

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

In the Matter of)	Case No. 07-O-10738-LMA
TERRIE CHUN,)	DECISION
Member No. 162139,)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Wonder J. Liang appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Terrie Chun 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 two years; that said suspension be stayed; and that she be actually suspended for 90 days and until she complies with rule 205, Rules Proc. of State Bar.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on June 14, 2007, and was properly served on respondent on that same date at her 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.) The return receipt, executed by “Robert Hicks,” indicated delivery of the NDC to respondent’s official address on June 18, 2007.

On June 26, 2007, respondent was properly served at her official address with a notice

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

advising her, among other things, that a status conference would be held on August 13, 2007.

Respondent did not file a responsive pleading to the NDC. On August 2, 2007, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that minimum discipline of two years' stayed suspension and two years' probation on conditions, including 90 days' actual suspension, would be sought if she was found culpable. Respondent did not respond to the motion.

Respondent did not appear at the August 13, 2007 status conference. On August 14, 2007, she was properly served with a status conference order at her official address by first-class mail, postage prepaid.

On August 21, 2007, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. This correspondence was returned by the United States Postal Service unclaimed and unable to be forwarded.

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.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The matter was submitted for decision without hearing after the State Bar filed a brief on September 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

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

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, 1992, and has been a member of the State Bar at all times since.

B. The Lowe Matter

1. Facts

On April 4, 2006, a default judgment was taken against Robert Lowe in the partition action entitled *Lai v. Lowe*, San Francisco Superior Court case no. CGC-06-448878.

In September 2006, Lowe hired respondent to represent him in the partition case.

On September 14, 2006, respondent filed a motion to set aside the default on the grounds of improper service of process. The motion was set for hearing on November 14, 2006.

Prior to November 14, 2006, respondent instructed Lowe to attend the hearing unrepresented by counsel and to inform the court that she was unable to appear because she had been called for jury duty.

On November 14, 2006, Lowe appeared at the hearing without respondent. He informed the court that respondent was unable to appear because she had been called for jury duty. The court continued the matter to November 27, 2006, and instructed opposing counsel, Cindy Lee, to inform respondent to provide proof of jury service at the November 27, 2006, hearing.

On November 15, 2007, Lee filed and properly served on respondent a notice that the motion hearing was continued to November 27, 2006, and that instructed respondent to provide proof that she was on jury duty on November 14. Respondent received the notice.

Lowe appeared at the November 27 hearing but respondent did not. He informed the court that respondent was out of town. Respondent also did not provide the court with proof that she was on jury duty on November 14.

On November 28, 2006, the court issued a order to show cause (OSC) why respondent

should not be held in contempt for not appearing at the November 14 and 27 hearings. A hearing on the OSC was scheduled for December 12, 2006. Respondent was personally served with the OSC on November 29, 2006.

Respondent appeared at the December 12 hearing. She told the court that she had a jury summons for November 13 and was out of town on November 14. Although she knew differently, she misrepresented to the court that Lowe must have misunderstood the reason for her not appearing in court on November 14. She made the statement with the intent to deceive the court.

Respondent misrepresented material facts surrounding her nonappearance on November 14 to Lowe and to the court at the OSC hearing. In reality, respondent, who also worked as a flight attendant, was working in that capacity out of the area on November 14. Being on jury duty would have been a legitimate excuse for not appearing at the OSC hearing.

When respondent misrepresented to Lowe the reason for her inability to appear at the November 14 hearing, she knew it was false and misleading and made the statement with the intent to deceive Lowe and the court.

At the OSC hearing, the court found that respondent was not on jury duty on November 14 but, rather, that she was working as a flight attendant. Respondent was held in contempt and was ordered to pay \$1,000 in sanctions for her unexcused absence from court on November 14 and 27. The court informed her that the sanctions were reportable to the State Bar. Respondent was aware of the \$1,000 sanctions and that they were reportable to the State Bar.

Respondent paid the sanctions on December 19, 2006 but did not report them to the State Bar within 30 days of knowing they were imposed or at all.

On April 26 and May 8, 2007, a State Bar investigator sent respondent a letter requesting that respondent answer in writing specific allegations of misconduct regarding the Lowe matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Respondent received the letters but did not answer them.

2. Conclusions of Law

a. Count One - Rule of Professional Conduct³ 3-110(A) (Incompetence)

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

By not appearing at the hearings on November 14 and 27, 2006, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count Two - Section 6068, subd. (d) (Employing Means Inconsistent with _____ Truth)

Section 6068, subdivision (d) requires an attorney from employing, for the purpose of maintaining the causes confided to her, those means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

There is clear and convincing evidence that respondent wilfully violated section 6068, subdivision (d). She sought to mislead a judicial officer by an artifice or false statement of fact or law by: (1) instructing Lowe to inform the court that she was absent from the November 14 hearing since she was on jury duty when, in reality, she was working as a flight attendant; and (2) stating to the court that Lowe misunderstood the reason for her absence on November 14 when, in reality, she knew she had instructed Lowe to do as he did.

c. Count Three - Section 6106 (Moral Turpitude/Misrepresentation)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by making misrepresentations to Lowe. Accordingly, she committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

³Future references to rule are to this source.

d. Count Four - Section 6068, subd. (o)(3) (Not Reporting Sanctions)

Section 6068, subdivision (o)(3) requires an attorney to report in writing to the State Bar the imposition of any judicial sanctions against her except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. The report must be made within 30 days of the time the attorney has knowledge of the sanctions.

Respondent knew of, but did not report, the court-ordered sanctions of \$1,000 to the State Bar in wilful violation of section 6068, subdivision (o)(3).

e. Count Five - Section 6068, subd. (i) (Not Participating in a Disciplinary Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not answering the State Bar's April 26 and May 8, 2006, letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Lowe matter 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 the administration of justice. (Std. 1.2(b)(iv).) Her misrepresentations resulted in continuances of the motion hearing and in the court holding an OSC hearing.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because

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

this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than 14 years of discipline-free practice. (Std. 1.2(e)(i).)

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 2.4, 2.4(b) and 2.6 apply in this matter. The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

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 one client matter, of not performing competently; making misrepresentations to her client and to the court; not reporting court-ordered sanctions; and not participating in the State Bar's investigation of her misconduct. In aggravation, the court considered multiple acts of misconduct and harm to the administration of justice. Respondent's 14 years of practice without discipline was a mitigating factor.

The State Bar recommends 90 days' actual suspension, among other things, citing *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585.

In *Johnston*, a default case, the attorney was actually suspended for 60 days for misconduct in a single client matter. He did not communicate with his client and did not perform competently, causing 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 suspended for not paying his State Bar dues. He was given mitigation credit for no prior discipline in 12 years of practice. In aggravation, the court found client harm and that he did not file a response in the disciplinary proceeding. The instant case presents greater misconduct than *Johnston*, including misleading the court and not reporting court-ordered sanctions and, therefore, merits greater discipline.

Respondent's misconduct and lack of participation in this matter raises concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can glean none. Having considered the evidence and the law, the court believes that 90 days' actual suspension to remain in effect until she complies with rule 205, Rules Proc. of State Bar, among other things, is adequate to protect the public and proportionate to the misconduct found and the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent TERRIE CHUN be suspended from the practice of law for two years; that said suspension be stayed; and that she 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 she be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating her actual suspension.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until she 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 her 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 her actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and

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 she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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

LUCY ARMENDARIZ
Judge of the State Bar Court