



**PUBLIC MATTER
FILED**

JUN 06 2008

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

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

In the Matter of)	Case No. 07-O-12155-LMA
SCOTT GREGORY BAKER)	DECISION
Member No. 187710,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent Scott Gregory Baker is charged with one count of professional misconduct, the failure to refund unearned fees to a client. The court finds, by clear and convincing evidence, that respondent is culpable of the misconduct as more fully set forth below.

In view of respondent's misconduct, considered in conjunction with the mitigating and aggravating circumstances and the goals of attorney discipline, the court recommends a one-year stayed suspension and a 30-day actual suspension and until respondent makes restitution.

II. Pertinent Procedural History

On August 28, 2007, the Superior Court of Calaveras County signed an order assuming jurisdiction of respondent's law practice.

On November 16, 2007, a 20-day letter was mailed to respondent at his official membership records address (official address).¹ This letter was returned to the State Bar of California, Office of the Chief Trial Counsel (State Bar) by the United States Postal Service

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.

(USPS) bearing the notations: "Return to Sender," "Box Closed," "Unable to Forward," and "Return to Sender."²

This matter was assigned to Deputy Trial Counsel Manuel Jimenez (DTC Jimenez) on January 29, 2008, and on January 30, 2008, the 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. No return receipt was returned to the State Bar.

On February 4, 2008, the State Bar Court filed and served a Notice of Assignment and Notice of Initial Status Conference,³ setting an initial conference for March 3, 2008.

Respondent failed to appear at the status conference on March 3, 2008, either in person or through counsel. The court filed and served a Status Conference Order on that date.

On March 19, 2008, DTC Jimenez attempted to contact respondent at the telephone number in respondent's file. The woman who answered the telephone told DTC Jimenez that respondent had not been at that number for a long time and that she had no other contact information for respondent. On the same date, DTC Jimenez conducted a computer based zabasearch for respondent in both California and Arizona. Because respondent has a common name, however, there were too many search results to make a reasonable effort to contact each

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 and admits into evidence exhibit one attached to the State Bar's motion for entry of respondent's default (a certified copy of respondent's address history on file in the State Bar's Membership Records Department as of March 4, 2008). The court notes that Deputy Trial Counsel Manuel 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 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. Each copy of the various documents that the court served on respondent was returned to the court marked "Return to Sender, Box Closed, Unable to Forward, Return to Sender."

one. Although there were results that listed respondent's date of birth, there was no contact information with those results. Also on March 19, DTC Jimenez sent an electronic mail to respondent at the address listed on the State Bar's official web site. Although Jimenez did not receive any indication that the mail did not go through, he never received a response from respondent.

On March 26, 2008, DTC Jimenez conducted a search of the 2008 Parker Directory of California Attorneys but found no addresses for respondent. He also searched the 2008 volume of the Daily Journal's Directory of Attorneys for California. Although he found a telephone number for a Scott G. Baker, when he telephoned the number, he found that the number was disconnected. DTC Jimenez did not find any new addresses for respondent of which the State Bar was not already aware. As of March 26, 2008, the State Bar had had no contact with respondent.

On March 26, 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 April 11, 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.⁴

On May 1, 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).)

⁴The 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.

A. Jurisdiction

Respondent was admitted to the practice of law in California on March 24, 1997, and has been a member of the State Bar of California at all times since that date.

B. Facts and Culpability

On March 5, 2007, Toni Glass hired respondent to represent her in divorce proceedings that had previously been filed in the Calaveras County Superior Court. Glass signed a fee agreement and, on March 6, 2007, paid respondent \$1,750 as an advanced fee. Respondent was to bill against this deposit at the rate of \$175 per hour for attorney work and \$60 per hour for paralegal work and provide Glass with periodic billing statements.

Glass met respondent on March 5, 2007, for about 20 minutes to sign the fee agreement. Respondent set another appointment for March 9, 2007, to further discuss the case with Glass. Respondent failed to appear for the March 9, 2007, meeting.

Between March 9 and March 20, 2007, Glass left telephone messages for respondent, requesting a return call to discuss her case. On March 12, 2007, respondent spoke to Glass and advised her that he would call her the next day to schedule an appointment to discuss amending her response in the divorce proceedings.

Thereafter, respondent failed to call Glass to set the appointment or to otherwise communicate with her regarding her case. On March 20, 2007, Glass sent an electronic mail to respondent in which she gave notice that she was discharging him as her attorney. She also requested a return of her fees and her file and requested an immediate response.

