

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

In the Matter of)	Case No. 07-O-10330-RAH
)	07-O-10037
CRANE STEPHEN LANDIS,)	DECISION
)	
Member No. 205057,)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Joy Chantarasompoth appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Crane Stephen Landis 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 one year, but that said suspension be stayed and that he be actually suspended for 90 days and until he complies with rule 205, Rules Proc. of State Bar.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on May 1, 2007, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 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.) This correspondence was returned as undeliverable.

¹Future references to section are to the Business and Professions Code.

On May 10, 2007, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on June 6, 2007.

On May 30, 2007, a courtesy copy of the NDC was sent to respondent at his official address by regular mail.

On May 5, 2007, the Deputy Trial Counsel had a telephone conversation with respondent in which she informed him that a status conference was scheduled for the next day.

Respondent appeared telephonically at the June 6, 2007, status conference. On respondent's oral motion, he was granted an extension to respond to the NDC until June 20, 2007. Dates were scheduled for a status conference, pretrial conference, trial and for the filing of pretrial conference statements and a stipulation. On June 7, 2007, he was properly served at his official address by first-class mail, postage prepaid with an order memorializing these events.

On June 8, 2007, he was properly served with a notice scheduling a settlement conference on August 15, 2007.

Respondent did not file a responsive pleading to the NDC. On June 22, 2007, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of one year's stayed suspension, two years' probation and 90 days' actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

On July 11, 2007, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and served on him at his official address on that same date by regular mail. This correspondence was returned as undeliverable marked "Return to sender. Refused. Unable to forward."

On September 20, 2007, the court issued an order on its own motion vacating the submission date, the entry of default and the inactive enrollment because the July 11,

2007, order was not served by certified mail, return receipt requested, as required by rules 60 and 200.

On September 20, 2007, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. It was returned as undeliverable. This correspondence was returned as undeliverable and unable to be forwarded.

Some of the State Bar's and the court's efforts to 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.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing on October 10, 2007.

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; Rules of Proc. of State Bar², 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 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 December 9, 1999, and has been a member of the State Bar at all times since.

B. Facts Applicable to Both Client Matters

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

On July 14, 2006, the State Bar's Office of Certification (OC) sent respondent at least a 60-day notice of non-compliance with MCLE requirements (first notice). The first notice advised respondent that he would be enrolled as an inactive member of the State Bar by September 15, 2006, if he did not comply with the MCLE requirements. Respondent received the first notice.

On August 14, 2006, the OC sent respondent a final notice of noncompliance, which was returned stamped "unable to forward."

On August 25 and September 1, 2006, the OC left messages at respondent's official telephone number. The messages, which respondent received, informed him of his noncompliance with MCLE requirements.

On September 15, 2006, the OC enrolled respondent inactive. On September 22, 2007, the OC sent a suspension notification. The notice was returned stamped "unable to forward."

In early October 2006, respondent satisfied his MCLE requirements and reported his compliance to the OC. He was placed on active status on October 17, 2006.

Respondent was not entitled to practice law from September 15 to October 17, 2006.

C. Case no. 07-O-10330 (The Isoczky Matter)

1. Facts

In July 2006, Stephen Isoczky, an inmate at the Metropolitan Detention Center, employed respondent to represent him in the case entitled *U.S. v. Stephen Isoczky*, United States District Court case no. SA 05-146. Respondent substituted into the case on July 5, 2006.

On July 17, 2006, the court ordered that the sentencing hearing date be continued to October 16, 2006. Respondent received the July 17 court order.

On July 19, 2006, Isoczky who gave respondent original probate documents to copy and return to him. Isoczky also asked respondent to obtain his records from Harbor-UCLA Medical Center and to file a motion on his behalf for additional medical care

during his incarceration. Respondent did not copy and return the probate documents to Isoczky nor did he obtain Isoczky's medical records.

On August 14, 2006, Isoczky sent and respondent received a letter asking that he withdraw as counsel; however, respondent did not answer the letter.

