

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos. **08-O-12813** (08-O-13125)
)
LISA RENAE HAMMOND,)
)
Member No. 219196,) **DECISION**
)
A Member of the State Bar.)

INTRODUCTION

In this default disciplinary matter, respondent **Lisa Renae Hammond** is charged with multiple acts of professional misconduct in two client matters, including (1) failing to perform competently; (2) failing to communicate with the client; (3) committing an act of dishonesty; and (4) failing to cooperate with the State Bar.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law in California for two years, that execution of suspension be stayed, and that she be suspended for a minimum of 90 days and until the State Bar Court grants a motion to terminate her suspension. (Rules Proc. of State Bar, rule 205.)

PERTINENT PROCEDURAL HISTORY

The State Bar filed and properly served on respondent a Notice of Disciplinary Charges (NDC) on March 17, 2009, at her official membership records address in White House, Tennessee. Respondent received the NDC and requested additional time to file her response, which the State Bar granted. Despite this extension of time, respondent thereafter never filed a response to the NDC.

Respondent's default was entered on June 19, 2009, and respondent was enrolled as an inactive member on June 22, 2009. The matter was submitted on July 23, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in California on May 13, 2002, and has since been a member of the State Bar of California.

Case No. 08-O-12813 (Coleman)

Facts:

On or about July 31, 2007, Pamela Coleman employed respondent, on a contingent fee basis, to represent her in a personal injury matter. At the time she hired respondent, Coleman informed respondent that the statute of limitations on her matter would expire on December 5, 2007.

Respondent did not file Coleman's complaint or perform any other legal services on Coleman's behalf. Coleman never heard from respondent after July 31, 2007.

On or about November 6, 2007, since Coleman had not been contacted by respondent concerning her matter, she began calling respondent's office to obtain a status update. Between on or about November 6, 2007, and December 7, 2007, Coleman left at least eight messages for respondent, either with respondent's receptionist or on respondent's office voice mail. In each message, Coleman requested that respondent return her call and provide Coleman a status update. Respondent received all the messages but returned none of them.

On one of the occasions on which Coleman spoke with respondent's receptionist, the receptionist provided Coleman with respondent's cell phone number. Coleman called that number and again left a voice mail message requesting a return phone call and a status update. Respondent received that message but did not return it.

On or about April 21, 2008, Coleman sent respondent a letter in which she described her unsuccessful efforts to obtain a return phone call from her. Coleman faxed and mailed the letter to respondent, at the fax number and address respondent had given her, which respondent received. Respondent did not respond to the letter.

On or about September 16, 2008, a State Bar investigator sent letters to respondent requesting that respondent respond in writing to Coleman's allegations by September 30, 2008. Respondent received the correspondence but did not respond to it.

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))¹

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

By failing to perform any legal services on Coleman's behalf, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

¹ References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))²

Section 6068, subdivision (m), provides that it is the duty of 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.

By not returning the messages Coleman left her (either on her office voice mail, her cell phone voice mail, or with her receptionist) between November 6, 2007, and December 7, 2007, and by not responding to Coleman's April 21, 2008 letter, respondent willfully failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

Count 3: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By not providing a written response to the allegations in the Coleman matter or otherwise cooperating in the investigation of the Coleman matter, respondent willfully failed to cooperate and participate in a disciplinary investigation pending against her, in willful violation of section 6068, subdivision (i).

Case No. 08-O-13125 (Tabian)

Facts:

On or about August 30, 2007, Paul Tabian employed respondent, on a contingent fee basis, to represent him concerning an injury he had received while undergoing surgery at a Veterans Administration hospital. Mr. Tabian's wife, Gloria, accompanied Mr. Tabian to the meeting, as Mr. Tabian had suffered a stroke which impaired his ability to communicate

² References to sections are to the provisions of the Business and Professions Code.

verbally. At that meeting, Mrs. Tabian spoke for her husband and explained the circumstances of the injury for which Mr. Tabian was employing respondent. Respondent understood that Mrs. Tabian was to serve as an intermediary in communications between respondent and Mr. Tabian.

Within approximately two weeks following the August 30, 2007 meeting, Mr. and Mrs. Tabian returned to respondent's office with medical records pertaining to Mr. Tabian's injury. At that time, respondent informed Mr. and Mrs. Tabian that respondent had already filed Mr. Tabian's claim with the Veterans Administration. Respondent knew that this representation was false, as respondent had never filed Mr. Tabian's claim. In fact, respondent had performed no legal services on behalf of Mr. Tabian.

On or about January 7, 2008, Mrs. Tabian went to respondent's office on behalf of Mr. Tabian but respondent was not present. Mrs. Tabian left a note for respondent, requesting that respondent contact her and Mr. Tabian and provide a status update. Respondent received the note but did not contact them.

