

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-H-15876-PEM
)	
LARRY SCOTT SPEARS,)	DECISION
)	
Member No. 195993,)	
)	
<u>A Member of the State Bar.</u>)	

In this default matter, respondent Larry Scott Spears (respondent) is charged with failing to comply with conditions attached to a private reproof administered by the State Bar.

The court finds respondent culpable as charged, and in light of respondent’s misconduct, the aggravating circumstances, and the lack of any mitigating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 90 days and will remain suspended at least until 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.

PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California, Office of the Chief Trial Counsel (State Bar) on October 26, 2009.¹

A copy of the NDC was properly served on respondent on October 26, 2009. The State Bar received a return card on November 2, 2009. The return card was signed, but the name of the signatory was illegible.

Respondent failed to appear for a properly noticed telephonic status conference on December 7, 2009.² On December 8, 2009, the court filed a Status Conference Order, noting that this matter was to proceed by default. Respondent was properly served with a copy of the Status Conference Order.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure), on December 23, 2009, the State Bar filed a motion for the entry of respondent's default. The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses, the declaration

¹ Prior to the filing of the NDC in this matter, Deputy Trial Counsel Elina Kreditor (DTC Kreditor) attempted to reach respondent by telephone at his official membership records telephone number. DTC Kreditor reached a voicemail which identified the number as belonging to L. Scott Spears. She left a message requesting that respondent return her call. On or about October 9, 2009, respondent returned DTC Kreditor's call. Respondent indicated that he wanted to resign from the Bar and requested a resignation packet. The resignation packet was sent to respondent on October 9, 2009, to respondent's official membership records address. Accompanying the packet was a letter requesting that respondent return the resignation paperwork by October 19, 2009. However, respondent did not return the resignation paperwork by this date. DTC Kreditor left other telephone messages for respondent but did not hear from him further. One message advised respondent that a NDC would be filed if DTC Kreditor did not hear back from respondent.

² There is no evidence that any documents properly served on respondent by mail, addressed to respondent at his official State Bar membership records address, were returned as undeliverable or for any other reason.

of Elina Kreditor and Exhibit 1.³ A copy of the motion was properly served on respondent on December 21, 2009.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on January 14, 2010, the court filed an Order of Entry of Default (Rule 200 – Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁴ A copy of said order was properly served on respondent on January 14, 2010.⁵

On January 29, 2010, the State Bar filed a brief on the issues of culpability and discipline. In its brief, the State Bar waived its right to request a hearing in this matter and requested that the matter be submitted on the record. The State Bar also requested that the court take judicial notice of the NDC. The court grants the State Bar's request.

This matter was submitted for decision on February 5, 2010.⁶

FINDINGS OF FACT AND CONCLUSION OF LAW

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 10, 1998, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Violation of Repeal Conditions

On or about March 15, 2008, respondent entered into and executed a stipulation

³ The court grants the State Bar's request and takes judicial notice of all of respondent's official membership addresses pursuant to Evidence Code section 452, subdivision (h).

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

⁵ The copy of the order was sent by certified mail, return receipt requested. The return receipt card was returned to the State Bar Court. The receipt card reflects that an agent of respondent (what appears to be the name "R. Wilsan") received delivery of the order on January 19, 2010.

⁶ The declaration of Elina Kreditor and Exhibit 1 attached to the motion for the entry of respondent's default, as well as Exhibits 1 and 2 attached to the State Bar's brief on the issues of culpability and discipline, are admitted into evidence.

regarding facts, conclusions of law, and disposition (Stipulation) in State Bar Court case no. 07-O-13015.

On April 18, 2008, the Hearing Department of the State Bar Court filed an Order approving the Stipulation and imposing upon respondent a private reproof with conditions (the Order).

On April 18, 2008, the Order was properly served by first-class mail upon respondent. Respondent received the Order.

Respondent had actual notice of the Order, the Stipulation and the contents of both.

The Order and the private reproof became effective on May 9, 2008.

