

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

In the Matter of	)	Case No. 05-O-03046-RAP
	)	
NANCY W. REID,	)	DECISION
	)	
Member No. 131796,	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Nancy W. Reid** is charged with four acts of misconduct in a single client matter. The misconduct alleged includes: (1) improper withdrawal from employment; (2) failure to communicate; (3) failure to cooperate with the State Bar; and (4) failure to maintain a current address with the State Bar. For the reasons set forth below, the court finds respondent culpable by clear and convincing evidence of three of the charged acts of misconduct.

The court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for 30 days and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**II. Pertinent Procedural History**

On April 12, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a four-count Notice of Disciplinary Charges (NDC) at her official membership records address (official address) under Business and Professions Code

section 6002.1.<sup>1</sup> The NDC was returned by the United States Postal Service (USPS), bearing the stamp, “Moved, Left No Address/Unable to Forward.”

Respondent did not file a response to the NDC. (Rules Proc of State Bar, rule 103.)

On May 17, 2006, the State Bar telephoned respondent at her official membership records telephone number. However, the number was disconnected and no new number was available.

On May 19, 2006, the State Bar called directory assistance for the area which includes respondent’s official address and asked for all telephone listings for respondent. Directory assistance had no listing for respondent. On May 19, the State Bar also checked Parker’s Directory; but, it did not list any address of which the State Bar was not already aware.

On the State Bar’s motion, respondent’s default was entered on June 7, 2006, and respondent was enrolled as an inactive member on June 10, 2006, under section 6007, subdivision (e). An order of entry of default was sent to respondent’s official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on June 27, 2006, following the filing of the State Bar’s brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent’s default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 14, 1987, and has since been a member of the State Bar of California.

#### **B. The Schmidt Matter**

On September 15, 2004, David J. and Catherine K. Schmidt (the Schmidts) paid respondent \$360.00 for an initial consultation to aid them in an uncontested marital dissolution matter. On

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<sup>1</sup>References to section are to the California Business and Professions Code, unless otherwise noted.

October 10, 2004, the Schmidts paid respondent another \$850.00 to assist them to file and finalize the dissolution matter.

From November 1 through November 10, 2004, the Schmidts left numerous voice mail messages with respondent's office asking for information regarding the status of the dissolution matter. On November 15, 2004, respondent telephoned the Schmidts and discussed the status of their case.

On November 17 and November 20, 2004, respondent wrote letters to the Schmidts regarding the dissolution matter. The correspondence included enclosures for the Schmidts to sign in order for respondent to file the dissolution matter in pro. per.

On December 1, 2004, the Schmidts signed and returned the documents that respondent had requested for the filing of the dissolution matter.

On December 3, 2004, respondent wrote a letter to the Schmidts informing them that she had received their signed court papers, and the dissolution matter was filed as of December 3, 2004.

Between December 3 and December 15, 2004, the Schmidts attempted to communicate with respondent by telephone and e-mail. However, respondent did not respond to the Schmidts' communications; nor did she assist the Schmidts in the dissolution matter after December 3, 2004. In fact, subsequent to December 3, 2004, respondent relocated to Louisiana without informing the Schmidts, without attempting to associate new counsel in the matter, without completing the services for which she had been retained by the Schmidts, and without advising the Schmidts that they needed to obtain new counsel or other legal assistance to finalize the dissolution matter.

In February 2005, the Schmidts paid a paralegal \$500.00 to assist them in completing the dissolution matter.

In June 2005, the State Bar opened case number 05-O-03046, pursuant to a complaint made by the Schmidts against respondent regarding their dissolution matter.

On July 27, 2005, the State Bar sent a letter to respondent, inquiring about the Schmidt complaint. The letter, which requested that respondent provide the State Bar with specified documents and a response by August 10, 2005, warned that respondent's failure to reply and provide the requested documents would be considered by State Bar as a failure to cooperate with its

investigation of the allegations set forth by the Schmidts regarding their dissolution matter. Although respondent received the July 27, 2005 letter from the State Bar, she did not respond to it.

In August 2005, respondent stopped receiving mail at her official address, and did not notify the State Bar in writing at that time (or at any time), of a new address to which her official correspondence could be sent.

Thus, when the State Bar sent a letter to respondent on August 12, 2005, at her official address, it was returned with the notation, “Return To Sender, Not At This Address.” The August 12 letter requested that respondent provide a written explanation to the State Bar by August 22, 2005, regarding the allegations set forth by the Schmidts in their complaint.

