

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 06-O-15058-PEM; 07-O-10897
PATRICK J. WOOD,)	DECISION
Member No. 191403,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this consolidated default disciplinary matter, respondent **Patrick J. Wood** is charged with multiple acts of professional misconduct in one client matter and trust fund violations in a separate matter, including (1) failure to communicate,(2) improper withdrawal from employment, (3) failure to return unearned fees, (4) failure to maintain an official address with the State Bar, (5) failure to maintain client funds in a trust account, and (6) commingling of personal and client funds in a client trust account.

The court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for one year and until he makes restitution 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

A. First Notice of Disciplinary Charges (Case No. 06-O-15058)

On February 28, 2007, 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 his official membership records address. The NDC was not returned as undeliverable or

for any other reason.

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

On April 3, 2007, the deputy trial counsel (DTC) assigned to this matter checked to determine whether respondent's official membership records address had changed since the NDC was served. No change of address was indicated. On that same date the DTC telephoned the current telephone number listed for respondent with the Membership Records Department. However, after the phone rang once, only a high pitched beeping noise was heard. The DTC called directory assistance in an attempt to find a telephone listing for respondent in San Francisco, California. Directory assistance stated that the customer requested that his information not be provided. The DTC also searched the January 2007 *California Directory of Attorneys*, published by the Daily Journal, as well as the 2007 *Parker Directory of California Attorneys* for a listing for respondent, but none was found.

On the State Bar's motion, respondent's default was entered on April 23, 2007, and respondent was enrolled as an inactive member on April 26, 2007, under Business and Professions Code section 6007, subdivision (e).¹ An order of entry of default was sent to respondent's official address by certified mail, but was returned to the court by the United States Postal Service (USPS), marked, "Unable to forward."

This matter was submitted for decision on May 14, 2007, following the filing of the State Bar's brief on culpability and discipline.

B. Second Notice of Disciplinary Charges (Case No. 07-O-10897)

On June 28, 2007, the State Bar properly served and filed a second NDC on respondent at his official membership records address. Respondent again did not file a response to the NDC.

On July 31, 2007, in consideration of the filing of case No. 07-O-10897, the court vacated the May 14, 2007 submission date in case No. 06-O-15058 and ordered the 06-O-15058 matter abated. On August 14, 2007, the court ordered that case No. 07-O-10897 proceed by default and be

¹All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

consolidated with case No. 06-O-15058.

On August 17, 2007, the DTC assigned to this matter attempted to contact respondent at his membership records phone number, but to no avail. He also called directory assistance in an attempt to find a telephone listing for respondent in San Francisco, California. Directory assistance stated that the customer requested that his information not be provided. The DTC also searched the January 2007 *California Directory of Attorneys*, as well as the 2007 Parker Directory of California Attorneys for a listing for respondent, but none was found.

On the State Bar's motion, respondent's default was entered in case No. 07-O-10897 on September 5, 2007, and respondent was enrolled as an inactive member on September 8, 2007, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official address by certified mail, but was returned to the court as undeliverable as the addressee was "unknown." On September 5, 2007, the court ordered that any further declarations, exhibits, or legal argument regarding discipline be filed by September 25, 2007, on which date the consolidated matter would be taken under submission.

The State Bar, however, filed a motion for late filing of its brief on culpability on October 3, 2007. On December 3, 2007, the court granted the State Bar's motion, vacated the September 25, 2007 submission date and ordered that the consolidated matter be submitted for decision as of October 3, 2007.

Respondent has not participated in the disciplinary proceedings.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

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).)

Respondent was admitted to the practice of law in California on December 9, 1997, and has been a member of the State Bar of California at all times since that date.

B. The Rodriguez Matter (Case No. 06-O-15058)

On May 26, 2006, Isabel Rodriguez (Rodriguez) hired respondent to file a civil suit on her

behalf, against G & P Construction, for abandoning a renovation project on her house. Rodriguez paid respondent \$8,000 by check. Respondent cashed the check and deposited the funds into his client trust account, account No. 5950005671 at Union Bank of California. On that same date, Rodriguez also gave respondent some original documents (referred to collectively as “client documents”) in support of her case. The client documents included: 1) notes and communications between the project manager of her construction project and the Mayor’s Office of Housing regarding her home; 2) her contract with the Mayor’s Office of Housing; and 3) her contract with G & P Construction. Although respondent promised to make copies of the client documents and return the originals to Rodriguez, he failed to do so.

