

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 07-O-12238-DFM;
)	08-O-13216 (Cons.)
ALAN PETER DOVE,)	
)	
Member No. 168582,)	DECISION
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this consolidated default disciplinary matter, respondent **Alan Peter Dove** is charged with multiple acts of professional misconduct in two matters, including (1) failing to promptly pay client funds; (2) holding himself out as entitled to practice law during his administrative suspension from the practice of law; (3) failing to update his membership records address; and (4) failing to cooperate with the State Bar.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be actually suspended from the practice of law for a minimum of one year and until (a) he makes certain restitution; and (b) the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California.

II. PERTINENT PROCEDURAL HISTORY

The State Bar filed and properly served on respondent a Notice of Disciplinary Charges (NDC) on November 12, 2008, in case No. 07-O-12238 and a second NDC on January 8, 2009, in case No. 08-O-13216 at his official membership records address. Respondent did not file a response to either NDC.

On February 17, 2009, the State Bar filed a motion for entry of default. On March 13, 2009, the court consolidated the two cases and entered respondent's default. Respondent was enrolled as an inactive member on March 16, 2009.

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).)

Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1993, and has since been a member of the State Bar of California.

Case No. 07-O-12238 (Bonventre)

Facts:

At all times relevant herein, respondent maintained a client trust account at the Bank of America (the "CTA").

In or about March 2006, Peter Bonventre ("Bonventre") hired respondent on a contingency basis to represent him in a personal injury matter arising out of an automobile accident that had occurred on or about March 11, 2006. Respondent and Bonventre agreed that respondent would be compensated by a contingency fee of forty percent (40%).

On or about March 13, 2006, Bonventre signed a medical lien in favor of his treating chiropractor, Jude J. Cortes, D.C. ("Cortes"); respondent's office signed Cortes's lien on or about April 4, 2006.

On or about June 7, 2006, respondent's office filed a civil complaint on behalf of Bonventre in the Superior Court of California, County of San Diego, entitled *Peter Bonventre v. Allan Kohler, Christine Kohler, et al.*, case No. GIC867150.

In or about March 2007, respondent's office settled Bonventre's personal injury case and received an insurance draft, dated March 11, 2007, from State Farm Mutual Automobile Insurance Company ("State Farm"), payable to the "Law Offices of Alan P. Dove and Peter Bonventre," in the amount of \$20,000.00 (the "settlement draft"). On or about March 19, 2007, respondent deposited the settlement draft into his CTA.

On or about May 1, 2007, Bonventre approved a disbursement of the \$20,000.00 settlement, authorizing respondent to take \$8,000.00 as his fees; disbursing \$8,293.90 to Bonventre; and withholding the remaining \$3,706.10 for the purpose of paying Cortes's lien and reimbursing Bonventre's insurer, Wawanesa, for medical payments Wawanesa made on Bonventre's behalf (collectively, the "lienholders"). Respondent informed Bonventre that he would retain the \$3,706.10 in claimed lien amounts in his CTA pending resolution of the liens, and would forward any remaining balance to Bonventre once the liens were paid.

In or about May 2007, respondent deducted his attorney fee of \$8,000.00 from Bonventre's settlement proceeds and disbursed \$8,293.90 to Bonventre.

To date, respondent has not paid any of Bonventre's funds held in the CTA to the lienholders or to anyone acting on behalf of the lienholders, as requested by Bonventre. Nor has respondent paid any of the \$3,706.10 to Bonventre or to anyone acting on behalf of Bonventre. No justification has been offered for this delay in payment.

Count 1: Failure to Pay Client Funds Promptly [Rules Prof. Conduct, Rule 4-100(B)(4)]

Rule 4-100(B)(4) of the Rules of Professional Conduct¹ requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive.

By not paying any portion of Bonventre's funds held in his CTA to either the lienholders or to anyone acting on their behalf, as requested by Bonventre; and by also not paying said funds to Bonventre, respondent failed to promptly pay client funds as requested by his client in wilful violation of rule 4-100(B)(4).

Case No. 08-O-13216

On or about February 1, 2008, respondent's State Bar membership dues for 2008 became due, which respondent knew. Respondent also knew that if he failed to pay those dues he would be suspended from practice for nonpayment. Knowing that he would be suspended, respondent left his dues unpaid until July 1, 2008, on or about which date respondent was suspended for nonpayment of his 2008 dues.

On or about August 1, 2008, and while respondent was still suspended for nonpayment of his dues, respondent posted an advertisement on "Craigslist" in San Diego, in which respondent held himself out as being eligible to practice law.

On or about September 4, 2008, and while respondent was still suspended for nonpayment of his dues, respondent maintained a website in which respondent held himself out as being eligible to practice law. On that website, respondent provided the address for his practice as "9974 Scripps Ranch Road, P.O. Box P.M.B. 182, San Diego, CA 92131-1825" ("Scripps Ranch Road Address").

¹ References to rule(s) are to the Rules of Professional Conduct, unless otherwise indicated.

Count 1: Holding Out As Entitled to Practice Law [Bus. & Prof. Code, §§ 6068, Subd. (a), 6125 and 6126]

Respondent is charged in count one with a violation of Business and Professions Code section 6068, subdivision (a),² which provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California. The State Bar charges that respondent violated section 6068, subdivision (a), by improperly holding himself out as entitled to engage in the practice of law in violation of sections 6125 and 6126.

Section 6125 provides that no person shall practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

By advertising his availability to perform legal services on "Craigslist" and by maintaining a website on which he identified himself as an attorney, respondent knowingly held himself out as eligible to practice law at a time when he was enrolled as an inactive member and had been suspended, in wilful violation of section 6126.

By violating section 6126, respondent thereby failed to support the laws of the State of California, in wilful violation of section 6068, subdivision (a).