After obtaining an address for respondent in Louisiana, the State Bar sent another letter to her at that Louisiana address on November 9, 2005. Like its earlier letters to respondent, the State Bar’s November letter requested that respondent provide a written explanation regarding the allegations made by the Schmidts in their complaint. The letter also stated that a written response was required by November 23, 2005.

Despite the fact that the November 9, 2005 letter from the State Bar was received by respondent, she failed to respond to it, and failed to otherwise cooperate or participate in the State Bar’s investigation.

On March 16, 2006, the State Bar sent respondent a letter at her official membership records address asking her to attend a meeting with the State Bar, so that the matter could be resolved prior to the filing of a notice of disciplinary charges by the State Bar. The March 16, 2006 letter was returned to the State Bar with the stamped notation, “RETURN TO SENDER ATTEMPTED NOT KNOWN UNABLE TO FORWARD.”

***Count 1: Improper Withdrawal from Employment (Rule 3-700(A)(2))<sup>2</sup>***

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2). Rule 300-700(A) states: “A member shall not withdraw from employment until the

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<sup>2</sup>Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.”

By taking no action after December 3, 2004, to complete the services for which she had been retained by the Schmidts and by relocating to Louisiana without notice, respondent effectively withdrew from representation of the Schmidts and did not inform them that she was withdrawing from employment. Respondent did not attempt to associate new counsel in the matter before relocating to Louisiana, although she had not finalized the dissolution matter for the Schmidts. Nor did respondent advise the Schmidts that they needed to obtain new counsel or other legal assistance to finalize the dissolution matter. As a result, in February 2005, the Schmidts were forced to pay \$500 to a paralegal to assist them in completing the dissolution matter. Thus, respondent wilfully failed to take steps to avoid reasonably foreseeable prejudice to her clients, in wilful violation of rule 3-700(A)(2).

***Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients in matters with regard to which the attorney has agreed to provide legal services.

On October 10, 2004, the Schmidts retained respondent to assist them to file and finalize their dissolution matter. A few weeks later, in response to messages left by the Schmidts between November 1 and November 10, 2004, respondent telephoned them on November 15, 2004, regarding the dissolution matter and discussed the status of the case. Thereafter, on November 17 and November 20, 2004, respondent wrote to the Schmidts regarding their case and requested that they sign certain documents.

In response, on December 1, 2004, the Schmidts signed and returned the documents. On December 3, 2004, respondent again wrote to her clients to inform them that the dissolution matter had been filed as of that date.

The NDC alleged that the Schmidts attempted to communicate with respondent by telephone and e-mail between December 3 and December 15, 2004, but that respondent did not reply to those

communications. However, the NDC did not allege what the subject of the Schmidts' December 2004 communications were or why the Schmidts had attempted to contact respondent after she had so recently given them several status updates.

Given that respondent had updated her clients on November 15, 17, and 20, 2004, and particularly because she had just given the clients a status update on December 3, 2004, only 12 days prior to the Schmidts' last communication, and given the paucity of facts alleged in the NDC regarding the content of the Schmidts' December 2004 communications, there is no clear and convincing evidence to find a violation of section 6068, subdivision (m). Accordingly, this count is dismissed with prejudice.

***Count 3: Failure to Cooperate with the State Bar (Bus. & Prof. Code §6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By failing to respond to the State Bar's July, August, and November 2005 letters or otherwise participate in the investigation of the Schmidt matter, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068, subdivision (i).

***Count 4: Failure to Update Membership Address (Bus. & Prof. Code, §6068, Subd. (j))***

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes.

By clear and convincing evidence, respondent wilfully violated section 6068, subdivision (j), when she discontinued receipt of her mail at her official membership records address in August 2005, and did not provide the State Bar with an alternative address to be used for State Bar purposes. As a result, the August 12, 2005 and March 16, 2006 letters sent by the State Bar to respondent's official address were returned as undeliverable.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.

for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).<sup>3</sup> However, at the time of her misconduct in 2004, respondent had no prior disciplinary record in 17 years of practice, which is a significant mitigating factor. “Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time.” *In re Young* (1989) 49 Cal.3d 257, 269.)

## **B. Aggravation**

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

Respondent committed multiple acts of wrongdoing. (Std. 1.2 (b)(ii).) She improperly withdrew from employment, failed to cooperate with the State Bar, and failed to update her membership address.

