

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No.: 08-J-14789-DFM |
| |) | |
| WILLIAM RANDOLPH WAHL, |) | DECISION |
| |) | |
| Member No. 182542, |) | |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

INTRODUCTION

Respondent **William Randolph Wahl** (Respondent) is a member of both the California and Arizona State Bars. By order filed on March 18, 2008, the Arizona Supreme Court imposed discipline on Respondent, consisting of actual suspension from practice in Arizona for six months and one day. As a result, the State Bar of California initiated this proceeding in October, 2009, charging that the Respondent's misconduct in Arizona also represented a violation by him of rule 1-300 of the California Rules of Professional Conduct. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Bita Shasty. Respondent did not appear in person or by counsel and permitted his default to be entered in this California proceeding.

Business and Professions Code section¹ 6049.1 provides, in pertinent part, that a certified copy of a final order by any court of record or other body of any state of the United States authorized by law or rule of court to conduct disciplinary proceedings against attorneys, determining that a member of the State Bar committed professional misconduct in such other jurisdiction, will be conclusive evidence that the member is culpable of professional misconduct in this state, subject only to the following limitations: (1) the degree of discipline to impose; (2) whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in California under the laws or rules applicable to members of the California State Bar at the time of the misconduct in the other jurisdiction; and (3) whether the proceedings of the other jurisdiction lacked fundamental constitutional protection. (Section 6049.1, subds. (a) and (b).)

The member bears the burden of establishing that the conduct for which he was disciplined in the other jurisdiction would not warrant the imposition of discipline in California and/or that the proceedings in the other jurisdiction lacked fundamental constitutional protection. Because Respondent did not participate in this proceeding, he did not establish either of these propositions. As a result, the formal record of discipline in Arizona is conclusive evidence of Respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) and (b).)

The State Bar charges that the Arizona disciplinary order conclusively establishes that Respondent is culpable of willfully violating California Rules of Professional Conduct, rule 1-300(B). The court agrees and recommends, among other things, that Respondent be suspended for two years, that execution of that period of suspension be stayed, and that he be suspended from the practice of law in California for a minimum of six months and will remain suspended

¹ All references to section(s) are to the Business and Professions Code, unless otherwise stated.

until the State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in this matter was filed on October 20, 2009, and 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.) The NDC was returned to the State Bar by the U.S. Postal Service, indicating a forwarding address. The State Bar then sent a copy of the NDC, by certified mail, return receipt requested, to Respondent's forwarding address. On October 26, 2009, the State Bar received the certified mail return receipt showing that an agent of Respondent, Jan Metzger, signed the receipt for the certified mail on October 22, 2009.

The State Bar's other efforts to contact Respondent were fruitless. The State Bar's efforts to locate Respondent included: (1) sending an e-mail to respondent at his e-mail address listed with his membership records; (2) calling respondent's membership records telephone number on two occasions; and (3) searching for new contact information through www.whitepages.com and www.411.com.

The court concludes 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.)

Despite the formal service of the NDC and the efforts to notify Respondent of this action, Respondent did not file a response to the NDC; nor did he appear in person or by counsel in the action. (Rules Proc. of State Bar, rule 103.) On motion of the State Bar, Respondent's default

was entered on January 14, 2010. Respondent was enrolled as an inactive member under section 6007, subd. (e), effective January 17, 2010.

A copy of the default order was properly served on Respondent on January 14, 2010, by certified mail, return receipt requested, addressed to Respondent at his official address. A courtesy copy was also sent by certified mail, return receipt requested, addressed to Respondent at his forwarding address. On February 1, 2010, the State Bar Court received the certified mail return receipt showing that “Jan Metzger” signed the receipt for the mailing sent to Respondent’s forwarding address on January 19, 2010.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on June 7, 1996, and has been a member of the State Bar of California at all times since.

Misconduct

Section 6049.1, subdivision (a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional misconduct in this state.

The court admits into evidence the certified copy of the Arizona disciplinary proceeding entitled *In the Matter of a Member of the State Bar of Arizona, William Wahl*, Bar No. 019356, Supreme Court No. SB-08-0017-D, Judgment and Order filed March 18, 2008; Disciplinary Commission Report, No. 06-1509, filed December 14, 2007; Order upon Decision, No. 06-1509, filed December 14, 2007; and Hearing Officer’s Report filed September 7, 2007, which were attached to the NDC as exhibit 1.

On March 18, 2008, the Supreme Court of Arizona issued a Judgment and Order in Supreme Court No. SB-08-0117-D, suspending Respondent from the practice of law for conduct in violation of his duties and obligations as a lawyer for a period of six months and one day, effective 30 days thereafter.

The Arizona Supreme Court order was based on the December 14, 2006 Report of the Disciplinary Commission (Disciplinary Commission Report), which adopted the findings of fact, conclusions of law, and disciplinary recommendation contained in the September 7, 2007 Hearing Officer's Report.² The record of the Arizona proceedings conclusively establishes the following facts:

Respondent was admitted to the practice of law in Arizona on January 12, 1999. Respondent was placed on administrative suspension in Arizona on March 25, 2005, for failure to comply with Arizona's mandatory continuing legal education requirement. Respondent was notified of the suspension by letter dated April 12, 2005. He remained suspended until he was reinstated on or about June 9, 2006.