On September 1, 2006, Christina Rodriguez (Christina), Isabel Rodriguez’s daughter, spoke to respondent on behalf of her mother regarding her mother’s legal matter. Respondent informed Christina that he was still trying to contact G & P Construction or G & P’s attorney, Susan Yee. Thereafter, respondent advised Rodriguez that he would get back to her on September 18, 2006, to inform her of her arbitration date and location. He also stated he would return her original documents to her at that time. However, respondent never got back to Rodriguez; nor did he return the client documents to her.

Rodriguez needed her client documents to pursue her lawsuit. Although respondent knew that the client documents were important evidence in the legal dispute between Rodriguez and G & P Construction, he failed to return them to Rodriguez.

On August 22, 2006, in California Supreme Court case No. S145875, the Supreme Court suspended respondent from the practice of law for failure to pay his California State Bar membership fees. The order, which became effective on September 18, 2006, was duly served by the clerk of the Supreme Court pursuant to law at respondent’s official membership records address as maintained by the State Bar in accordance with section 6002.1. On or before September 18, 2006, respondent knew of his suspension from the practice of law. Yet, respondent failed to advise Rodriguez of his suspension or of his termination from employment as her attorney due to his suspension.

Prior to his suspension, respondent had performed only preliminary services which were of no benefit to Rodriguez. Although respondent did not earn the fee paid to him by Rodriguez, he did

not return the \$8,000 to her.

In October 2006, Sam Zamora, Rodriguez's son-in-law, visited respondent's office at One Embarcadero Center, suite 500, San Francisco, California 94111 (the One Embarcadero Center address), on behalf of Rodriguez. He was told by the current occupants that respondent was no longer at that address; nor did they have a new address for respondent. Respondent had abandoned his legal offices at the One Embarcadero Center address on or before November 2006. Yet, respondent never advised Rodriguez of his new address, once he vacated the One Embarcadero Center address. Additionally, respondent failed to update his membership records address with the State Bar, after vacating the premises at the One Embarcadero Center address.

As of the filing of the NDC on February 28, 2007, respondent was still suspended from the practice of law for failure to pay membership fees.

Count 1: Failure to Inform Client of Significant Developments (§6068, sub. (m))

Section 6068, subdivision (m), provides that it is the duty of any attorney to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to notify Rodriguez of his suspension from the practice of law and of an address where he could be reached after he had vacated the One Embarcadero Center address, respondent failed to keep his client reasonably informed of significant developments affecting a legal matter in which respondent agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

Counts 2 and 3: Improper Withdrawal from Employment (Rules Prof. Conduct, Rule 3-700(A)(2)) and Failure to Return Unearned Fees (Rules Prof. Conduct, Rule 3-700(D)(2))²

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

²References to rules are to the Rules of Professional Conduct, unless otherwise noted.

complying with rule 3-700(D), and complying with applicable laws and rules.”

Respondent was constructively terminated from employment as Rodriguez’s attorney due to his suspension from the practice of law. “In order to minimize harm to a client, a suspended attorney should take all steps necessary to avoid foreseeable prejudice to the client, *short of practicing law.*” (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.) However, respondent failed to advise Rodriguez of his suspension or that he was terminated as her attorney. Moreover, although respondent had failed to perform services of any benefit to Rodriguez, he did not return the \$8,000 unearned fee upon or after his termination from employment as her attorney.

Informing Rodriguez that he was suspended from the practice of law and that he was terminated from employment as her attorney and returning the unearned fees to Rodriguez are reasonable steps that respondent could have taken, without his engaging in the practice law, in order to avoid reasonably foreseeable prejudice to the rights of his client. By failing to take the aforementioned steps, respondent wilfully failed to take steps to avoid reasonably foreseeable prejudice to his client, in violation of rule 3-700(A)(2).

