FILED MAY 6, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 07-O-13895** (07-O-14272, 08-O-11116)-DFM
JOHN RANDALL FAITH	)	
Member No. 50474	)	**DECISION**
A Member of the State Bar.	)	

INTRODUCTION

In the seven-count Notice of Disciplinary Charges filed in this matter, Respondent **John Randall Faith** (Respondent) is charged with willfully violating (1) Business and Professions Code section 6106 (moral turpitude-NSF checks)[1]; (2) rule 3-700(A)(2) of the Rules of Professional Conduct[2] (improper withdrawal from employment); (3) rule 3-700(D)(1) (failure to release client file); (4) section 6068, subdivision (m) (failure to respond to client inquires); and (5) three counts of violating section 6068, subdivision (i) (failure to cooperate in State Bar investigation).

The State Bar was represented by Deputy Trial Counsel Elina Kreditor. Respondent did not appear in person or by counsel and permitted his default to be entered in the proceeding. The court finds culpability and recommends discipline as set forth below.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

[2] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter on October 26, 2009. It was properly served on Respondent on that same date at his official membership records address (official address), by certified mail, return receipt requested, as provided in section 6002.1, subdivision (c). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) On November 3, 2009, a return card was received by the State Bar signed by Respondent.

Before the State Bar filed its motion for entry of Respondent's default, State Bar attorneys made extensive efforts to make Respondent aware of the pendency of the action and to persuade him to participate in it. Letters and emails were sent; telephone calls were made; messages were left; and the NDC was sent to other addresses.[3] Throughout the process, Respondent chose to ignore the State Bar's efforts.

On January 6, 2010, the State Bar filed its motion for entry of default. That motion was properly served and additional efforts made to make Respondent aware of its pendency. Nonetheless, Respondent's refusal to participate in this disciplinary process continued.

Respondent's default was entered on January 25, 2010. The court at that time concluded that Respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) A copy of the default order was properly served on Respondent on January 25, 2010, by certified mail, return receipt requested, addressed to Respondent at his official membership address. Respondent was then enrolled as an inactive member under section 6007, subd. (e), effective January 28, 2010.

[3] The court commends the State Bar's attorneys, attorney Kreditor and her colleague, Jean Cha, for their efforts in this regard.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted on entry of a respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).) Except as otherwise noted, the following facts and conclusions are based on the factual allegations of the NDC.

Jurisdiction

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar at all relevant times.

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At all times mentioned herein, Respondent maintained a client trust account at Wells Fargo Bank. (Respondent's CTA). On or about July 5, 2007, the balance in Respondent's CTA was $368.49. On that date, Respondent issued check, number 1960, in the amount of $604.50 from his CTA, made payable to the Law Offices of Donald E. Boss, against insufficient funds. The bank paid the check, lowering the balance in Respondent's CTA to (-$236.06). At the time Respondent issued this check, Respondent knew, or in the absence of gross negligence should have known, that there were insufficient funds in the CTA to cover the amount of the check.

On or about October 2, 2007, Respondent issued check no. 1982 from his CTA, in the amount of $700.00 and made payable to the Law Offices of J. Randall Faith, against insufficient funds. The bank paid the check, lowering the balance to (-$55.06). At the time Respondent issued CTA check number 1982, he knew, or in the absence of gross negligence should have known, that there were insufficient funds in the CTA to cover the amount of the check.

On or about July 25, 2007, the Intake Unit of the State Bar of California wrote Respondent a letter, notifying him that the State Bar had received a report from Respondent's bank regarding check number 1960 being paid against insufficient funds. The letter requested

Respondent to respond by August 8, 2007. Respondent received the July 25, 2007, letter but failed to respond.

On or about August 27, 2007, the Intake Unit wrote another letter to Respondent requesting a response to the letter sent on July 25, 2007. The due date for the response was set for September 11, 2007. Respondent received the August 27, 2007, letter but did not respond.

On or about October 11, 2007, a State Bar Investigator (Investigator) sent an investigative letter to Respondent at his official membership records address, requesting a response to the CTA matter. The response deadline was October 26, 2007. Respondent received the letter. A copy of the letter was sent to an alternate office address. Respondent received the second letter as well. Respondent did not respond to either letter.

