

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 07-O-11878-DFM (07-O-12545)
)
ALAN PETER DOVE) DECISION
)
Member No. 168582)
)
A Member of the State Bar.)
_____)

I. INTRODUCTION

In this disciplinary matter, Melanie J. Lawrence appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Alan Peter Dove did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be actually suspended for 90 days and until he satisfies the judgment entered in favor of Melody Sheehan as set forth below and until he complies with rule 205, Rules Proc. of State Bar.¹

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on May 28, 2008, and was properly served on respondent on that same date at his official membership records address, by certified

¹ Future references to Rule of Procedure are to this source.

mail, return receipt requested, as provided in Business and Professions Code section²6002.1, 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 to the State Bar as undeliverable.

On June 10, 2008, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on July 15, 2008.

Respondent did not file a responsive pleading to the NDC. On July 21, 2008, 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 90 days' actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

Respondent did not appear at the July 15, 2008, status conference. On July 24, 2008, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. The order set forth additional appearances, including the trial date, and filing deadlines.

On August 8, 2008, 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. This correspondence was returned to the State Bar Court as undeliverable.

On August 19, 2008, the default order was again properly served on respondent at his official address by certified mail, return receipt requested. The signed³ return receipt indicated it was received on August 22, 2008.

The State Bar's and the court's efforts to locate or contact respondent were fruitless. The

² Future references to section are to the Business and Professions Code.

³ The signature was illegible.

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 August 26, 2008.

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; Rule of Procedure 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 21, 1993, and has been a member of the State Bar at all times since.

B. Case No. 07-O-11878 (The Sheehan Matter)

On or about October 4, 2006, Melody Sheehan hired respondent to represent her in a child visitation case regarding her granddaughter. On that date, she signed an employment/fee agreement prepared by respondent and paid him \$1000. Respondent agreed to represent Sheehan for a deposit of \$1000 against an hourly fee of \$195.

On December 7, 2006, having received no communication from respondent since October 4, Sheehan telephoned his office and left a voicemail informing him that she was terminating his services.

On December 14, 2006, still having received no communication from respondent concerning her case or any response to her message of December 7, Sheehan again called

respondent's office to discuss a refund of her fees.

On December 20, 2006, still having received no communication from respondent concerning her case or any response to her voicemail messages, Sheehan sent respondent a letter requesting a refund of \$800 from the \$1000 deposit she paid him on October 4. In that letter, Sheehan credited respondent with having spent an hour on her matter at a cost of \$195, pursuant to the employment agreement. Again, Sheehan received no response to this letter.

On January 5, 2007, still having received no communication from respondent, Sheehan filed suit in small claims court for \$800 plus costs. Respondent was served with the suit on January 18, 2007.

Respondent did not appear at the small claims proceedings. On February 15, 2007, a judgment was rendered in Sheehan's favor against respondent in the amount of \$800 plus \$60 in costs.

Count One - Rule of Professional Conduct,⁴ 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 taking any action in furtherance of the matter for which Sheehan retained him, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Two - Section 6068, subd. (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 communicating in any manner with Sheehan following their initial meeting

⁴Future references to rule are to this source.

despite Sheehan's numerous communications to him, respondent did not respond promptly to Sheehan's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

Count Three- Rule 3-700(D)(2) (Unearned Fees)

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. Respondent did not earn the entire amount of the \$1,000 fee advanced to him by Sheehan. By not refunding any part of the \$1000 to Sheehan after her demand for a refund of the unearned portion, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

B. Case No. 07-O-12545 (The Hong Matter)

On or about August 4, 2005, Crystelle Hong, an attorney formerly employed by respondent, filed a small claims court action against him claiming he owed her \$3750 in fees, plus \$22 in costs.

On or about August 12, 2005, respondent sent a settlement letter , which he labeled as a "Evidence Code §1152" letter, in which he warned Hong that, in the event she proceeds with her suit, respondent "will file a formal complaint against [Hong] with the State Bar of California" that will allege Hong's "abandonment of clients [of respondent] whose cases were being worked on at the time [of the fee obligations Hong alleged in her small claims complaint]." Respondent closed his letter to Hong with the admonition: "It is your choice."

On or about July 2, 2007, the State Bar opened an investigation on case no. 07-O-12545 pursuant to a complaint filed by Hong.

On or about August 20 and September 10, 2007, a State Bar investigator prepared letters to respondent regarding this matter. Each letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. Each letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States

Postal Service in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received each letter mailed to the membership records address.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the *Hong* matter. Respondent did not answer the letters or otherwise communicate with the investigator.

Count Four - Rule 5-100(A)(Threatening Charges to Gain Advantage in Civil Suit)

Rule 5-100(A) prohibits an attorney from threatening to present criminal, administrative or disciplinary charges to obtain an advantage in a civil dispute.

Respondent violated rule 5-100(A) by threatening to file a State Bar complaint against Hong if she proceeded with her small claims action against him.

Count Five - Section 6068, subd. (i) (Participation in 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 the member.

By not providing a written to response to the State Bar investigator's letters, respondent did not participate in the investigation of the allegations of misconduct regarding the *Hong* case in wilful violation of 6068, subdivision (i).

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. Misconduct⁵, std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

⁵ Future references to standard or std. are to this source.

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Sheehan attempted repeatedly to contact respondent to obtain a refund of \$800 in unearned fees. Because he did not respond to her contacts, she had to file suit to try to regain her funds.

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 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.)

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 his nearly 12 years of blemish-free practice prior to the commencement of the misconduct herein.

IV. LEVEL OF DISCIPLINE

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).) Discipline is progressive. (Std. 1.7.)

Standards 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found

at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

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 violating section 6068, subdivision (m) and rules 3-100(A) and 3-700(D)(2) and, in another, of violating section 6068, subdivision (i) and rule 5-100.

The State Bar recommends, among other things, 90 days’ actual suspension. The court agrees.

The court found instructive *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690. In *Aulakh*, the attorney was given a one-year stayed suspension and three-year probation, including 45 days’ actual suspension and was ordered to make restitution of \$3000 for his misconduct in a single client matter. The misconduct included failure to perform, improper withdrawal, and failure to account for or refund unearned fees, resulting in harm to the client. Respondent Aulakh had no prior record of discipline in 20 years of practice but was uncooperative during the disciplinary process. The instant case is comparable to *Aulakh*, but encompasses greater misconduct and less mitigation; hence, it merits greater discipline.

Respondent’s misconduct and 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 believes that a 90-day actual suspension, to remain in effect until he satisfies Sheehan's judgment and complies with Rule of procedure 205, 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 **ALAN PETER DOVE** be suspended from the practice of law for one year and until he satisfies the Sheehan judgment; that said suspension be stayed; and that he be actually suspended from the practice of law for 90 days and until: (1) he satisfies the judgment entered against him and in favor of Melody Sheehan in the amount of \$800 plus \$60 in costs and furnishes satisfactory proof thereof to the State Bar's Office of Probation; and (2) 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, hereafter 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) of said rule 9.20 within 40 days of the effective date of the order, showing his compliance with said order.⁶

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.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that said costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November _____, 2008

DONALD F. MILES
Judge of the State Bar Court

⁶ Failure 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 has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)