On September 1, 2006, Isoczky sent and respondent received a follow-up letter, again asking him to withdraw as counsel. Respondent did not answer the letter.

On September 5, 2006, Isoczky sent and respondent received a letter asking respondent to return the original probate documents that Isoczky gave to respondent in July 2006. Respondent did not answer the letter.

On September 6, 2006, Isoczky wrote to the district court asking that respondent be removed as counsel.

On September 19, 2006, the court sent and respondent received a notice, ordering him and Isoczky to appear at a status conference on October 2, 2006. Respondent did not advise Isoczky or the court that he was not entitled to practice law effective September 15, 2006.

Respondent did not appear at the October 2 status conference. The court removed respondent as counsel and appointed attorney Kenneth P. White to represent Isoczky. The court also ordered respondent to transfer Isoczky's file to White. The status conference was continued to October 16, 2006. Respondent was served with and received the October 2, 2006, minute order.

On October 16, 2006, the court again issued an order that respondent immediately transfer Isoczky's file to White. Although he received the court's order, respondent did not transfer the file, including the original probate documents, to White.

On October 26 and November 2, 2006, White sent and respondent received email asking the he forward Isoczky's file. Respondent did not answer White's email nor did he transfer the file as ordered by the court. As of April 30, 2007, respondent had not transferred the file to Isoczky or to White, his new counsel.

On November 14, 2006, the State Bar opened an investigation on case no. 07-O-10330 pursuant to a complaint filed by Isoczky regarding respondent's failure to return his file. On January 31 and February 21, 2007, a State Bar investigator sent respondent letters asking that he answer in writing specific allegations of misconduct regarding the Isoczky complaint. Although he received the letters, respondent did not answer them or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count One - Rule of Professional Conduct,³ Rule 3-110(A) (Competence)

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

By not obtaining Isoczky's medical records and by not copying the original probate documents, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count Two - 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 responding to Isoczky's letters of August 14 and September 1 and 5, 2006, or to White's emails, respondent did not respond promptly to Isoczky's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

c. Count Three - Rule 3-700(D)(1) (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

³Future references to rule are to this source.

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 transferring the file or returning the original probate documents, respondent wilfully violated rule 3-700(D)(1).

d. Count Four - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not appearing at the October 2 and 16 status conferences and advising the court of his inability to practice due to suspension and by not transferring the file to Isoczky's new counsel, respondent wilfully disobeyed a court order in wilful violation of section 6103.

e. Count Five - Section 6068, subdivision (i) (Not Participating in 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 responding to the State Bar's January 31 and February 21, 2007, letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Isoczky complaint in wilful violation of 6068, subdivision (i).

B. Case no. 07-O-10037 (The Hammett Matter)

1. Facts

In March 2006, Rebecca B. Hammett employed respondent to represent her in a criminal matter in which she was charged with three misdemeanors. (*People v. Hammett*, Los Angeles Superior Court case no. 6MP03073. She gave him \$2,500 in advanced

attorney fees at that time.

In April 2006, Hammett informed respondent that she would be working in England from April 27, 2006 to October 2006. Hammett gave respondent her contact information in England.

On April 12, 2006, respondent appeared at Hammett's arraignment. She was not present in court. The arraignment was continued to April 27, 2006. Respondent did not inform the court of Hammett's travel plans.

Respondent did not appear at the April 27 arraignment nor did he provide any excuse for Hammett's failure to appear. The court ordered a bench warrant for \$26,000 against Hammett and continued the arraignment until May 9, 2006. Respondent was properly served with and received the court's orders. Respondent did not inform Hammett about the bench warrant.

Respondent appeared at the May 9 arraignment. The bench warrant was recalled and a pretrial hearing was scheduled for June 27, 2006. Respondent did not inform the court that Hammett was working in England. He also did not tell Hammett about the pretrial hearing date.