On or about October 30, 2007, the Investigator called Respondent's office to discuss the lack of response to the Investigator's October 11, 2007, letter. The Investigator spoke to Respondent. Respondent acknowledged receipt of the October 11, 2007, letter. Respondent promised to respond to the matter but subsequently failed to do so. The Investigator also informed Respondent that a second notice from Respondent's bank reported that on October 2, 2007, check number 1982, in the amount of $700.00, was returned to Respondent because of non-sufficient funds or was paid against non-sufficient funds in his CTA.

On or about November 6, 2007, the Investigator sent a second letter to Respondent at his official membership records address, requesting a response to the CTA matter. The response deadline was November 21, 2007. Respondent received the letter. A copy of the letter was sent to the alternate office address. Respondent received the second letter as well. Respondent did not respond to either letter.

On or about November 6, 2007, the Investigator also sent a letter to Respondent at his official membership records address, requesting a response to the issuance of check number 1982

being paid from his CTA against insufficient funds as per the Investigator's discussion with Respondent on October 30, 2007. The response deadline was November 21, 2007. Respondent received the letter. A copy of the letter was also sent to the alternate office address. Respondent received the second letter as well. Respondent did not respond to either letter.

On or about November 28, 2007, the Investigator sent an electronic message to Respondent at the e-mail address listed with his State Bar of California official membership records address, requesting a response to the unanswered October 11, 2007, and November 6, 2007, letters. Respondent received the e-mail but failed to reply to it.

On or about December 13, 2007, the Investigator sent another letter to Respondent at his official membership records address, requesting a response to both the CTA matter and the check number 1982 matter discussed in the unanswered letters. Respondent received the letter. Copies of the October 11, 2007, and November 6, 2007, letters were enclosed. A copy of the December 13, 2007, letter with enclosures was also sent to a third office address. Respondent received these letters but failed to respond to any of them.

Count 1 – Section 6106 [Moral Turpitude – NSF Checks]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. "Writing checks when one knows or should know that there are not sufficient funds to cover them manifests a disregard of ethics and fundamental honesty, at least if such conduct occurs repeatedly. Writing bad checks may, by itself under some circumstances, constitute moral turpitude." (*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11, citing *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1088; *Bambic v. State Bar* (1985) 40 Cal.3d 314, 324; see also *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 58; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 315.)

By issuing two checks from his CTA at two different times against insufficient funds, when he knew, or in the absence of gross negligence should have known, that there were insufficient funds in the CTA to cover the checks, Respondent committed acts of moral turpitude, in willful violation of section 6106.

Count 2 – Section 6068, Subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068, subdivision (i) of the Business and Professions Code, subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

The State Bar spent considerable time seeking to get from Respondent a response to its inquiries regarding the checks he had bounced. Respondent was aware of the State Bar's investigation and actually promised to provide a response. He never did. By failing to cooperate and participate in a State Bar disciplinary investigation, Respondent willfully violated section 6068, subdivision (i).

Case No. 07-O-14272

On or about November 5, 2007, the State Bar opened an investigation pursuant to a complaint filed by Robert Sandberg (the Sandberg matter). On or about November 6, 2007, a State Bar Assistant Chief Trial Counsel (the ACTC) wrote a letter to Respondent regarding the Sandberg matter. The letter requested Respondent to respond in writing by November 21, 2007, to specified allegations of misconduct being investigated by the State Bar in the Sandberg matter. Respondent received the letter but failed to respond to it.

On or about November 6, 2007, the ACTC sent a copy of the November 6, 2007, letter to an alternate office address for Respondent. Respondent also received this letter but failed to respond to it.

On or about November 21, 2007, the ACTC e-mailed Respondent at the e-mail address on file with the State Bar, asking for a response to the allegations in the Sandberg matter. Respondent failed to respond to the e-mail.

On or about December 4, 2007, the ACTC called Respondent's office and spoke with Respondent. Respondent stated that he would respond by December 5, 2007. He subsequently failed to do so.

On or about December 13, 2007, a State Bar Investigator wrote Respondent, requesting a response to the allegations being investigated in the Sandberg matter. The Investigator's letter was mailed to Respondent at his official membership records address. The Investigator enclosed a copy of the November 6, 2007, letter. Copies of the letter, with enclosures, were also mailed to two additional office addresses for Respondent. Respondent received the letters but did not respond to any of them.