The State Bar contends in its brief on culpability that respondent displayed a lack of candor and cooperation to the victims of her misconduct when she failed to complete the services for which she was hired and relocated to another state without informing her clients. (Std. 1.2(b)(v).) But, the acts of misconduct on which the State Bar relies are the same acts which serve as the basis for finding respondent culpable of the substantive violation of improperly withdrawing from employment with which she was charged pursuant to rule 3-700(A)(2), and thus do not constitute an additional factor that aggravates respondent’s misconduct. (See, *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497.)

Respondent’s failure to participate in this disciplinary matter before the entry of her default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## **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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent’s misconduct involved one client matter. The standards provide a broad range

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<sup>3</sup>All further references to standards are to this source.

of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.4(b), 2.6 and 2.10.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

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 State Bar urges one year stayed suspension and 90 days actual suspension. In support of its recommended discipline, the State Bar cited several cases, including *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, *Wren v. State Bar* (1983) 34 Cal.3d 81, and *Layton v. State Bar* (1990) 50 Cal.3d 889.

The court finds that the misconduct of the attorneys in *Aulakh* and *Wren* is more serious than that of respondent. However, all of the attorneys, involved in the three cases cited by the State Bar, participated in their disciplinary proceedings, whereas respondent has not participated in these proceedings.

In *Aulakh*, the attorney was given a one-year stayed suspension and three-year probation, including a 45 day actual suspension and restitution, for his misconduct in a single client matter, where he failed to perform legal services competently, improperly withdrew from employment while his client was incarcerated, failed to refund unearned fees and failed to render an accounting to the client. In mitigation, he had 20 years of discipline-free practice preceding his misconduct. In aggravation, he significantly harmed his client by leaving him stranded in jail for 10 days and was very uncooperative during the disciplinary proceeding. Unlike *Aulakh*, respondent’s client was not incarcerated, and no trust accounting violation was involved.

In *Wren*, the attorney, who had been in practice for 22 years with no prior record of discipline, was given a two-year stayed suspension and a two-year probation, including a 45 day actual suspension. The court found that respondent failed to communicate with his client, knowingly misrepresented the status of the case to his client, wilfully failed and refused to perform all of the services for which he had been retained, and wilfully failed to use reasonable diligence in



prosecuting his client's claim. (Over a twenty-two month period, the attorney failed to file suit on behalf of his client.)

In *Layton*, the Supreme Court imposed 30 days actual suspension for a respondent, who was acting as attorney for a trust and estate for which he was also the executor, and who failed through neglect and inattention to fulfill important and material requirements of his office as executor for over five years, which ultimately resulted in his removal from office by the probate court. Aggravating factors included significant harm to the estate and a beneficiary and indifference toward rectification. In mitigation, the court considered the attorney's 30 years blemish-free practice, the lack of personal gain from the misconduct, and the emotional and physical strain of caring for his terminally-ill mother.

The court also finds instructive an analogous case, *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476. There, the attorney who had no prior in 13 years of practice defaulted and was suspended for one year, stayed, placed on probation for one year, with 30 days actual suspension, for abandoning one client and failing to cooperate with the State Bar. In aggravation, the attorney's misconduct caused harm to his client, the administrator of a decedent's estate, and to the estate's beneficiary. As a result of his actions, Lilley's client was forced to hire another attorney to complete the probate and a third party incurred additional financial burden. Similarly, respondent abandoned one client matter, respondent's clients were forced to hire a paralegal to assist them in finalizing the dissolution matter, respondent failed to cooperate with the State Bar, and respondent did not participate in this proceeding.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against her nor her duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Her failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or any mitigating circumstances surrounding her misconduct.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) However, the State Bar's recommendation of 90 days of actual suspension is excessive. In view of

respondent's misconduct, the case law, the aggravating evidence, and the compelling mitigating factor that she had no prior record of discipline in her 17 years of practice, the court concludes that placing respondent on an actual suspension for 30 days would be appropriate to protect the public and to preserve public confidence in the profession.

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent **Nancy W. Reid** be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for 30 days and until she files and the State Bar Court grants a motion to terminate her actual suspension. (Rules Proc. of State Bar, rule 205).

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

It is also recommended that if respondent is actually suspended for two years or more, she will remain actually suspended until she has shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order or during the period of her actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn.8.)

If respondent remains actually suspended for 90 days or more, it is further recommended that respondent be ordered to comply with California Rules of Court 955, and perform the acts specified in subdivisions (a) and (c) of that rule, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of

contempt, or criminal conviction.<sup>4</sup>

## **VII. Costs**

It is further 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: September 18, 2006

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RICHARD A. PLATEL  
Judge of the State Bar Court

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<sup>4</sup>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.)