On or about January 16, 2008, Mrs. Tabian called respondent's office on behalf of Mr. Tabian and was informed by respondent's secretary, Fabiola, that respondent was out of the United States but would return Mrs. Tabian's message upon her return to the United States.

On or about February 5, 2008, Mrs. Tabian again called respondent's office on behalf of Mr. Tabian and spoke to Fabiola. Respondent received the message. Fabiola informed Mrs. Tabian that respondent was still out of the country but that Mrs. Tabian should try to call again every week in case respondent returned.

On or about February 13, 2008, Mrs. Tabian called respondent's office on behalf of Mr. Tabian and again spoke to Fabiola. Fabiola informed Mrs. Tabian that respondent had left a message asserting that she would be in the office on February 25, 2008.

On or about February 25, 2008, Mrs. Tabian called respondent's office on behalf of Mr. Tabian and again spoke to Fabiola. Fabiola informed Mrs. Tabian that respondent had still not been heard from, but that Mrs. Tabian should continue calling for her.

On or about February 27, 2008, Mrs. Tabian called respondent's office on behalf of Mr. Tabian and again spoke to Fabiola, who informed Mrs. Tabian that respondent had still not been heard from.

On or about September 17, 2008, a State Bar investigator sent a letter to respondent requesting that she respond in writing to Mr. and Mrs. Tabian's allegations by October 1, 2008. Respondent received the letter but did not respond to it.

Count 4: Failure to Perform Competently (Rule 3-110(A))

By failing to perform any legal services on Mr. Tabian's behalf and by failing to provide her employees with contact information so that her employees could both keep in contact with respondent and have her contact information to make available to Mr. and Mrs. Tabian, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 5: Failure to Communicate (§ 6068, Subd. (m))

By not responding to Mrs. Tabian's January 7, 2008 note, in which she requested a return call and a status update, and to Mrs. Tabian's multiple telephone calls, respondent willfully failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

Count 6: Dishonesty (§ 6106)

By asserting to Mr. and Mrs. Tabian, within approximately two weeks following the initial August 30, 2007 meeting, that she had filed Mr. Tabian's claim with the Veterans

Administration, when she knew that statement to be false, respondent willfully committed an act involving dishonesty, in willful violation of section 6106.

Count 7: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By not providing a written response to the allegations in the Tabian matter or otherwise cooperating in the investigation of the Tabian matter, respondent willfully failed to cooperate and participate in a disciplinary investigation pending against her, in willful violation of section 6068, subdivision (i).

IV. MITIGATION AND AGGRAVATION

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).)³ There are several aggravating factors present here.

Multiple Acts of Misconduct

Respondent has been found culpable of multiple counts of misconduct in the present proceeding involving two separate matters. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct significantly harmed her clients in that one client lost her cause of action and another client was abandoned. (Std. 1.2(b)(iv).)

Lack of Participation in Disciplinary Proceeding

Respondent's failure to participate in this disciplinary proceeding before the entry of her default is also an aggravating factor. (Std. 1.2(b)(vi).) However, because of the nexus between this aggravating circumstance and respondent's culpability for violating section 6068,

³ All further references to standard(s) are to this source.

subdivision (i), the court gives this aggravating factor only slight 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).) No mitigation was submitted into evidence or otherwise appears.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (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 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.” (*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 *In the Matter of Van Sickle, supra*; *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.

Standards 2.3, 2.4 and 2.6 apply in this matter.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4 provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar recommends that discipline here include two years' stayed suspension, and actual suspension for 90 days and until the State Bar Court grants a motion to terminate respondent's suspension under rule 205, citing *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831. This court agrees that the *Greenwood* case involved facts and considerations quite similar to those present here and that the recommended discipline is appropriate in the instant matter.

RECOMMENDED DISCIPLINE

Suspension Recommended

Accordingly, the court hereby recommends that respondent **Lisa Renae Hammond** be suspended from the practice of law for two years, that said suspension be stayed, and that

respondent be actually suspended from the practice of law for a minimum of 90 days and until respondent files and the State Bar Court grants a motion to terminate her current actual suspension under rule 205 of the Rules of Procedure.

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

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 conditions, she remain suspended until she has shown proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. (Standard 1.4(c)(ii) and Rules Proc. of State Bar, rule 205.)

Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, 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).)

California Rules of Court, Rule 9.20

The court 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

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.

Dated: October _____, 2009

DONALD F. MILES
Judge of the State Bar Court

⁴ Respondent is required to file a rule 9.20(c) affidavit even if she 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 a 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).)