

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No. 09-O-12845-RAH
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LORRAINE DICKSON,) **DECISION**
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Member No. 220841,)
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A Member of the State Bar.)

Introduction

The trial in this original disciplinary proceeding commenced on March 9, 2011. Respondent **LORRAINE DICKSON** is charged with two (2) counts of misconduct. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Erin Joyce. Respondent represented herself.

Significant Procedural History

The State Bar filed a Notice of Disciplinary Charges (NDC) against respondent on May 5, 2010. Respondent filed her response to the NDC on July 2, 2010.

On July 8, 2010, interrogatories and a request for production of documents were served on respondent. The State Bar agreed to extend the time to respond until August 31, 2010. Respondent did not respond to the requests and on September 10, 2010, the State Bar filed a

motion to have the requests for admission deemed admitted. Respondent did not respond to the motion, and on October 14, 2010, the court granted the State Bar's motion. On November 24, 2010, the court issued an order requiring respondent to provide without objection, on or before December 1, 2010, answers to outstanding interrogatories and all the documents requested in the State Bar's demand for production of documents.

Settlement conferences were held in mid to late September 2010, and again in late November 2010. Respondent served responses to the State Bar's first set of interrogatories just before close of business on December 1, 2010. The production of documents was missing some documents required by the demand for production of documents and some of the documents provided were not legible. Respondent's answers to the interrogatories contained general objections to the interrogatories but answered each question without reservation. In addition, respondent did not provide an original verification to her answers. On December 3, 2010, respondent sent a letter to the State Bar that contained the missing documents and more legible copies of others.

On December 9, 2010, respondent filed a motion to set aside the court's October 14, 2010, order deeming requests for admissions admitted. On December 13, 2010, a hearing was held before a judge pro tem to make recommendations to the court regarding whether respondent had complied with the November 24, 2010, order, and whether respondent's December 9, 2010, motion should be granted. Respondent asserted at the hearing that she did not respond to the request for admissions due to a medical emergency which incapacitated her during the month of October 2010, and that she believed that she did not have to respond as the parties were engaging in settlement discussions which would have resolved the case in its entirety.

Respondent also admitted at the December 13 hearing that the inclusion of the general objections was in error. In addition, respondent provided the State Bar with original signed

verifications to the interrogatories, including both the December 1, 2010 production of documents and the December 3, 2010 letter. Further, respondent stated that these documents were all of the documents she then had in her possession that were requested in the State Bar's July 8, 2010, request for production of documents.¹ On December 15, 2010, the court denied respondent's motion to set aside the court's order deeming request for admissions admitted.

On December 15, 2010, the court granted the motion in limine filed by the State Bar, precluding respondent from offering any evidence at trial at variance with the facts deemed admitted in the court's October 14, 2010 discovery order.

The matter came on regularly for trial in the morning on December 15, 2010. Respondent did not appear when the case was called for trial, and her default was entered. As a result of the default, respondent was enrolled as an inactive member of the State Bar of California. Later that day, respondent realized that she had mistakenly calendared the matter to commence at 1:30 p.m. on December 15, 2010. In fact, respondent was in the court building filing other matters when trial was scheduled to start. On that day, she filed a motion to set aside the default. On December 27, 2010, the State Bar filed an opposition to the motion. On January 6, 2011, the court filed an order granting the motion to set aside the default and setting a status conference to set trial. At that status conference, trial was set to commence on March 9, 2011.

Findings of Fact and Conclusions of Law²

Respondent was admitted to the practice of law in the State of California on November 23, 2002, and since that time has been an attorney at law and a member of the State Bar of California.

¹ Respondent indicated that there is a telephone bill that she did not then have in her possession that is responsive to the request for production of documents and that she will update her responses with a copy of this bill promptly upon her receipt of it.

² Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all references to sections refer to the Business and Professions Code, unless otherwise indicated.

I. Culpability Findings³

In March 2006, respondent met with Albert and Helen Johns about a boundary dispute they were experiencing with their next door neighbors. At the meeting, respondent agreed to represent the Johns in their boundary dispute.

On April 6, 2006, respondent visited the Johns and met with them for about an hour regarding their case. She then went next door to the neighbors and met with them in their home, also for about an hour. The next day, respondent met with the neighbors again for about two hours, and again met with the Johns for about 45 minutes. Respondent took pictures of the properties, showing the area of the dispute. She also met with a surveyor, who placed markers on the ground, showing the property line.

During these meetings with the Johns, she told them that a campaign of letter writing would not work, and that after the initial cease and desist letter was sent, she would have to prepare a lawsuit if the neighbors did not cooperate. Respondent took a check for \$2,500 for advanced attorney fees from Helen Johns. Respondent told the Johns that the \$2,500 advanced fees would be sufficient for respondent to prepare and send the cease and desist letter and institute a lawsuit for the Johns, should that prove necessary. At both the March and April meetings, respondent failed to provide the Johns with a written attorney-client retainer agreement.

On June 8, 2006, respondent sent a letter to the Johns' neighbors, James and Deborah Williams, via personal delivery, about the boundary dispute involving the Johns' property. Respondent sent a copy of the letter to the Johns. After sending this letter, respondent undertook

³ Most of the findings of fact were directly taken from the deemed admissions. Additional facts on culpability were elicited by the State Bar during the examination of the complaining witnesses that somewhat contradicted the admissions. However, these contradictions did not change the culpability findings. The following facts reflect the deemed admissions as modified by the credible testimony of the witnesses at trial.

no further legal work related to the Johns' boundary dispute. After June 2006, respondent stopped communicating with the Johns about their legal matter. In 2006 and 2007, Albert Johns called respondent intermittently and left detailed messages requesting a status report on their legal matter. Respondent received the phone messages, but did not call the Johns to provide a status report on any occasion during this time frame.

