitted for decision without hearing after the State Bar filed a brief on August 21, 2006.

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. (§6088; rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and

³Future references to section are to the Business and Professions Code.

⁴This status conference was not held.

convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1990, and has been a member of the State Bar at all times since.

B. Case no. 05-O-02773 (The Pitre Matter)

1. Facts

On October 29, 2004, Marc Pitre paid respondent \$2,000 to represent him regarding the dissolution of his marriage. (*Pitre v. Pitre*, Los Angeles Superior Court case no. SD 022 031.)

In mid-November 2004, the parties agreed to set aside Pitre's default, which had been entered before he retained respondent.

On December 2, 2004, respondent filed a responsive pleading on Pitre's behalf.

On December 6, 2004, respondent sent Pitre a letter, informing him that the next step in the case was to negotiate and prepare a settlement agreement. She stated that she had all of the necessary information from him and she would keep him apprized of all developments.

Respondent did not perform any more work on Pitre's behalf.

In January 2005, Pitre called respondent about five times and left messages inquiring about the status of his dissolution. Late that month, respondent's secretary informed Pitre that respondent was working on his case.

Between January and late March 2005, Pitre called respondent between 10 and 15 times, leaving messages on voicemail and with her secretary in which he asked for billing statements and inquired about the status of his case. Neither respondent nor anyone on her behalf contacted Pitre.

On March 4 and 24, 2005, Pitre sent respondent letters asking for billing statements and the status of his case. The March 24 letter was sent to respondent by facsimile and by United States mail and advised her that, if she did not respond by Pitre's requests by March 30, 2005, he would report her to the State Bar. Although respondent received Pitre's letters, she did not respond.

On March 29, 2005, respondent's secretary confirmed for Pitre that respondent had received the faxed letter and that respondent was working to give him a response by the end of that week.

In April or May 2005, Pitre sent respondent an executed substitution of attorney form indicating that he would represent himself in the action. Respondent signed the form and filed it with the court on May 20, 2005. Pitre completed the dissolution in July 2005.

In approximately May 2005, respondent refunded to Pitre the fees that he had paid her.

2. Conclusions of Law

a. Count 1 - Rule of Professional Conduct⁵ 3-110(A) (Competence)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not performing any services for Pitre after December 2004, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count 2 - Section 6068, subdivision (m) (Communication)

Section 6068, subdivision (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 answering Pitre's letters or calls, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

C. Case no. 05-O-04128 (The Castro Matter)

1. Facts

In June 2005, Caesar Gilbert Castro, a resident of Puerto Vallarta, Mexico, retained respondent to help him regarding child support arrearages he owed. On June 10, 2005, Castro sent to respondent by DHL express mail the signed retainer agreement, \$2,000 in fees and relevant documents. On June 15, 2005, respondent confirmed by email that she received his express mail.

⁵Future references to rule are to this source.

In early July 2005, Castro sent respondent two emails to the email address that was contained in respondent's June 15 email to him. In each of these emails, Castro asked respondent for the status of his case. Respondent did not answer the emails.

In mid- to late July 2005, Castro called respondent's office twice, each time leaving a message either with voicemail or with the secretary asking respondent for the status of his case. Respondent did not return the calls.

On August 5, 8 and 17, 2005, Castro sent respondent email stating that he was upset about her nonresponsiveness. Respondent did not answer the emails. She never communicated with Castro after July 15, 2005.

Respondent did not perform any work of value on Castro's case. She did not earn the fees he paid her.

On September 13, 2005, Castro advised respondent by email that he had reported her to the State Bar and asked that she refund the fees he had paid her. She did not answer the email or refund the fees.

On September 2, 2005, the State Bar opened an investigation regarding allegations of misconduct by respondent in this matter. On September 19 and October 20, 2005, a State Bar investigator sent respondent a letter asking her to answer in writing specific allegations of misconduct regarding Castro's complaint. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was not returned to the State Bar as undeliverable or for any other reason. Although respondent received the letters, she did not answer them or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 3 - Section 6068, subdivision (m) (Communication)

By not answering Castro's emails and calls, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

b. Count 4 - Rule 3-110(A) (Competence)

By not performing any work on Castro's case, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

c. Count 5 - Rule 3-700(D)(2) (Unearned Fees)

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

Respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

d. Count 6 - Section 6068, subdivision (i) (Investigation)

Section 6068, subdivision (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 answering the State Bar's letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Castro case in wilful violation of 6068, subdivision (i).