However, respondent did not violate section 6125. "The practice of law is the doing and performing of services in a court of justice ... [I]t includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matters may or may not be pending in a court." (*In re Utz* (1989) 48 Cal.3d 468, 483, fn. 11.) Here, respondent's advertising his availability to perform legal services in and of itself was not

² References to section(s) are to the provisions of the Business and Professions Code.

giving legal advice or preparing a legal document and, thus, it did not constitute the practice of law.

Count 2: Failure to Update Membership Address [Section 6068, Subd. (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.

On a date after November 18, 2001, respondent stopped receiving mail at the mailing address he had previously designated as his membership records address, 1434 5th Avenue, San Diego, CA 92101. Respondent did not provide notice to the State Bar that he was no longer receiving mail at his former membership records address; nor did respondent provide notice to the State Bar of his then current office address or telephone number, or, in the alternative, an address to be used for State Bar purposes or purposes of the agency charged with attorney discipline.

On or about September 4, 2008, the office address where he was receiving mail was "9974 Scripps Ranch Road, P.O. Box P.M.B. 182, San Diego, CA 92131-1825" ("Scripps Ranch Road Address").

By not providing notice to the State Bar of his current office address and telephone number, or of an address to be used for State Bar purposes or purposes of the agency charged with attorney discipline, respondent failed to comply with the requirements of section 6002.1.

By not updating his State Bar membership records address after November 2001, respondent failed to maintain a current address and telephone number to be used for State Bar purposes, in wilful violation of section 6068, subdivision (j).

Count 3: Failure to Cooperate With the State Bar [Section 6068, Subd. (i)]

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

On or about September 4, 2008, and again on or about October 2, 2008, an investigator from the State Bar of California sent letters to respondent at his previous membership records address, and also to the Scripps Ranch Road Address, requesting that respondent respond to allegations of misconduct in writing, by September 25, 2008, and by October 17, 2008, respectively. Respondent received the letters but did not respond.

By not responding in writing to the State Bar investigator's letters dated September 4, 2008, and October 2, 2008, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in wilful violation of section 6068, subdivision (i).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³ There are several aggravating factors present here.

Prior Record of Discipline

Respondent has one prior record of discipline, in which he also defaulted. (Std. 1.2(b)(i).) There, he was found culpable of failing to perform with competence, failing to communicate, failing to return unearned fees, threatening charges to gain advantage in a civil suit, and failing to participate in a disciplinary investigation. The California Supreme Court suspended respondent for one year, stayed, and actually suspended him for 90 days and until he satisfies a judgment and until the State Bar Court grants a motion to terminate his actual suspension, effective May 3, 2009. (S170199; State Bar Court case No. 07-O-11878.) The weight given to this factor here,

³ All further references to standard(s) are to this source.

however, is discounted for the reasons set forth in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.

Multiple Acts of Misconduct

Respondent has been found culpable of multiple counts of misconduct in the present proceeding involving two separate matters. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).)

Respondent's failure to pay promptly client funds deprived his client and the lienholders of their funds.

Lack of Participation in Disciplinary Proceeding

Respondent's failure to participate in this disciplinary proceeding before the entry of his default is also an aggravating factor. (Std. 1.2(b)(vi).) However, because of the nexus between this aggravating circumstance and respondent's culpability for violating section 6068, subdivision (i), the court gives this aggravating factor only slight weight. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigation was submitted into evidence.

IV. DISCUSSION

The purpose of State Bar 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *In the Matter of Van Sickle, supra*; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(a) provides “If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current

proceeding would be manifestly unjust.” Respondent has one prior record of discipline which became effective only in May 2009.

Standards 2.2(b) and 2.6 apply in this matter.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances. Here, respondent failed to promptly return client funds.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges that discipline here include two years’ stayed suspension, and actual suspension for one year and until (a) respondent pays restitution to his client of the client funds and (b) the State Bar Court grants a motion to terminate his suspension under rule 205. In support of this recommendation, the State Bar cites to *Farnham v. State Bar* (1976) 17 Cal.3d 605, *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, and *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. This court agrees that these cases involved facts and considerations quite similar to those present here, including holding oneself out as entitled to practice law while suspended.

The court further agrees that a lengthy period of stayed and actual suspension is necessary here to protect the public and the profession. Respondent had perpetrated multiple acts of misconduct; his conduct has caused significant harm to a client and others; he continues to withhold the client funds he wrongfully withheld from his client; and he has repeatedly ignored his obligation to participate in the disciplinary process in the past and still refuses to do

so. Under such circumstances, stern measures must be taken, including an actual suspension of one year.

V. RECOMMENDED DISCIPLINE

Suspension Recommended

Accordingly, the court hereby recommends that respondent **Alan Peter Dove** 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 a minimum of one year and until all of the following conditions are satisfied:

- A. He makes restitution to Peter Bonventre in the amount of \$3,706.10 plus 10% interest per annum from May 1, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Peter Bonventre, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and furnishes satisfactory proof of payment thereof to the State Bar's Office of Probation;⁴ and
- B. Respondent files and the State Bar Court grants a motion to terminate his current actual suspension under rule 205 of the Rules of Procedure.

Future Probation

It is 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).)

Conditional Standard 1.4(c)(ii)

It is also recommended that, if respondent remains suspended for two years or more as a result of not satisfying the preceding conditions, he remain suspended until he has shown proof

⁴ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Standard 1.4(c)(ii) and Rules Proc. of State Bar, rule 205.)

MPRE

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination since he was previously and recently ordered to do so in Supreme Court order No. S170199.

Rule 9.20

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁵

Costs

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

Dated: July ____, 2009

DONALD F. MILES
Judge of the State Bar Court

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)