On or about March 8, 2006, while he was suspended, Respondent filed a pleading in the Superior Court of the State of Arizona in a case entitled *Salesforce.Com, Inc. v. FPR II, L.L.C.*, Case No. CV2006-003048. In that pleading, Respondent was listed as the attorney of record for the defendant.

In or about May 2006, the arbitrator assigned to the case contacted the Arizona State Bar to confirm the mailing addresses for the involved attorneys. At that time he learned that Respondent had been and was suspended from the practice of law. By letter dated June 6, 2006,

² Because Respondent also defaulted in the Arizona proceeding, the facts as set forth in the Arizona State Bar's complaint were deemed admitted as provided under the Arizona Supreme Court Rules.

the arbitrator then informed the parties of the suspension and requested that Respondent respond to the information by June 26, 2006. Respondent did not respond to the arbitrator, but did seek reinstatement from the suspension.

During the period of suspension, Respondent also represented clients in other cases, including a probate matter, PB 1998-00042, in which Respondent appeared in court as attorney for the estate on or about October 25, 2005.

Violations of Arizona ER 5.5 -- Unauthorized Practice of Law in Arizona

Based on the findings and recommendations of the Arizona Disciplinary Commission, the Arizona Supreme Court concluded that Respondent was culpable of violating, inter alia, Arizona ER 5.5³. This rule states, in pertinent part, that “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”

Violation of Rule 1-300(B) of the California Rules of Professional Conduct [Unauthorized Practice of Law in Another Jurisdiction]

Rule 1-300(B) of the Rules of Professional Conduct provides: “A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.” Respondent’s above misconduct, in violation of Arizona ER 5.5, also constituted a willful violation by him of rule 1-300(B).

Factors in Aggravation/Mitigation

Although the findings of culpability are subject to the process set forth in section 6049.1, such is not true with regard to issues of aggravation and mitigation. Instead, the burdens of proof with regard to those issues are the same as in any other case. (*In the Matter of Jenkins* (Review

³ Pursuant to Evidence Code section 452(a), the court takes judicial notice of Arizona Supreme Court Rule 42 (Arizona Rules of Professional Conduct), specifically, ERs 5.5, 8.1(b), 8.4(c) and (d), as well as Arizona Supreme Court Rule 53.

Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163-164.) The State Bar had the burden of proving aggravating circumstances by clear and convincing evidence. Respondent had the burden of proving mitigating circumstances by the same clear and convincing standard. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b) and (e).⁴) The court finds the following with regard to those issues:

Aggravating Circumstances

Multiple Acts of Misconduct

Respondent's practice of law in two cases, while summarily suspended from the practice of law, is an aggravating factor. (Std. 1.2(b)(ii).)

Lack of Cooperation in the Disciplinary Process

Respondent failed to participate in either the Arizona or the instant disciplinary proceedings. This failure by him to participate in the disciplinary process is a serious aggravating factor. (Std. 1.2(b)(vi).)

Mitigating Circumstance

No Prior Discipline

The court takes judicial notice of Respondent's more than 9 years of discipline-free practice at the time of his misconduct in late 2005. This is a mitigating factor. (Std. 1.2(e)(i); *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88.)

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.)

⁴ All further references to standard(s) are to this source.

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 Silvertown* (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.)

The applicable standard in this matter is standard 2.10. Standard 2.10 provides that culpability of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in the other standards will result in reproof or suspension depending upon the gravity of the wrongful conduct and the degree of harm to the client, if any, with due regard to the purposes of imposing discipline.

The State Bar recommends that Respondent be actually suspended for six months. The court agrees.

In this matter, Respondent deliberately engaged in the unauthorized practice of law in Arizona during his suspension in that state. Respondent’s misconduct reflects a blatant disregard

of professional and ethical responsibilities. Moreover, Respondent's failure to appear and participate in both the Arizona and the California disciplinary proceedings shows that he either fails to comprehend his professional obligations as a member of the bar or is either unwilling or unable to comply with those obligations. Whichever that may prove to be, it is a source of considerable concern to this court and a significant threat of future misconduct if not promptly corrected. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Placing Respondent on suspension for a minimum of six months, among other things, is both proportionate to the misconduct and is necessary to protect the public. (*Farnham v. State Bar* (1976) 17 Cal.3d 605; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896.)

RECOMMENDATION

Discipline Recommendation

The court recommends that respondent **William Randolph Wahl** be suspended from the practice of law in California for one year; and that execution of that period of suspension be stayed, subject to the following conditions:

- A. That Respondent be suspended from the practice of law for a minimum of six months, and he will remain suspended until the following requirements are satisfied:
1. The State Bar Court grants a motion to terminate Respondent's suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California; and
 2. If Respondent remains suspended for two years or more as a result of not satisfying the preceding condition, he must also 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
- B. That Respondent comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

Multistate Professional Responsibility Examination

It is recommended that William Randolph Wahl 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. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that William Randolph Wahl 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 imposing discipline in this matter. Willful failure to do so may result in revocation of probation, suspension, disbarment, conviction of contempt, or criminal conviction.⁵

Costs

It is recommended 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 Business and Professions Code section 6140.7 and as a money judgment. It is also recommended that William Randolph Wahl reimburse the Client Security Fund to the extent that the misconduct in this matter results in payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: May ____, 2010

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. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)