D. Case no. 05-O-04198 (The Tinkey Matter)

1. Facts

On August 4, 2004, James Tinkey hired respondent to obtain the release of his driver's license and to establish a payment plan for child support arrearages he owed. On that same date, Tinkey's wife, Marci Chase, paid respondent \$2,000 in legal fees. Respondent substituted in the pending case for Tinkey.

On December 8, 2004, respondent sent Tinkey an email asking Tinkey to insert certain information in the declaration regarding the arrearages and return of the driver's license with instructions to return it to respondent to complete. Tinkey returned the declaration with the information by email to respondent on December 13, 2004. Respondent received the email and declaration.

Because Tinkey has limited reading ability, Chase often wrote to respondent for Tinkey. On December 14, 2004, Chase sent respondent an email informing her that there were errors in Tinkey's declaration and giving her the correct information. She also made recommendations for

additional information that Tinkey believed to be relevant.

On January 7 and February 1 and 28, 2005, Chase sent respondent email and a facsimile and called regarding the status of the changes to Tinkey's declaration. Respondent did not answer Chase or Tinkey. She did not amend the declaration. Respondent did not provide any services of value to Tinkey. She did not earn the fees paid to her.

On April 15, 2005, Chase wrote and respondent received a letter on Tinkey's behalf terminating respondent's services and asking for a refund of the legal fees paid to her. Respondent did not answer the letter.

On June 13, 2005, Tinkey sent respondent a letter asking for the return of unearned fees, a statement of all costs incurred and the return of his case file. Respondent did not return any of the fees or the file. She did not provide him with an accounting.

2. Conclusions of Law

a. Count 7 - Rule 3-110(A) (Competence)

By not providing Tinkey with the legal services for which she had been hired, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count 8 - Section 6068, subdivision (m) (Communication)

By not answering Tinkey's emails, calls and facsimile, respondent did not respond promptly to his reasonable status inquiry in wilful violation of section 6068, subdivision (m).

c. Count 9 - Rule 3-700(D)(2) (Unearned Fees)

Respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

d. Count 10 - Rule 3-700(D)(1) (Return Client Papers or Property)

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By not returning Tinkey's case file at his request after her services were terminated, respondent wilfully violated rule 3-700(D)(1).

e. Count 11 - Rule 4-100(B)(3) (Accounting)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing Tinkey with an accounting of the advanced fees, respondent wilfully violated rule 4-100(B)(3).

E. Case no. 05-O-4424 (The Chico Matter)

1. Facts

In July 2004, Andre Chico hired respondent to represent him in a child support case and paid her \$2,000 in legal fees. At respondent's request, Chico sent her his paycheck stubs and bank statements.

Between July 2004 and April 2005, Chico left about 25 messages for respondent with her assistants, leaving his telephone number and asking that she contact him regarding his case. Respondent did not contact Chico after July 2004.

Respondent did not do any work of value on Chico's case. She did not earn any of the advanced legal fees that Chico paid her.

In early 2005, Chico spoke with Justin, respondent's assistant, asking if Chico could go to the office and pick up his file. Justin said that he would make a copy of the file and would call him when it was ready to be picked up. No one called Chico about it and he has never received a copy of his file.

On March 2, 2005, Chico's aunt Terri wrote to respondent on Chico's behalf, terminating her services and asking for an accounting and for the return of the \$2,000 in legal fees. Although respondent received the letter, she did not answer it. She did not refund any part of the \$2,000 or provide an accounting.

