

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 05-O-04590-LMA
CHESTERFIELD ADAMS SPAHR)	DECISION
Member No. 190173,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent Chesterfield Adams Spahr is charged with six counts of professional misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of four of the six counts of misconduct as more fully set forth below.

In view of respondent's misconduct in this matter, considered in conjunction with the mitigating and aggravating circumstances and the goals of attorney discipline, the court recommends a two-year stayed suspension and a 90-day actual suspension.

II. Pertinent Procedural History

On March 28, 2006, and April 20, 2007, a 20-day letter was mailed to respondent at his official membership records address (official address)¹ and was not returned to the State Bar Court by the United States Postal Service (USPS).² On October 3, 2007, the State Bar of

¹Respondent maintained his official membership records address with the State Bar pursuant to Business and Professions Code section 6002.1. All further statutory references are to the Business and Professions Code unless otherwise indicated.

²Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of all respondent's official membership records addresses to the date of the filing of this decision. The court notes that Deputy Trial Counsel Manuel Jimenez (DTC Jimenez) "checked the respondent's address and telephone number as noted in the case file and confirmed its accuracy against the official membership records address for the respondent on the AS/400 computer

California, Office of the Chief Trial Counsel (State Bar) filed and served a Notice of Disciplinary Charges (NDC) against respondent with the State Bar Court. A copy was served on respondent at his official address by certified mail, return receipt requested, and was not returned by the USPS. On this date, the matter was assigned to DTC Jimenez for prosecution.

On October 15, 2007, the State Bar Court filed and served a Notice of Assignment and Notice of Initial Status Conference,³ setting an initial conference for November 19, 2007, before the Honorable Pat McElroy.⁴ However, in an order filed on November 28, 2007, Judge McElroy recused herself, and on November 29, 2007, the matter was reassigned to this court.

On December 4, 2007, the court filed and served a notice of a status conference in this matter to take place on January 7, 2008.

On December 18, 2007, respondent left a voice mail for Deputy Trial Counsel Robin Brune (DTC Brune), requesting an extension of time to answer the NDC. DTC Brune forwarded the voice mail to DTC Jimenez, and on the same day, DTC Jimenez left a voice mail for respondent at his cellular telephone number, asking how long respondent needed to file his answer. Respondent left a voice mail for DTC Jimenez on December 26, 2007, stating that he was trying to get a response out the following day and wanted an extension until December 26 or 27, 2007. However, as of January 15, 2008, respondent had not provided the State Bar with a response to the NDC.

Respondent failed to appear at the status conference on January 7, 2008, either in person

records maintained by the State Bar.”

³This notice and all other documents sent to respondent by the court, except for the order entering respondent’s default, were sent to respondent at his official address by first-class mail, postage fully prepaid. The order entering default was sent to respondent at his official address by certified mail, return receipt requested. None of the documents sent to respondent by the court were returned by the USPS.

⁴The notice actually states that the conference is to take place on November 19, 2006, but it was signed, filed, and served on October 15, 2007. The court considers the typographical error in the date to be immaterial to any issue in this case. The record does not reflect what, if anything took place at the status conference on November 19, 2007.

or through counsel. The court filed and served a Status Conference Order on January 9, 2008.

On January 15, 2008, the State Bar filed and served a motion for the entry of respondent's default. A copy was served on respondent at his official address by certified mail, return receipt requested. The record does not reflect whether this document was returned to the State Bar.

On January 31, 2008, the court filed and served an Order for Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁵ On February 7, 2008, the court received a return receipt from the same copy of the order served on respondent which contained a signature that does not appear to be that of respondent, and the return receipt does not indicate that it was signed by an agent of respondent's. However, the return receipt shows that the document was delivered on February 5, 2008.

On February 20, 2008, the State Bar filed and served a brief on culpability and discipline and requested a waiver of a default hearing. This document was served on respondent at his official address, but the record does not reflect whether this document was returned to the State Bar by the USPS.

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).) The court admits into evidence exhibits one through four attached to the NDC, as respondent has admitted, through his default, that these exhibits are true and correct copies of the court orders and judgment in the underlying civil case described below.