Count 3 – Section 6068, Subd. (i) [Failure to Cooperate in State Bar Investigation]

The State Bar spent considerable time seeking to get from Respondent a response to its inquiries regarding the Sandberg matter. Respondent was aware of the State Bar's investigation and actually promised to provide a response. He never did. By failing to cooperate and participate in the State Bar disciplinary investigation of the Sandberg matter, Respondent willfully violated section 6068, subdivision (i).

Case No. 08-O-11116

In approximately 2000, Robert Haigh hired Respondent to handle various business matters for him and his company. After Robert Haigh died in November 2006, his son, John Haigh (Haigh), retained Respondent to handle the resulting probate matter.

Respondent prepared and filed in the Orange County Superior Court on December 19, 2006, a petition for probate of the will of Robert Haigh (the probate matter). The last activity

performed by Respondent concerning this case was the filing of a Petition to Administer the Estate on March 26, 2007. Thereafter, Respondent failed to take any further action in the matter. By not performing any work on the probate matter after March 26, 2007, Respondent effectively withdrew from his employment in the matter. At no time did Respondent inform Haigh that he was withdrawing from employment in the probate matter or that he would not take any further legal action in the probate matter. Nor did Respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

From in or about mid-August 2007 through in or about December 2007, Haigh and his wife made various attempts to contact Respondent concerning the probate matter. They called Respondent and left messages requesting him to contact Haigh regarding the status of the probate matter. Respondent failed to return any of their calls. Haigh eventually hired new counsel to take over the probate case.

On or about January 17, 2008, Haigh sent Respondent a letter, requesting him to release all the Haigh files to Haigh's new counsel, Thomas Ramsey (Ramsey). Respondent received the letter but failed to reply to it.

On or about February 5, 2008, Haigh sent Respondent another letter demanding that Respondent release all of Haigh's files to Ramsey. Respondent received the letter but failed to release the files.

On or about February 21, 2008, Ramsey sent Respondent a letter demanding the release of Haigh's files. Respondent received the letter but did not respond and did not turn over the files.

On or about March 5, 2008, Ramsey attempted to contact Respondent via telephone but the call went straight to Respondent's voicemail. Ramsey left a message asking Respondent to return his call. Respondent failed respond.

On or about March 14, 2008, staff from the Intake Unit of the State Bar of California spoke to Respondent via telephone and informed him that Haigh's file should be released to his new counsel, Ramsey. Respondent stated he would send the file by the following weekend and agreed to send the State Bar a copy of the transmittal letter. Respondent also represented to Ramsey that he would send the file to him by the weekend. However, Respondent neither sent Ramsey the file nor gave the State Bar a copy of any transmittal letter.

At the time of the filing of the NDC, Respondent had still not turned over Haigh's file to either Haigh or Ramsey.

Count 4 – Rule 3-700(A)(2) [Improper Withdrawal From Employment]

Rule 3-700(A)(2) provides, "A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules." An attorney may effectively withdraw from a case without any intent to do so, when that attorney virtually abandons the client and is grossly negligent in communicating with the client. (See, e.g., *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 951; and cases cited therein.) That is what Respondent did here.

By not performing any work in the probate matter after March 26, 2007, failing to inform Haigh of his intent to withdraw from employment, and failing to take any steps to avoid reasonably foreseeable prejudice to his client, Respondent improperly withdrew from his employment in the Haigh probate matter, in willful violation of rule 3-700(A)(2).

Count 5 – Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) provides: "A member whose employment has ended shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request

of the client, all the client's papers and property. 'Client papers and property' includes 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 releasing Haigh's files to Haigh's new counsel, despite repeated requests from and on behalf of Haigh (including a request by the State Bar), Respondent failed to release promptly to the client, at the request of the client, all of the client's papers and property, in willful violation of rule 3-700(D)(1).

Count 6 –Section 6068, Subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m) of the Business and Professions Code obligates 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."

Haigh made numerous and reasonable inquiries of Respondent regarding the status of the probate matter. By not returning any of Haigh's telephone calls inquiring about the status of the probate matter, Respondent willfully failed to respond promptly to reasonable status inquiries by a client, in willful violation of section 6068, subdivision (m).