On April 3, 2007, respondent executed a substitution of attorney to Glass's new counsel, John Trifilo, and sent Glass's file to Trifilo. However, respondent failed to return \$1,750 to Glass although he performed no services of any value to Glass. If he performed any work, it was preliminary in nature. In addition, respondent never provided any accounting to Glass of her advanced fee.

Count One: Rules of Professional Conduct, rule 3-700(D)(2)⁵

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(D)(2). That rule provides that, with an exception not applicable here, an attorney whose employment has terminated must promptly refund any unearned part of a fee that was paid in advance. By accepting \$1,750 as an advanced fee against which respondent would bill attorney and paralegal fees, performing no services of any value for Glass, and then failing to refund the unearned advanced fee when Glass terminated his employment, respondent failed to promptly refund an unearned fee in willful violation of rule 3-700(D)(2).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Because respondent's default was entered, no evidence in mitigation was offered in this proceeding. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶ The court takes judicial notice, however, that respondent had no prior discipline in approximately ten years of practice prior to the commencement of misconduct in the instant case. (Std. 1.2(e)(i); *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 215, 217 [no prior discipline in ten years of practice given mitigating credit].)

B. Aggravation

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 an aggravating circumstance. (Std. 1.2(b)(vi).) However, the court declines to find additional aggravation based on either the failure to refund unearned fees or the failure to participate in the disciplinary proceedings prior to the entry of the default. Any such additional aggravation would be based on acts already relied upon to find either culpability or other aggravation and would therefore be duplicative. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76-77.)

⁵All further references to rules are to these Rules of Professional Conduct unless otherwise indicated.

⁶All further references to standards are to this source.

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. 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 Silverton* (2005) 36 Cal.4th 81, 92.)

In this case, the standards provide for discipline ranging from reproof to suspension depending on the gravity of the offense or the harm, if any, to the victim. (Std. 2.10.) 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 one-year stayed suspension and a 60-day actual suspension and until restitution.⁷

Respondent has been found culpable in this matter of one count of failing to refund unearned fees in one client matter. The court is guided by *Matthew v. State Bar* (1989) 49 Cal.3d 784 (*Matthew*), one of the cases cited by the State Bar, in which the Supreme Court imposed, among other things, a 60-day actual suspension. There, in three client matters, Matthew was found culpable of failing to refund unearned fees in two matters, failing to perform legal services competently in one matter, and continuing representation in a matter in which he did not have sufficient time to perform with competence. Although Matthew had no prior record of discipline, Matthew's misconduct commenced approximately three years after he was admitted to practice law in California, much earlier than in the present case. Although the present case presents the serious aggravating circumstance that respondent failed to participate in the

⁷The State Bar also recommends a two-year probation. However, the court notes that probation is not appropriate in default cases. (Rules Proc. of State Bar, rule 205(a), (g).)

disciplinary proceedings prior to the entry of his default, whereas Matthew participated in his disciplinary proceedings, Matthew's misconduct resulted in harm to his clients and he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by delaying in refunding unearned fees even after the State Bar Court found culpability and by failing to participate in an arbitration hearing in one client matter.

The court concludes that *Matthew* presents overall a more serious case than that currently before the court, notwithstanding this court's concern with respondent's failure to participate in this disciplinary proceeding. Under all of the circumstances, the court concludes that the instant case warrants a 30-day period of actual suspension.

VI. Recommended Discipline

The court hereby recommends that respondent Scott Gregory Baker be suspended from the practice of law for one year, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 30 days and until: (1) he files and the State Bar Court grants a motion to terminate his actual suspension (Rules Proc. of State Bar, rule 205); and (2) he makes restitution to Toni Glass in the amount of \$1,750 plus 10 percent interest per annum from March 20, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Toni Glass, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). 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).)

If the period of actual suspension reaches or exceeds 90 days, it is further recommended 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 120 and

130 days, respectively, after the effective date of the Supreme Court's order.⁸


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: June 2, 2008



LUCY ARMENDARIZ
Judge of the State Bar Court

⁸Failure 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.)

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 6, 2008, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

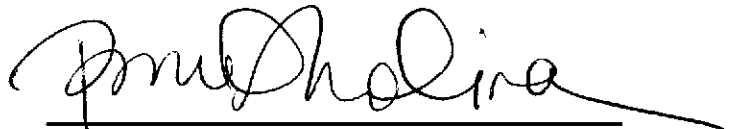
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SCOTT G. BAKER
LAW OFFICES OF SCOTT G. BAKER
PO BOX 1441
SAN ANDREAS, CA 95249

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 6, 2008**.



Bernadette C. O. Molina
Case Administrator
State Bar Court