

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

|                                   |   |                                      |
|-----------------------------------|---|--------------------------------------|
| In the Matter of                  | ) | Case No.: 08-O-12210-RAH             |
|                                   | ) |                                      |
| <b>BILL JAY WEIR, JR.</b>         | ) | <b>DECISION INCLUDING DISBARMENT</b> |
|                                   | ) | <b>RECOMMENDATION AND ORDER OF</b>   |
| <b>Member No. 98824</b>           | ) | <b>INVOLUNTARY INACTIVE</b>          |
|                                   | ) | <b>ENROLLMENT ORDER</b>              |
| <u>A Member of the State Bar.</u> | ) |                                      |

**I. INTRODUCTION**

In this disciplinary matter, Margaret P. Warren appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Bill Jay Weir, Jr., did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed on November 19, 2010, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of

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<sup>1</sup>Future references to section are to the Business and Professions Code.

mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned by the United States Postal Service stamped “return to sender/unclaimed.”

Copies of the NDC and a letter advising respondent of upcoming events deadlines were also sent to respondent on December 8, 2010, by regular mail to his official address and to the email address shown on the State Bar’s membership records. The mailed copy was returned by the United States Postal Service stamped “return to sender” and bearing the handwritten notation “not at this address.”

On November 22, 2010, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on December 17, 2010. Respondent did not appear at this status conference. An order memorializing it was properly served on him at his official address on December 20, 2010.

Respondent did not file a responsive pleading to the NDC. On December 21, 2010, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. Copies of the motion were also sent to respondent on December 8, 2010, by regular mail to his official address and to the email address shown on the State Bar’s membership records. The mailed copy was returned by the United States Postal Service stamped “return to sender” and bearing the handwritten notation “not at this address.” He did not respond to the motion.

On January 14, 2011, the court entered respondent’s default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested.

The State Bar’s and the court’s efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding,

including notice by certified mail, by regular mail and email, 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.)

The matter was submitted for decision without hearing after the State Bar filed a brief on February 3, 2011.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar<sup>2</sup>, former rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on September 29, 1981, and has been a member of the State Bar at all times since.

#### **B. Facts**

In May 2007, Melissa Shipley (Melissa) obtained a judgment against Ross Shipley (Shipley). She levied his bank accounts to collect her judgment.

In July 2007, Shipley hired respondent to set aside the judgment and to oppose the levies. He paid respondent \$1,500 as an advance fee.

Shipley specifically wanted respondent to address that the judgment was entered improperly against him because he did not owe any money to Melissa, and that he had no

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<sup>2</sup>Future references to the Rules of Procedure are to the Rules of Procedure in effect until December 31, 2010.

notice of the judgment. He also wanted respondent to oppose the levies because they were based upon the same flawed judgment. Shipley informed respondent that it was important that he address these matters immediately.

Respondent took no action to set aside the judgment or to oppose the levies. He did not earn any of the advance fees.

In November 2007, Shipley sent respondent a letter that effectively terminated his employment and demanded the return of the advance fees. Respondent received the letter. He never refunded the advance fees nor did he provide Shipley with an accounting of them.

On April 7, 2008, the State Bar opened an investigation on case no. 08-O-12210 pursuant to Shipley's complaint regarding allegations of misconduct by respondent in this matter.

On September 29 and October 12, 2008, a State Bar investigator sent respondent letters requesting his written response to specific allegations of misconduct regarding Shipley's complaint. The letters were addressed to respondent's official membership records address. He had until October 13 and 22, 2008, respectively, to respond to the letters. He received the letters but did not answer them or otherwise communicate with the investigator.

### **C. Conclusions of Law**

#### **a. Count 1 - Rule of Professional Conduct,<sup>3</sup> Rule 3-110(A) (Competence)**

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not taking any action to set aside the judgment entered against Shipley or to oppose the bank levies, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

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<sup>3</sup>Future references to rule are to this source.

**b. Count 2 - Rule of Professional Conduct 3-700(D)(2) (Unearned Fees)**

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

Respondent did not return an advanced, unearned fee after his employment was terminated in wilful violation of rule 3-700(D)(2).

**c. Count 3 - Rule 4-100(B)(3) (Failure to Account)**

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing Shipley with an accounting of the funds he paid to respondent, respondent wilfully violated rule 4-100(B)(3).

**d. Count 4 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)**

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the September 29 and October 12, 2008 letters from the State Bar, respondent did not participate in the investigation of the allegations of misconduct regarding the Shipley case in wilful violation of 6068, subdivision (i).

**IV. LEVEL OF DISCIPLINE**

**A. Aggravating Circumstances**

It is the prosecution's burden to establish aggravating circumstances by clear and

convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>4</sup>, std. 1.2(b).)

Respondent has two prior instances of discipline. (Std 1.2(b)(i).) By order filed November 13, 1996, in Supreme Court order no. S055906 (State Bar Court case no. 93-O-15659), discipline was imposed consisting of 30 days' stayed suspension and two years' probation. Respondent stipulated, in two client matters, to violations of rules 3-110(A), 3-700(A)(2) and 3-700(D)(2) as well as section 60689, subdivision (m). Multiple acts of misconduct was the aggravating factor. Mitigating factors included no prior discipline; good faith; and severe emotional and financial distress.

A public reproof was imposed by order filed November 4, 1999 in State Bar Court case no. 97-O-16968 for violations of rule 3-700(D)(2) and section 6068, subdivision (i) in one client matter. A prior instance of discipline was the aggravating factor. The parties stipulated to candor and cooperation, good character and pro bono work as mitigating circumstances.

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

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

## **B. Mitigating Circumstances**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

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<sup>4</sup>Future references to standard or std. are to this source.

### **C. 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; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(b), 2.4(b), 2.6 and 2.10 apply in this matter. The most severe of these sanctions is suggested by standard 2.2(b): at least three months actual suspension regardless of mitigating circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable, in one client matter, of violating rules 3-110(A), 3-700(D)(2) and 4-100(B)(3) as well as section 6068, subdivision (i). In aggravation, the court considered his prior disciplinary record, which includes violations similar to those found in the instant case, multiple acts of misconduct, and lack of participation (little weight afforded this last factor). There were no mitigating circumstances in this default matter.

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case. (Std. 1.7(b).) The serious and unexplained nature of the misconduct and the lack of participation in these proceedings underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the prior instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. The present case includes violations similar to those in the two prior disciplinary matters. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

#### **V. DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent BILL JAY WEIR be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in



paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

#### **VI. 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.

#### **VII. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court