Count 7 – Section 6068, Subd. (i) [Failure to Cooperate in State Bar Investigation]

On or about March 24, 2008, the State Bar opened an investigation pursuant to a complaint filed by Haigh (the Haigh matter). On or about March 26, 2008, a State Bar Investigator (the Investigator) left messages on Respondent's office voicemail and cell phone voicemail, requesting Respondent to contact the Investigator. Respondent received the voicemails but failed to respond to any of the messages.

On or about March 27, 2008, the Investigator wrote Respondent a letter, requesting that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Haigh matter. The response deadline was April 11, 2008. The letter was sent to two different addresses for Respondent. At the same time, it was also faxed and e-mailed to Respondent. Respondent received the letter but failed to respond to it.

On or about April 16, 2008, the Investigator wrote Respondent another letter, requesting a response to the letter sent on March 27, 2008. A copy of the March 27, 2008, letter was enclosed. The letter was sent to three separate addresses for Respondent. It was also faxed and e-mailed to Respondent. The response deadline was May 1, 2008. Respondent received the letter and enclosure but failed to respond.

By not providing the Investigator with a written response to the allegations in the Haigh matter or otherwise cooperating in the investigation of the Haigh matter, Respondent knowingly failed to cooperate in a State Bar investigation, in willful 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).)[4] The court finds the following aggravating factors.

Multiple Acts of Misconduct

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

Lack of Participation in Disciplinary Proceeding

Respondent's failure to participate in this disciplinary proceeding before the entry of his default is an aggravating factor. (Std. 1.2(b)(vi).) However, because of the nexus between this

[4] All further references to standard(s) or std. are to this source.

aggravating circumstance and Respondent's culpability for repeatedly violating section 6068, subdivision (i), the court gives this aggravating factor only slight additional 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).) The court finds mitigating factors as follows:

No Prior Discipline

Although the Respondent did not appear in this action, the court takes judicial notice of the fact that he practiced law in California for 35 years prior to the commencement of the instant misconduct and has no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is entitled to considerable weight in mitigation. (Std. 1.2(e)(i); *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225; *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749.)

DISCUSSION

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (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.' [Citations.]" (*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 *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *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. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.3, which provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon 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 member's acts within the practice of law." Acts of moral turpitude by an attorney are grounds for suspension or disbarment even if no harm results. (*In the Matter of Jeffers, supra*, 3 Cal. State Bar Ct. Rptr. at p. 220.)

The State Bar recommends a two-year stayed suspension, with an actual suspension of six months. In support of that recommendation it cites several supporting cases, including *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871; *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, and *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490.

This court agrees with the State Bar's recommended discipline.[5] Respondent has violated his professional obligations in three separate matters and in several different ways. While he has many years of discipline-free practice, the extended period during which the instant misconduct occurred and his repeated and ongoing refusal to participate in the State Bar's investigatory or disciplinary processes preclude this court from finding that his misconduct was aberrational. His ongoing failure to appear in this proceeding has also prevented this court from being able to assess what factors have caused the apparent change in Respondent's approach to the practice of law and his current disregard for his professional duties. His disregard for this process is a strong indicater that he presents an ongoing substantial risk to both the public and the profession. The discipline suggested by the State Bar is both warranted and required here to protect the public and the profession.

RECOMMENDED DISCIPLINE

Suspension Recommended

For all of the above reasons, it is recommended that **John Randall Faith** be suspended from the practice of law in California for two years; that execution of that period of suspension be stayed; and that Respondent be suspended from the practice of law for a minimum of six months, and he will remain suspended until he files and the State Bar Court grants a motion to terminate his suspension under rule 205 of the Rules of Procedure of the State Bar of California.

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 condition, he be ordered to provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Std. 1.4(c)(ii); Rules Proc. of State Bar, rule 205(b).)

[5] The State Bar also recommended two-years' probation. Any such order of probation, however, should await Respondent's appearance in the matter.

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 suspension. (Rules Proc. of State Bar, rule 205(g).)

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20

The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court, and 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.[6]

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. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and

[6] 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 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).)

that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: March _____, 2011

DONALD F. MILES
Judge of the State Bar Court