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 26, 1997, and has been a member of the State Bar of California at all times since that date.

B. Facts: Counts One Through Five

In 2004, respondent represented Jeffrey Patrick Irvin, the defendant in a civil matter

⁵The court's order that respondent be involuntarily enrolled as an inactive member under section 6007, subdivision (e), was effective three days after service of the court's order.

entitled *Ellery v. Irvin*, case no 415384, filed in the San Francisco Superior Court.

On January 14, 2004, the superior court filed an Order After Hearing requiring respondent and his client to pay plaintiff Charles Ellery and plaintiff's counsel, Jesse Ralph, \$1,760 in attorneys fees; \$249.14 in costs; and \$250 in compensation for violation of California Rules of Court, rules 212, 222, and 227; San Francisco Superior Court Local Rule 4.3; and San Francisco Superior Court Early Settlement Program, Policies and Procedures, 4, 10-12, for a total award of \$2259.14.⁶ Respondent and his client were ordered to pay no later than January 30, 2004. On January 18, 2004, Ralph served a copy of this order on respondent at his official address by first-class mail, postage prepaid.⁷ Respondent received this order and was aware of its contents. However, respondent failed to pay the sanctions on or before January 30, 2004.

On January 29, 2004, the court issued a judgment against defendant Irvin after Irvin failed to appear for trial. The judgment recites that respondent's law firm, Gasner, Spahr & Larson, "was permitted to withdraw from Defendant's representation in [this] action."⁸ The court also specifically included in the judgment the award of \$2,259.14 from the court's order filed on January 14, 2004, against respondent and respondent's law firm and in favor of Ralph and plaintiff Ellery. On February 3, 2004, Ralph served a copy of the judgment on respondent at his

⁶The order filed January 14, 2004, specifies that the sanctions were imposed for the failure without good cause to: (1) timely pay a nonrefundable administration fee for the Early Settlement Program; (2) submit a written offer to opposing counsel; (3) submit a settlement conference statement; and (4) attend the settlement conference.

⁷Respondent's address as of November 11, 2003, was 345 Franklin Street, San Francisco, California, 94102. On or about March 23, 2004, he added "Law Chambers Building" to this address. Although Ralph served the order on respondent at the Law Chambers Building, which was not part of respondent's official address at the time, the court notes that the street address remained the same.

⁸While the judgment does not specify the date that respondent's law firm was permitted to withdraw, the judgment recites the fact prior to reciting facts regarding the trial and judgment, indicating that the withdrawal occurred before trial. In addition, the judgment specifies that defendant Irvin did not appear for trial but mentions nothing about whether or not counsel appeared, further supporting this court's conclusion that respondent's law firm did not represent Irvin at the time of trial in the underlying matter.

official address by first-class mail, postage prepaid. Respondent received the judgment and was aware of its contents.

On May 28, 2004, respondent paid a portion of the judgment award, the principal amount of \$2,259.14, but did not pay any interest.⁹

On December 7, 2004, the superior court filed a postjudgment Order After Hearing. The order states that a plaintiff Ellery had filed a postjudgment motion against respondent's law firm as judgment debtor requesting an order compelling certain responses to postjudgment discovery and an order imposing reasonable expenses, including attorney fees, as monetary sanctions. The order states that the postjudgment hearing was originally set for November 4, 2004, and that despite the failure of respondent's law firm to file an opposition to plaintiff Ellery's motion, the law firm requested oral argument. The superior court then continued the motion for further hearing on November 22, 2004, and ordered respondent's law firm to file and serve an opposition to plaintiff Ellery's motion no later than November 10, 2004. Respondent's law firm failed to file and serve an opposition and did not request oral argument on the continued hearing date. No opposition having been filed, the superior court ordered respondent (by way of his law firm, Gasner & Spahr, LLP) to pay to plaintiff Ellery, within 14 days of notice of the order, \$986.30 for discovery violations. The superior court also ordered respondent's law firm to provide complete, objectionless responses to plaintiff Ellery's postjudgment discovery within 14 days of notice of the order. On December 10, 2004, Ralph served a copy of this order on respondent at his official address by first-class mail, postage prepaid. Respondent received the order and was aware of its contents. However, respondent did not pay the \$986.30 within 14 days of notice of the order. Respondent should have paid the sanctions by December 29, 2004.