Respondent did not appear at the June 27 pretrial hearing. The court ordered a bench warrant for \$40,000 against Hammett. Respondent was properly served with and received the court's orders. Respondent did not inform Hammett about the bench warrant.

On September 28, 2006, respondent unsuccessfully asked the court to recall the bench warrant. The court ordered respondent to surrender Hammett on October 4, 2006.

Respondent appeared with Hammett on October 4 and the court recalled the bench warrant.

At neither the September 28 nor October 4 court appearances did respondent inform the court that he was suspended from the practice of law effective September 15, 2006.

Hammett fired respondent sometime after October 4, 2006.

On February 15, 2007, Hammett emailed respondent a letter asking him to return the unearned portion of the \$2,500 she had paid him. Respondent did not account for nor return any portion of the advanced fee nor did he otherwise respond to Hammett's letter.

On November 14, 2006, the State Bar opened an investigation on case no. 07-O-10037 pursuant to a complaint filed by Hammett regarding respondent's failure to perform. On January 26 and February 15, 2007, a State Bar investigator sent letters asking that respondent answer in writing specific allegations of misconduct regarding the Hammett complaint. Although he received the letters, respondent did not answer them or otherwise communicate with the investigator.

2. Conclusions of Law

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

By not informing Hammett about the bench warrants or of the pretrial hearing date or of his suspension from practice, respondent did not keep Hammett reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

b. Count Seven - Section 6068, subdivision (a) (Unauthorized Practice of Law)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By appearing in court twice on the Hammett matter after he was suspended from practice, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126,

subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

c. Count Eight - Rule 4-100(B)(3) (Failure to Account)

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 Hammett with an accounting regarding the use of the advanced fee, respondent wilfully violated rule 4-100(B)(3).

d. Count Nine - Section 6068, subdivision (i) (Not Participating in Investigation)

By not responding to the State Bar's January 26 and February 15, 2007, letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Hammett 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁴, 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 and the administration of justice. (Std. 1.2(b)(iv).) Other counsel had to be appointed for Isoczky. In both matters, the courts had to continue hearings due to respondent's misconduct.

⁴Future references to standard or std. are to this source.

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.

Respondent's approximately six years and four months of blemish-free practice are sufficient to warrant only minimal mitigation. (*Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years]; *In re Naney* (1990) 51 Cal.3d 186, 196 [seven years, minimal weight].)

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 and 2.10 apply in this matter. The most 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, in two client matters, of violating section 6068, subdivision (m) (two counts), 6068, subdivision (i) (two counts), section 6068, subdivision (a), section 6103, and rules 3-110(A), 3-700(D)(1) and 4-100(B)(3). In aggravation, the court considered multiple acts of misconduct and harm to clients and the administration of justice. There were no mitigating factors in this default matter.

The State Bar recommends 90 days' actual suspension, among other things.

The court found *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, to be instructive. In *Johnston*, 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 which caused his client to lose her case. He also improperly held himself out as entitled to practice law by misleading his client into believing he was still working on her case while he was on suspension for not paying his dues. He defaulted in the disciplinary proceedings as well. *Johnston* presents less misconduct and greater mitigation than the present case. Accordingly, the present case merits greater discipline than *Johnston*.

Respondent's misconduct, the aggravating factors, the absence of mitigation and his lack of participation in this matter raises concerns about his ability or willingness to comply with his 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 finds no reason to deviate from the requirements of standard 2.2(b) and believes that a 90-day actual suspension to remain in effect until he complies with the requirements of rule 205, Rules Proc. of State Bar, among other things, is adequate to protect the public and proportionate to the misconduct found. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent Crane Stephen Landis be suspended from the practice of law for one year; that said suspension be stayed; and that he be actually suspended from the practice of law for 90 days 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.)

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

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

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 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 his compliance with said order.⁵

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 within one year from the effective date of the Supreme Court's order or during the period of his actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

⁵Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he or she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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: December ___, 2007

RICHARD A. HONN
Judge of the State Bar Court