Pursuant to the Order, respondent was required to comply with certain terms and conditions attached to the private reproof for a period of one year, including but not limited to the following:

- a. comply with the State Bar Act and the Rules of Professional Conduct during the reproof period;
- b. within one year of the effective date of the reproof, provide proof of passage of the Multistate Professional Responsibility Examination (MPRE) to the Office of Probation (Probation);
- c. within one year of the effective date of the reproof, provide proof of attendance at a session of the Ethics School and passage of the test given at the end of that session to Probation;
- d. submit Quarterly Reports to Probation on each January 10, April 10, July 10 and October 10 of the reproof period, stating under penalty of perjury whether respondent has complied with the State Bar Act, the Rules

of Professional Conduct, an all conditions of the reproof during the preceding calendar quarter; and

- e. submit a Final Report containing the same information as all Quarterly Reports no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

Respondent did not: (1) submit proof of passage of the MPRE to Probation by May 9, 2009; (2) submit proof of attendance of a session of the Ethics School and passage of the test given at the end of that session to Probation by May 9, 2009; (3) timely submit the Quarterly Report due by January 10, 2009; (4) submit the Quarterly Report due by April 10, 2009; and (5) submit the Final Report due by May 9, 2009.

Rule 1-110 of the Rules of Professional Conduct of the State Bar of California

By not: (1) submitting proof of passage of the MPRE or of attending Ethics School by May 9, 2009; (2) timely submitting the Quarterly Report due by January 10, 2009; and (3) submitting the Quarterly Report due by April 10, 2009 and the Final Report due by May 9, 2009, respondent failed to comply with the conditions attached to a private reproof administered by the State Bar in willful violation of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

MITIGATING/AGGRAVATING CIRCUMSTANCES

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

In aggravation, respondent has a prior record of discipline.⁷ (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i).) Effective May 9, 2008,

⁷ Although the State Bar failed to provide the court with an authenticated copy of respondent's prior record of discipline (as required by rule 216 of the Rules of Procedure),

respondent was privately reprovved with conditions for one year in State Bar Court case number 07-O-13015. In this prior disciplinary matter, respondent stipulated to a willful violation of rule 3-110(A) of the Rules of Professional Conduct. In mitigation: (1) respondent had no prior record of discipline; (2) no harm occurred to the client; (3) respondent was cooperative by entering into a stipulation; and (4) he demonstrated remorse and recognition of wrongdoing by refunding his advanced fee promptly at the client's request, prior to the initiation of any disciplinary changes. No aggravating circumstances were involved.

Respondent also engaged in multiple acts of misconduct by violating several conditions of his reprovral in this current matter. (Standard 1.2(b)(ii).)

Respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

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 set 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."

For guidance in determining the appropriate discipline recommendation, the court first looks to the standards. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) In this case, standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct must result in suspension.

pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of respondent's prior record of discipline in State Bar Court case no. 07-O-13015.

In addition, 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.

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 standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) Nevertheless, while the standards are not binding, they are entitled to significant weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains “grave doubts as to its propriety.” (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for the imposition of discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of failing to comply with several of the conditions attached to his earlier private reproof. In addition, there are several aggravating circumstances in this matter and no mitigating circumstances. Of particular concern to this court 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.

The State Bar recommends, in part, that respondent be actually suspended from the practice of law for 90 days. In support of its discipline recommendation, the State Bar cites to *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445 and *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. Although instructive, both of these matter involved probation revocation proceedings. Thus, the court also considered *Conroy v. State Bar* (1990) 51 Cal.3d 799, *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 and *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. After reviewing and considering these cases, as well as the standards set forth above, the court concurs that the appropriate discipline in this matter should include a 90-day period of suspension.

RECOMMENDED DISCIPLINE

The court hereby recommends that respondent **LARRY SCOTT SPEARS**, State Bar Number 195993, 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. That respondent be suspended from the practice of law for a minimum of 90 days, and he will remain suspended until the following requirements are satisfied:

- a. 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
- b. 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).)

2. It is also recommended that respondent be ordered to comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.

It is also 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 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).)

It is further recommended that respondent 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 (thirty) and 40(forty) calendar days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. **Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

COSTS

The court recommends 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 further recommended that Larry Scott Spears be ordered to reimburse the Client Security Fund to the extent that the

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misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: May _____, 2010

PAT McELROY
Judge of the State Bar Court