

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: 08-O-10817-LMA
CATHYE E. LEONARD,) DECISION
Member No. 177791,)
A Member of the State Bar.)

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on August 12, 2009.¹ The State Bar of California, Office of the Chief Trial Counsel (State Bar), was represented in this matter by Deputy Trial Counsel Mark Hartman (DTC Hartman). Respondent Cathye E. Leonard (respondent) failed to participate in this matter either in-person or through counsel.

The State Bar filed a Notice of Disciplinary Charges (NDC) against respondent on January 29, 2009. On January 29, 2009, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (Rules

¹ This matter was originally submitted for decision on May 18, 2009. However, this submission date was later vacated, as the April 21, 2009 order of entry of respondent's default was discovered to have been improperly served on respondent. Subsequently, this matter was again submitted for decision after proper service on respondent of the order of entry of respondent's default.

of Procedure).² The NDC was not returned by the U.S. Postal Service as undeliverable or for any other reason.

As respondent did not file a response to the NDC, on April 3, 2009, the State Bar filed and properly served on respondent a motion for the entry of respondent's default.³

When respondent failed to file a written response within ten days after service of the motion for the entry of her default, on August 12, 2009, the court filed an order of entry of default and involuntary inactive enrollment.⁴ A copy of the order was properly served on respondent that same day.

The State Bar did not request a default hearing in this matter. On May 14, 2009, the State Bar filed a brief on the issues of culpability and discipline.

This matter was submitted for decision on August 12, 2009, after proper service of the order of entry of respondent's default.⁵

Efforts by the State Bar to contact respondent or locate respondent at an address other than her official State Bar membership records address were fruitless. 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, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

² Unless otherwise indicated, all documents were properly on respondent served pursuant to the Rules of Procedure.

³ The motion also contained a request that the court take judicial notice of respondent's address history maintained by the State Bar's Membership Records Department. The court grants this request.

⁴ See footnote 1. Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), is effective August 15, 2009, three days after the service of this order by mail.

⁵ Exhibits 1-2 attached to the State Bar's December 11, 2008 motion for the entry of respondent's default and Exhibit 1 attached to the State Bar's brief on the issues of culpability and discipline are admitted into evidence.

II. Findings of Fact

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on October 20, 1995, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. The Raj Matter - Counts One Through Three (Case No. 08-O-10817)

On or about January 4, 2005, Rajesh C. Raj (Raj) hired respondent to represent him in the family law matter *Arun L. Raj v. Rajesh C. Raj*, Nevada County Superior Court Case No. FL03078. Specifically, respondent was hired to seek a change of venue from Nevada County to Contra Costa County and a change of custody for Raj's daughter. At that time, Raj paid respondent \$2,000 in advanced fees for her services.

Subsequently, respondent took no action on Raj's behalf. Respondent's employment by Raj was effectively terminated when she failed to perform any services on behalf of Raj.

On or about March 14, 2008, Raj sent a letter to respondent at respondent's official State Bar membership records address as provided in Business and Professions Code section 6002.1, subdivision (c). In the March 14, 2008 letter, Raj advised that he was terminating respondent's services and requested respondent to turn over the legal file and to refund all unearned fees. Respondent received Raj's March 14, 2008 letter, but did not respond to it. Respondent's employment by Raj was formally terminated by Raj's March 14, 2008 letter.

Respondent earned no portion of the \$2,000 in advanced attorney fees paid to her by Raj, because respondent performed no services of value to Raj.

As of January 29, 2009, respondent has refunded no portion of the \$2,000 in advanced attorney fees to Raj.

As of January 29, 2009, respondent has not returned Raj's client file or otherwise made it available to him, despite Raj's request for the file.

C. The Raj Matter - Count Four (Case No. 08-O-10817)

On or about January 11, 2008, the State Bar opened an investigation in case no 08-O-10817, pursuant to a complaint filed by Raj (Raj complaint).

On or about February 7, 2008, State Bar Complaint Analyst Edward C. Williams (Williams) sent a letter to respondent at respondent's official State Bar membership records address as provided in Business and Professions Code section 6002.1, subdivision (c), regarding the Raj complaint. Respondent received the February 7, 2008 letter.

Williams's February 7, 2008 letter requested respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Raj complaint. Respondent did not respond to Williams's letter of February 7, 2008.

On or about March 10, 2008, State Bar Investigator Jeanne Isola (Isola) sent a letter to respondent at respondent's official State Bar membership records address as provided in Business and Professions Code section 6002.1, subdivision (c), regarding the Raj complaint. Respondent received the March 10, 2008 letter.

Isola's March 10, 2008 letter requested respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Raj complaint. Respondent did not respond to Isola's March 10, 2008 letter.

On or about April 3, 2008, Isola sent a letter to respondent at respondent's official State Bar membership records address as provided in Business and Professions Code section 6002.1, subdivision (c), regarding the Raj complaint. Respondent received the April 3, 2008 letter.

Isola's April 3, 2008 letter requested respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Raj complaint. Respondent did not respond to Isola's April 3, 2008 letter.

III. Conclusions of Law

Count One – Rule 3-110(A) of the Rules of Professional Conduct⁶

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-110(A). Rule 3-110(A) provides that “[a] member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” By failing to take any action on Raj's behalf after his employment, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Two – Rule 3-700(D)(2)

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(D)(2). Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees. By failing to refund the \$2,000 in unearned advanced fees after the termination of her professional relationship with Raj, respondent failed to promptly refund fees paid in advance that were not earned in willful violation of rule 3-700(D)(2).