On September 26, 2005, the State Bar opened an investigation regarding allegations of

misconduct by respondent in this matter. On October 14 and November 1, 2005, a State Bar investigator sent respondent a letter asking her to answer in writing specific allegations of misconduct regarding Chico's complaint. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was not returned to the State Bar as undeliverable or for any other reason. Although respondent received the letters, she did not answer them or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 12 - Section 6068, subdivision (m) (Communication)

By not returning Chico's calls or otherwise communicating with him, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

b. Count 13 - Rule 3-110(A) (Competence)

By not performing the legal services for which she was hired, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

c. Count 14 - Rule 3-700(D)(1) (Return Client Papers or Property)

By not returning Chico's file at his request after her services were terminated, respondent wilfully violated rule 3-700(D)(1).

d. Count 15 - Rule 3-700(D)(2) (Unearned Fees)

Respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

e. Count 16 - Rule 4-100(B)(3) (Accounting)

By not providing Chico with an accounting of the settlement funds, respondent wilfully violated rule 4-100(B)(3).

f. Count 17 - Section 6068, subdivision (i) (Investigation)

By not answering the State Bar's letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Chico case in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Pitre, Castro, Chico and Tinkey had to make repeated attempts over a period of months to contact respondent about their cases. Moreover, Pitre ended up completing his case himself.

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than approximately 14 years of law practice without discipline. (Std. 1.2(e)(1).)

C. Discussion

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

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. (Std. 1.6(a).)

Standards 2.2(b), 2.4(b), 2.6(a) and 2.10 apply in this matter. The more severe sanction is suggested by standard 2.2(b): at least three months actual suspension regardless of mitigating circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of, essentially, abandoning four clients and not returning unearned fees (three counts) or client files (two counts) or providing accountings (two counts). She also did not participate in the State Bar’s investigation of two of the complaints. Multiple acts of misconduct and client harm are aggravating factors. The court considered respondent’s 14 years of practice without discipline as a mitigating circumstance.

The State Bar recommends five years’ stayed suspension and actual suspension for two years and until respondent makes restitution and complies with standard 1.4(c)(ii) and rule 205 of the Rules of Procedure. The court agrees.

Bledsoe v. State Bar (1991) 52 Cal.3d 1074 is instructive as to the level of discipline. In *Bledsoe*, the attorney, whose default had been entered and who was unable to obtain relief therefrom, was found culpable of misconduct involving four clients. In four matters, the attorney failed to perform services; in two matters he failed to communicate; in two matters he failed to refund legal fees; and in one matter, he withdrew from employment without giving sufficient notice or delivering necessary papers to his client. The attorney was also found culpable of failing to cooperate in a State Bar investigation. The attorney in *Bledsoe* had no prior record of discipline and had practiced law for 17 years. No pattern of misconduct was found. Nevertheless, the attorney’s misconduct resulted in harm to three of his clients. The Supreme Court suspended the attorney for five years, stayed execution of his suspension, and placed him on probation for five years on conditions including a two-year actual suspension and payment of restitution. The dissenting Justices would have disbarred respondent for this misconduct on the basis of respondent’s pattern of abandonment and his knowing election not to participate in the default hearing.

Respondent's misconduct and lack of participation in this matter raises concerns about her ability or willingness to comply with her 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. Having considered the evidence and the law, the court believes that a two-year actual suspension to remain in effect until she makes restitution and complies with standard 1.4(c)(ii) and rule 205, among other things, is adequate to protect the public and proportionate to the misconduct found and the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent MARGARET ELLEN MONOS be suspended from the practice of law for five years and until she makes restitution to Caesar Gilbert Castro in the amount of \$2,000 plus 10% interest per annum from June 15, 2005; and until she makes restitution to James Tinkey in the amount of \$2,000 plus 10% interest per annum from December 13, 2005; and until she makes restitution to Andre Chico in the amount of \$2,000 plus 10% interest per annum from July 15, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Castro, Tinkey and Chico, 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); and until she provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; 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 (rule 205(a), (c), Rules Proc. of State Bar); that said suspension be stayed; and that she be actually suspended from the practice of law for two years and until she complies with standard 1.4(c)(ii) and rule 205 of the Rules of Procedure and completes restitution as set forth above;

It is also recommended that she 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.

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 file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing her compliance with said 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 during the period of her actual suspension and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

VI. 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: November 20, 2006

RICHARD A. PLATEL
Judge of the State Bar Court

⁶Failure 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 a rule 955(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)