On January 20, 2005, Ralph had respondent personally served with an Order to Show

⁹The NDC also alleges that respondent did not pay any of the costs awarded. However, the principal amount which respondent did pay included the costs awarded in the order filed on January 14, 2004, in the amount of \$249.14. According to the plain language of the judgment, the costs awarded in the judgment were awarded against the defendant, i.e., Irvin. Nothing in the judgment indicates that costs were awarded against respondent or his law firm.

Cause In Re: Contempt (OSC) against respondent with a hearing on the OSC set for February 17, 2005. Respondent failed to appear at the hearing on the OSC.

At the hearing, the commissioner presiding found beyond a reasonable doubt that, among other things, respondent (1) filed no opposition to the OSC; (2) failed to appear at the OSC as ordered by the court; and (3) disobeyed the order filed on December 7, 2004, directing respondent (a) to provide complete, objectionless responses to plaintiff Ellery's postjudgment discovery and (b) to pay sanctions to Ralph in the amount of \$986.30. The court also found that plaintiff Ellery incurred reasonable attorney fees and costs in connection with the OSC in the amount of \$1,286.30.

In an order filed April 19, 2005, the superior court found respondent in contempt of the court's order that respondent pay \$986.30 in monetary sanctions. The court ordered respondent to pay \$1,286.30 in costs and attorneys fees to Ralph in connection with the OSC, to be paid within 14 calendar days following notice of the order. On April 28, 2005, Ralph served a copy of this order on respondent at his official address by first-class mail, postage prepaid. Respondent received the order and was aware of its contents. However, respondent did not pay the \$1,286.30 within 14 days after notice of the order. Respondent should have paid the sanctions by May 17, 2005.

As part of the April 19, 2005, order, the court ordered a body attachment warrant issued against respondent to show cause why he should not be punished for contempt in disobeying the court's mandate. On May 6, 2005, the warrant expired, and on March 17, 2006, the court issued a second bench warrant against respondent.

On March 20, 2006, respondent paid Ralph the sum of \$10,500 in settlement of the sanctions orders and judgment.

Count One: Section 6103

Section 6103 provides in relevant part that an attorney must not willfully disobey or violate a court order "requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear." The State Bar has proved by clear and

convincing evidence that respondent violated this section by failing to obey the superior court's orders that he: pay sanctions of \$2259.14 by January 30, 2004; pay sanctions of \$986.30 within 14 days of notice of the order to pay these sanctions; and pay sanctions of \$1,286.30 within 14 days after notice of the order to pay these sanctions.

Count Two: Section 6068, Subdivision (b)

Section 6068, subdivision (b) provides that an attorney must maintain the respect due to the courts of justice and judicial officers. In Count Two, the State Bar alleged that respondent violated section 6068, subdivision (b) by committing all the violations set forth as the basis for sanctions in the superior court's order filed January 14, 2004, including failing to (1) pay a nonrefundable administration fee for the Early Settlement Program; (2) submit a written offer to opposing counsel; (3) submit a settlement conference statement; and (4) attend the settlement conference. The superior court's order filed on January 14, 2004, explains that these violations resulted from the failure to comply with certain San Francisco Superior Court Local Rules, other local policies and procedures, and certain California Rules of Court, not from any violation of a court order. Absent evidence that respondent was aware of the requirements set forth in these rules and procedures, the court concludes that there is no clear and convincing evidence to support a conclusion that respondent violated section 6068, subdivision (b). Otherwise, an attorney could be deemed to violate that section based on a merely negligent lack of awareness of a local rule. Under these circumstances, the court dismisses Count Two with prejudice.