However, as the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), the court declines to find respondent culpable of wilfully violating rule 3-700(D)(2) as alleged in count 3. 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), is more comprehensive than rule 3-700(D)(2). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280). The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of unearned fees. Thus, an attorney’s failure to promptly return unearned fees may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent’s failure to return unearned fees is encompassed in respondent’s improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(2). The court therefore dismisses count 3 with prejudice.

Count 4: Failure to Update Membership Address (§ 6068, Subdivision (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, and notify the membership records office of the State Bar of any change in that information within 30 days of such change.

By clear and convincing evidence, respondent wilfully violated section 6068(j) when he failed to maintain a current official membership records address by vacating his office at the One Embarcadero Center address, sometime before November 2006, and not providing the State Bar with an alternative address to be used for State Bar purposes.

C. The Client Trust Fund Matter (Case No. 07-O-10897)

At all times mentioned, respondent maintained client trust account No. 5950005671 (CTA) at Union Bank of California-North (Union Bank). On December 13, 2006, respondent issued CTA check No. 0390246 in the amount of \$328.43 to JP Morgan Chase Bank (JP Morgan). When the check was presented for payment on December 18, 2006, there was a negative balance of \$126.19 in respondent's CTA. Additionally, Union Bank issued seven separate overdraft fees to respondent for December 2006, not including the December 13, 2006 insufficient funds check that respondent had issued to JP Morgan .

Respondent issued the following electronic check transfers, checks, or telephone transfers from his CTA for personal or business purposes, that were unrelated to a client matter, as follows:

<u>Date</u>	<u>Amount</u>	<u>Recipient</u>	<u>Type of Withdrawal</u>
10/27/06	\$140.29	Verizon Wireless	E check ref. 50390340
10/27/2006	\$277.07	AT&T	Tel. ref 508364429
12/11/2006	\$219.42	Comcast	Check No. 8265

On May 26, 2006, respondent deposited \$8,000 for a client matter into his CTA .

In February 2007, the Union Bank closed respondent's CTA.

Count 1: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney will be deposited therein or otherwise commingled therewith.

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the rules, regardless of the attorney's intent or the absence of injury to anyone. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26.)

By failing to maintain sufficient funds in his CTA to cover check No. 0390246, and allowing the CTA to be overdrawn, respondent failed to properly administer a client trust account in wilful violation of rule 4-100(A).

Count 2: Commingling Personal Funds in Client Trust Account (Rule 4-100(A))

Rule 4-100(A) "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

There is clear and convincing evidence that respondent commingled his personal funds in the trust account for his own use in that he issued electronic check transfers, checks, or telephone transfers from the CTA for personal or business purposes, unrelated to a client matter. The amount involved totaled \$636.78.

Using the trust account for his personal expenses constituted commingling within the meaning of rule 4-100(A) even if there were no client funds in the trust account at the time. (See, *Arm v. State Bar* (1990) 50 Cal.3d 763, 776-777.) Therefore, respondent is culpable of commingling funds in his trust account in wilful violation of rule 4-100(A).

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).)³

Respondent's eight years and five months of trouble-free practice at the time of his misconduct in 2006, is a mitigating factor, but does not merit significant weight. (Std. 1.2(e)(i).) (See *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [slightly less than eight years and four months of unblemished practice is a mitigating circumstance, but does not

³All further references to standards are to this source.

merit significant weight].)

B. Aggravation

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

Respondent committed multiple acts or wrongdoing, including failure to communicate, improper withdrawal from employment, failure to return unearned fees, failure to maintain an official address with the State Bar, failure to properly administer a client trust account, and commingling funds in a client trust account. (Std. 1.2(b)(ii).)

Respondent's misconduct was surrounded by bad faith, where he failed to return his client's original documents to her after promising that he would make copies of the documents and then return them. Thereafter, respondent stated that he would return the documents to his client by September 18, 2006, but did not do so. (Std. 1.2(b)(iii).)

Respondent harmed his client. (Std. 1.2(b)(iv).) His failure to return the unearned fees amounting to \$8,000 deprived his client of her funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to refund any portion of the unearned fees or return the client documents.

Respondent's failure to participate in this disciplinary matter before the entry of his 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 of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.2(b), 2.4(b), 2.6 and 2.10.)