Count Three – Rule 3-700(D)(1)

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(D)(1). Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. By failing to return the file, as requested by Raj, respondent failed to promptly release all client papers and property as requested by a client upon termination of employment in willful violation of rule 3-700(D)(1).

⁶ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

Count Four – Business and Professions Code Section 6068, Subdivision (i)⁷

The State Bar proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (i). Section 6068, subdivision (i), requires an attorney to cooperate with and participate in a State Bar disciplinary investigation or proceeding. By failing to respond to the February 7, March 10 and April 3, 2008 letters from the State Bar and by failing to provide a written response to the allegations of misconduct in relation to the Raj compliant, respondent failed to cooperate or participate in the disciplinary investigation against her in violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on her behalf and none can be gleaned from the record.

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (standard).) On December 16, 2005, the Supreme Court issued an order suspending respondent from the practice of law for one year and until she makes and provides proof of specified restitution, the execution of the suspension was stayed, and she was placed on probation for two years subject to certain conditions of probation for willfully violating: (1) rule 3-110(A) by recklessly failing to perform legal services with competence; (2) section 6068, subdivision (m) by failing to respond to her client's status inquiries; (3) rule 3-700(D)(2) in two matters by failing to refund unearned advanced fees to her client; (4) rule 4-100(B)(4) by failing to promptly pay, as requested by her client, funds in her possession which the client was entitled to receive; (5) rule 3-310(F) by

⁷ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

accepting fees for representation of her client from someone other than her client without obtaining her client's informed written consent after written disclosures; (6) rule 3-700(A)(2) by failing to substitute out as her client's attorney of record; (7) rule 3-700(D)(1) by failing to release her client's documents to him promptly upon request; and (8) rule 4-100(B)(4) by failing to promptly pay, upon request, a certain amount from funds she held in trust. In aggravation, respondent's misconduct harmed a client, and she engaged in multiple acts of wrongdoing. In mitigation, respondent had no prior record of discipline; she displayed candor and cooperation with the State Bar and the victims of her misconduct during the disciplinary proceedings; she entered into a stipulation in the disciplinary matter; and she refunded an entire prepaid fee to her client even though she earned most of the funds.

The fact that respondent engaged in multiple acts of misconduct in this matter is a further aggravating circumstance. (Standard 1.2(b)(ii).)

Respondent's failure to participate in a March 9, 2009 status conference prior to the entry of her default is a further aggravating circumstance. (Standard 1.2(b)(iv).)

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) But "the standards do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has been long-held that 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.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) While the standards are entitled to “great weight” (*In re Brown* (1995) 12 Cal.4th 205, 220), they do not provide for mandatory disciplinary outcomes. “[A]lthough the [s]tandards were established as guidelines, ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case.” (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(b) provides 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.

In this case, the standards provide for the imposition of sanctions ranging from reproof to disbarment. (Standards 2.4(b), 2.6 and 2.10.) In addition, standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.” In this case, the most severe sanction is set forth in standard 2.6, which provides for suspension or disbarment for a violation of section 6068, depending on the harm, if any, to the victim and the gravity of the offense.

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

The State Bar recommends that respondent be suspended for three years; that execution of the suspension be stayed; and that respondent be actually suspended for 90 days and until: (1) respondent makes specified restitution; and (2) the State Bar Court grants respondent's motion to terminate her actual suspension pursuant to rule 205 of the Rules of Procedure.

In determining the discipline to recommend in this matter, the court is particularly troubled by the fact that the misconduct in this matter includes similar offenses to those found in respondent's prior disciplinary matter. Formal disciplinary charges were filed against respondent in her prior disciplinary matter in late 2004 and early 2005, and the Supreme Court order imposing discipline was issued in December 2005. Nevertheless, respondent's prior discipline did nothing to deter her misconduct in this case in which misconduct occurred into 2008.

A further factor in determining the appropriate discipline to recommend in this matter is respondent's failure to participate in this disciplinary proceeding. Respondent's failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent's misconduct or from learning of any mitigating circumstances which would justify this court's departure from the discipline recommended by the standards.

Thus, after considering: (1) the nature of the violations found by the court; (2) the aggravating circumstances in this matter; (3) the lack of mitigating circumstances; (4) the standards set forth above; and (5) *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, as well as the cases cited in the State Bar's brief on culpability and discipline and other case law, the court finds the discipline set forth below is the appropriate disciplinary recommendation in this matter.

VI. Recommended Discipline

According, the court recommends that respondent Cathye E. Leonard, State Bar Number 177791, be suspended from the practice of law in California for two years, and that execution of that period of suspension be stayed, subject to the following conditions:

1. Respondent Cathye E. Leonard is suspended from the practice of law for a minimum of 90 days, and she will remain suspended until the following requirements are satisfied:
 - a. She makes restitution to Rajesh C. Raj in the amount of \$2,000 plus 10 percent interest per annum from January 4, 2005 (or reimburses the Client Security Fund to the extent of any payment from the fund to Rajesh C. Raj, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles;
 - b. The State Bar Court grants a motion to terminate her suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and
 - c. If Cathye E. Leonard remains suspended for two years or more as a result of not satisfying the preceding requirements, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Cathye E. Leonard must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating her suspension.

It is also recommended that Cathye E. Leonard take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's final disciplinary order in this matter, or during the period of her 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).)

It is further recommended that Cathye E. Leonard 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's final disciplinary order in this matter. Failure to do so may result in disbarment or suspension.

VII. 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.

Dated: August _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court