Count Three: Section 6068, Subdivision (b)

In Count Three, the State Bar alleged that respondent failed to maintain the respect due the courts of justice and judicial officers by failing to appear for trial in the underlying civil case on January 26, 2004, as indicated in the judgment dated January 29, 2004. However, as set forth in the recital of facts above, that judgment recites that defendant Irvin's former counsel (respondent's law firm) was permitted to withdraw from defendant's representation. The judgment also recites that defendant Irvin failed to appear for trial in violation of the court's order; however, the judgment does not indicate that respondent was ordered to appear or failed to

appear for trial. The court therefore concludes that the State Bar failed to prove by clear and convincing evidence that respondent violated section 6068, subdivision (b) as charged in this count, and Count Three is dismissed with prejudice.

Count Four: Section 6068, Subdivision (b)

In Count Four, the State Bar alleged that respondent failed to maintain the respect due the courts of justice and judicial officers by failing to file and serve an opposition or request oral argument at the continued hearing date for plaintiff Ellery’s postjudgment motion to compel discovery responses and for sanctions.¹⁰ “Respect due the courts as required by section 6068 [subdivision] (b) includes compliance with court orders absent a good faith belief in a legal right not to comply. [Citation.]” (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221.) In contrast to the charge that respondent violated section 6068, subdivision (b) by failing to comply with certain court rules, in this instance the facts establish that respondent received service of the court orders and was aware of the contents of these orders. The court concludes that the State Bar has proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (b) by failing to file and serve an opposition to plaintiff Ellery’s postjudgment motion as respondent was ordered to do.

Count Five: Section 6068, Subdivision (b)

In Count Five, the State Bar alleged that respondent failed to maintain the respect due the courts of justice and judicial officers by failing to appear at the hearing on the OSC. The NDC and the superior court order filed on April 19, 2005, establish that respondent was personally served with the OSC, that respondent was ordered to appear at the hearing on the OSC, and that respondent failed to appear. The court therefore concludes that the State Bar proved by clear and

¹⁰As to the allegation that respondent failed to request oral argument at the continued hearing date, nothing in the court order filed on December 7, 2004, establishes that respondent or his law firm were ordered to request oral argument at the continued hearing, and the order does not clearly state whether or not respondent or his law firm appeared at the continued hearing. The court therefore concludes that there is no clear and convincing evidence of a violation based on the failure to request oral argument.

convincing evidence that respondent willfully violated section 6068, subdivision (b).

C. Facts: Count Six

On November 30, 2005; December 14, 2005; and January 31, 2006, State Bar Investigator Willis Shalita wrote to respondent at his official address¹¹ regarding the complaint in this matter. Shalita sent the letters via United States mail, postage prepaid. Respondent received the letters, but he failed to respond to them or otherwise respond to the State Bar investigation.

On June 15, 2006, respondent was scheduled to meet with Shalita regarding this matter. Respondent failed to appear. On June 20, 2005, Shalita spoke to respondent regarding his failure to appear for the meeting. Respondent indicated that he thought the meeting was scheduled for June 22, 2006. Respondent stated that he would shortly send documents to Shalita via facsimile regarding the complaint. Thereafter, respondent failed to do so.

Count Six: Section 6068, Subdivision (i)

The State Bar proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (i). That section provides that it is an attorney's duty to cooperate and participate in a State Bar disciplinary investigation or proceeding. By failing to respond to Shalita's letters of November 30, 2005, December 14, 2005, and January 31, 2006; by failing to meet with Shalita on June 15, 2006 as scheduled; and by failing to send documents to Shalita regarding the complaint as he said he would do, respondent willfully violated section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Because respondent's default was entered, no evidence in mitigation was offered in this

¹¹The court concludes that the reference on page seven of the NDC to "the Chambers address" is to the "Law Chambers address" as defined on page three of the NDC. Although respondent's official address is misstated on page three, paragraph five of the NDC, in that the zip code is incorrectly listed as 94192 instead of 94102, the address is correctly stated, with the correct zip code, on page three, footnote one of the NDC. The court concludes that the incorrect listing in paragraph five is merely a typographical error that does not affect the proper service of documents in this matter.

proceeding. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)¹² The court takes judicial notice that respondent had no prior discipline in approximately six years of practice prior to the commencement of misconduct in the instant case. However, this lack of a prior record is entitled to minimal weight in mitigation because it was a relatively short period of time. (*In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 541, 544.)