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 court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges two years stayed suspension and an actual suspension of one year and until respondent makes restitution, citing *King v. State Bar* (1990) 52 Cal.3d 307 [four years stayed suspension and probation, conditioned on a three-month actual suspension]. Both King and respondent caused their clients to suffer financial loss. Whereas in the instant case respondent committed misconduct in only one client matter, the attorney in the *King* case committed misconduct in two client matters. But, respondent lacked King’s 14 years of discipline-free practice before the start of his misconduct. Additionally, because respondent has defaulted in this proceeding, the State Bar argues that a greater level of discipline than three months actual suspension is required.

The court also finds the following cases to be instructive.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney, who had no prior record of discipline in 12 years of practice, was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed to perform competently. He also improperly held himself out as entitled to practice law and engaged in an act of moral turpitude by misleading his client into believing he was still working on her case while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary proceedings as well.

In the Matter of Greenwood (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, involved two client matters. The attorney was found culpable of two serious instances of reckless failure to perform legal services, improper withdrawal from employment in one matter, failure to communicate, failure to maintain the respect due to the courts, failure to obey a court order, failure to return a client file, and failure to cooperate with State Bar investigations. The court determined that the attorney’s misconduct warranted a discipline recommendation of 18-months stayed suspension, two years of probation, and a 90-day actual suspension. The attorney had defaulted in the disciplinary proceedings.

Most similar to respondent’s misconduct is that of the attorney in *In the Matter of Nees*

(Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459. The *Nees* attorney failed to respond to his client's reasonable status inquiries, to provide competent legal services for an incarcerated client, to turn over the client's file promptly on demand, and to refund promptly unearned fees. Focusing upon the attorney's reckless and protracted failure to perform legal services for an incarcerated client and his failure to return any of the \$7,000 unearned fees, the review department recommended a two-year stayed suspension, a two-year probation, and a six-month actual suspension.

Here, respondent failed to communicate with his client, improperly withdrew from employment, failed to refund unearned fees of \$8,000, and failed to update his membership address. This court is particularly troubled by respondent's failure to return the unearned fees upon his suspension and resultant termination as Rodriguez's attorney. The court is also greatly troubled by the fact that respondent permitted his default to be entered.

Additionally, respondent engaged in trust fund violations by failing to properly administer his CTA when he allowed it to be overdrawn. Respondent also commingled his personal funds in his CTA when he used the trust account for his personal expenses, issuing electronic check transfers, checks, or telephone transfers for personal or business purposes unrelated to a client matter. Standard 2.2(b) provides that culpability of commingling or the commission of another violation of rule 4-100, which does not involve misappropriation should result in at least a three-month suspension from the practice of law.

Failing to appear and participate in this hearing 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 v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

In view of respondent's misconduct, the standards for attorney sanctions for professional misconduct, the case law, and the aggravating evidence, placing respondent on actual suspension for one year and until he makes restitution would be appropriate to protect the public and to preserve public confidence in the profession.

Moreover, it has long been held that "[r]estitution is fundamental to the goal of

rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084,1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (Id. at 1093) Therefore, respondent should refund all legal fees to his client.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Patrick J. Wood** be suspended from the practice of law for two years, that said suspension be stayed, and that respondent be actually suspended from the practice of law for one year and until he makes restitution to Isabel Rodriguez in the amount of \$8,000 plus 10% interest per annum from September 18, 2006⁴ (or to the Client Security Fund to the extent of any payment from the fund to Isabel Rodriguez, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and until respondent files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205). Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

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

It is further recommended that if respondent is actually suspended for two years or more, he will 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).

It is further recommended that respondent take and pass the Multistate Professional

⁴Rule 3-700(D)(2) provides that “a member whose employment has terminated shall promptly refund any part of a fee paid in advance that has not been earned.” In its brief on culpability the State Bar urges that respondent be required to pay restitution from May 26, 2006, the date he was hired by his client, Rodriguez. Restitution for unearned fees, however, should be calculated from the date of the member’s termination, which in the instant matter was September 18, 2006, the date by which respondent knew that he had been suspended from the practice of law and thus constructively terminated as Rodriguez’s attorney.

Responsibility Examination within one year after the effective date of the Supreme Court order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn.8.)

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

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: December ____, 2007

PAT McELROY
Judge of the State Bar Court

⁵Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (See, *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)