

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 08-O-12282
)
MANVINDER GILL,) DECISION
)
Member No. 194519)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Manvinder Gill was charged with four counts of misconduct in a single client matter. Respondent failed to participate either in-person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel Larry DeSha.

The court finds by clear and convincing evidence that respondent is culpable of all of the charged violations. Respondent has a record of one prior imposition of discipline in 2004. In view of respondent’s misconduct, his failure to participate in the present case and his prior discipline, the court recommends, among other things, that respondent be suspended from the practice of law in California for two years, that execution of the suspension be stayed, and that he be suspended for a minimum of 90 days and 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 case was filed on December 1, 2008, and was properly served on respondent on November 26, 2008. Respondent did not file an

answer or otherwise participate in the case and his default was entered on July 7, 2009. The matter was submitted for decision as of July 27, 2009, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.¹

FINDINGS OF FACT

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California in March 1998, and has been a member since then.

In April 2005, Alis Saravia employed respondent to represent him in a personal injury matter. Respondent sent two letters, in May and October 2005, to Progressive Insurance, the opposing party's insurance carrier. The second letter contained a settlement demand. Progressive Insurance did not accept the settlement demand. Respondent failed to advise Saravia of that fact. Thereafter, respondent did nothing further on Saravia's behalf. Respondent did not inform Saravia of his intention to cease working on the case. The statute of limitations on Saravia's claim expired in April 2007. Respondent did not advise Saravia of this fact.

Having heard nothing from respondent as to the status of his matter, Saravia sent respondent a letter in March 2008 requesting a status update. Respondent received the letter but did not respond.

CONCLUSIONS OF LAW

The court finds by clear and convincing evidence that respondent is culpable of the misconduct charged in the NDC. In Count One, respondent willfully violated rule 3-110(A) of

¹ Exhibit 1 attached to the State Bar's brief is admitted into evidence.

the Rules of Professional Conduct² by recklessly and repeatedly failing to take any further action to advance Saravia's personal injury case after he sent the two letters to Progressive Insurance. In Count Two, respondent is culpable of willfully violating rule 3-700(A)(2) as he withdrew from employment in the Saravia matter by failing to take any further action in the case after sending the two letters to Progressive Insurance and he failed to take reasonable steps to avoid foreseeable prejudice to his client by not informing Saravia of his intention to cease working on the case and of the statute of limitations. In Counts Three and Four, respondent violated Business and Professions Code section 6068 subdivision (m)³ by failing to respond to Saravia's March 2008 letter requesting a status update (Count Four), and by not informing Saravia that the settlement demand had been rejected and that the statute of limitations was to expire, which were significant developments in the case (Count Three).

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating circumstances have been presented. In aggravation, respondent has been disciplined on one prior occasion. By Supreme Court order filed June 10, 2004 (S123409), respondent was suspended from the practice of law for 90 days, execution of which was stayed, and he was placed on probation for one year on conditions, including restitution to his clients. Respondent represented a father and daughter as plaintiffs in a personal injury case. Respondent stipulated that he failed to perform legal services competently in violation of rule 3-110(A) by failing to supervise his paralegal, which permitted the paralegal to forge the clients' names on the settlement and the settlement checks. The clients did not receive any portion of the settlement money. In mitigation, in this prior case, the parties stipulated that respondent did not have a

² All further references to rules are to these Rules unless otherwise noted.

³ All further references to sections are to this Code unless otherwise noted.

prior record of discipline. In aggravation in this prior case, the parties stipulated that respondent's misconduct harmed the clients.

As further aggravation in the present case, the client was harmed by respondent's misconduct in that the client lost his legal right to pursue his claim as the statute of limitations expired.

DISCIPLINE

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.) In determining the appropriate level of discipline, the court looks first for guidance to the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, tit. IV; hereafter Standards). Although the Standards are guidelines, they should be followed absent a compelling reason to depart from them. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent is culpable in this case of failing to perform services competently (rule 3-110(A)), improperly withdrawing from employment (rule 3-700(A)(2)), and failing to communicate with his client (§ 6068, subd. (m)). The standards applicable to this misconduct provide for a range of discipline from reproof to disbarment. (See stds. 2.4(b), 2.6(a) and 2.10.) However, in light of respondent's prior record of discipline, standard 1.7(a) also applies and is most instructive on the issue of the appropriate discipline in this case.

Standard 1.7(a) provides that when an attorney has one prior imposition of discipline, "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’s prior discipline was not remote in time or minimal in severity.

As noted by the Supreme Court, "the principal purpose of disciplinary proceedings and the imposition of sanctions is to protect the public by ensuring to the extent possible that misconduct by an attorney will not recur." (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331.) Respondent began committing the misconduct in the present case shortly after his probation in his prior discipline ended. Respondent’s prior discipline, which did not include any period of actual suspension, proved inadequate to ensure that respondent’s misconduct would not recur.

In addition, respondent’s failure to participate in this case shows that he does not appreciate the seriousness of the charges or comprehend the importance of participating in the disciplinary proceedings. (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805) These factors cause additional concern that the risk of respondent committing future misconduct is high.

Accordingly, a significant period of actual suspension is warranted in order to ensure, to the extent possible, that respondent does not commit future misconduct. Balancing all relevant factors, the court concludes a minimum of 90 days suspension from the practice of law is necessary to protect the public, courts and legal profession.

RECOMMENDATION

It is recommended that respondent Manvinder Gill be suspended from the practice of law in California for two years, that execution of this suspension be stayed subject to the following conditions:

1. Respondent be suspended from the practice of law for a minimum of 90 days and he remain suspended until the following conditions are satisfied:
 - i. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and

- ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding condition, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).
2. Respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension.

The court also 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.⁴

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 in this matter, or during the period of his/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).)

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November _____, 2009

RICHARD A. HONN
Judge of the State Bar Court

⁴ 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.)