B. Aggravation

The facts in this matter establish that respondent engaged in multiple acts of misconduct, a factor in aggravation. (Std. 1.2(b)(ii).

The court agrees with the State Bar that respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Std. 1.2(b)(vi).) The State Bar urges the court to find as additional aggravation that respondent's failure to participate in the proceeding prior to the entry of default demonstrates that he does not appreciate (1) the seriousness of these charges or his prior misconduct or (2) the importance of his participation in this proceeding. However, the failure to participate is the same act used to find aggravation for failure to cooperate with the State Bar during disciplinary proceedings, the court declines to give it additional weight in aggravation under standard 1.2(b)(v). (See *In the Matter of Hunter, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 76-77.) Similarly, the court finds no indifference or harm that exists in this matter besides the indifference and harm inherent in the acts which the court has already relied upon as the basis for culpability and other aggravation.

V. Discussion

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

¹²All further references to standards are to this source.

1.3.) 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.) While the standards are not binding, they are entitled to significant weight. (*In re Silvertan* (2005) 36 Cal.4th 81, 92.)

In this case, the standards provide for discipline ranging from suspension to disbarment depending on the gravity of the offense or the harm, if any, to the victim. (Std. 2.6(a) & (b).) Standard 1.6, subdivision (b), adds 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 State Bar recommends a two-year stayed suspension and a 90-day actual suspension, along with compliance with California Rules of Court, rule 9.20.

Respondent has been found culpable in this matter of failing to obey a court order, failing to maintain the respect due to courts and judicial officers in two instances, and failing to cooperate in a State Bar disciplinary investigation. The court is guided by *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508 (*Conroy*), a case involving an attorney's failure to comply with a disciplinary order.

Conroy received a one-year stayed suspension, a one-year probation, and a 60-day actual suspension based upon his failure to timely take and pass the Professional Responsibility Examination (PRE) as he had been ordered to do as a condition of a private reproof. In aggravation, Conroy had one prior record of discipline, the underlying private reproof imposed after, in three separate matters, Conroy: failed to communicate; failed to relinquish his clients' file to a new attorney; failed to file a timely inventory of estate property or an accounting prior to the disposition of funds while acting as an executor; abandoned a client resulting in the issuance of an arrest warrant; and subsequently failed to assist in having the arrest warrant withdrawn. Also in aggravation, Conroy failed to appreciate the seriousness of the charge; showed that he failed to comprehend the importance of participating in disciplinary proceedings by failing to appear at trial; and failed to comprehend the gravity of his earlier misdeeds, showing a lack of

remorse. The court gave some weight in mitigation to Conroy's belated passage of the PRE but concluded that "this single extenuating factor [was] substantially outweighed by numerous aggravating circumstances." (*Conroy, supra*, 51 Cal.3d at p. 805.)

The court concludes that the misconduct in the present case is more serious than that in *Conroy* due to respondent's numerous failures to comply with court orders and to maintain the respect due to courts and judicial officers. "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Also of great concern to this court is respondent's failure to participate in this disciplinary proceeding, especially given respondent's actual notice of the charges, as evidenced by his calling the State Bar and asking for additional time to file a response to the NDC. Failing to appear and participate shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy, supra*, 51 Cal.3d at p. 805.) 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 mitigating circumstances that might justify a departure from the discipline recommended by the standards. Although Conroy had a prior record of discipline while respondent does not, respondent is entitled to very minimal mitigation for his to his lack of a prior record. Under all of the circumstances, the court concludes that the instant case warrants a 90-day period of actual suspension as recommended by the State Bar.

VI. Recommended Discipline

The court hereby recommends that respondent Chesterfield Adams Spahr be suspended from the practice of law for two years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.) The court also recommends that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed on him by the State Bar Court as a condition for

terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

The court further recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order.¹³

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, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. (See also Rules Proc. of State Bar, rule 205(b).)

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

VII. Costs

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 section 6140.7 and as a money judgment.

Dated: May ___, 2008

LUCY ARMENDARIZ

Judge of the State Bar Court

¹³Failure to comply with rule 9.20 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 California Rules of Court, rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)