In fall 2008, Albert Johns discovered an alternate telephone number for respondent and made a phone call to that number. During that phone conversation in fall 2008, respondent claimed that she was in the hospital since she had just suffered a miscarriage. Respondent promised to call Albert Johns about the status of the Johns' legal matter as soon as she was out of the hospital. After the fall 2008 phone conversation, respondent failed to call the Johns at any time to provide a status report on their legal matter.

Throughout the remainder of 2008 and 2009, the Johns continued to leave detailed messages for respondent to provide a status report on their legal matter. Respondent received the phone messages, but again failed to return the phone calls. In early March 2009, the Johns sent respondent a certified letter, return receipt requested, requesting a status report on their legal matter. The certified letter was properly mailed to respondent at her State Bar Membership Records address. On March 4, 2009, the certified letter was signed for by Paula Heider, who was authorized by respondent to collect her mail directed to her State Bar Membership Records address. Respondent received the Johns' certified letter but failed to undertake any actions to respond to the Johns' request or contact the Johns about their legal matter in response to the certified letter.

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Conclusions of Law

Count One- (Rule 3-110(A) [Failure to Perform with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to undertake any legal services for the Johns after sending the June 8, 2006 letter to their neighbors, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Two- (§ 6068(m) [Failure to Respond to Client Inquiries])

Section 6068, subdivision (m) states that an attorney has a duty 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 failing to return the Johns' telephone calls and failing to provide a status report to the Johns concerning their legal matter in any other manner, respondent failed to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068 subdivision (m).

II. Aggravation⁴

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

The State Bar sought to amend the NDC to allege that respondent had failed to maintain her official membership records address. (Section 6068 subdivision (j).) When the court denied this motion, the State Bar requested that this failure be considered in aggravation. The dispute arising out of the membership records address arose when the private post office box company she used as her membership records address refused to accept the large packages being sent by

⁴ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

the State Bar. Respondent negotiated with the post office box company and this issue was eventually resolved. As such, the court does not find that respondent willfully violated section 6068 subdivision (j).

The State Bar also asserts that respondent's clients suffered significant harm from respondent's inaction, in that they were unable to obtain approval for a day-care center because of the dangers posed by the lack of a fence between the Johns' and the neighbor's properties. However, the day care center was to be owned by Mrs. Johns' daughter, not the Johns. As such, while their daughter may have suffered some harm by respondent's delays, there was insufficient evidence that there was significant harm to a client, the public or the administration of justice. (Std. 1.2(b)(iv.))

III. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) The court finds the following factors in mitigation.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Respondent suffered from extreme emotional and physical difficulties during the time of the misconduct. During this time, respondent was in a very abusive relationship with her daughter's father. This abuse manifested itself in physical violence, including fights where he hit her and broke her lip. He was arrested for this conduct.

In September 2006, he again came to respondent's house to see the one year-old daughter. Respondent and he began to argue while the daughter was asleep, and he raped her. She called the authorities and filed a report. However, respondent does not believe he has been charged. Later, she reconciled with him.

In May 2007, they had another argument. He grabbed respondent and threw her onto the brick patio. She severely injured her back and was unable to get up. She heard him leave with

her daughter. She was required to crawl into the garage to drive to the police station. As a result of his actions, the police again took him into custody. Respondent obtained a protective order. She still suffers from her back injury.

In November 2007, she saw him at a bus stop on her way home. When she arrived at the house, she saw that he had knocked a hole in the door. She called the police and they apprehended him. Respondent was forced to move her residence to avoid confrontations with him. Respondent received a total of three restraining orders regarding her daughter's father: two in the criminal courts and one in the family law court.

During this period, respondent became pregnant, but she suffered from gestational diabetes, with very high levels of blood sugar. She was admitted to the hospital with complications from the pregnancy. She suffered a miscarriage. Because he was listed in her patient records, her daughter's father was contacted by the hospital. He came to visit her in the hospital. He then found out where she now lived. He followed her home one day and they got into an argument. He violently kicked a footlocker and it rebounded back toward her, hitting her arm. He again got arrested and spent 30 days in jail.

In October 2008, she suffered another miscarriage, which was the one Mr. Johns was advised of when he called her on the telephone. She has since filed for divorce and met another man who was a prior boyfriend. Unfortunately, she suffered more miscarriages in April 2009, November 2009 (twins), April 2010, and October 2010.⁵

Respondent has produced sufficient evidence to warrant substantial mitigation pursuant to standard 1.2(e)(iv).

Discussion

⁵ The October 2010 miscarriage occurred after she collapsed while in a meeting at the State Bar offices in Los Angeles.

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. 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 applicable sanction is set forth in Standard 2.4(b), which provides that a member’s culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member’s culpability of willfully failing 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.

In addition to the standards, the court looks to relevant case law for guidance. This court finds instructive *Colangelo v. State Bar* (1991) 53 Cal.3d 1255 (one-year stayed suspension, 18 months' probation and no actual suspension); *Chefsky v. State Bar* (1984) 36 Cal.3d 116 (3 years' stayed suspension, 3 years' probation and 30 days' actual suspension); and *Wells v. State Bar* (1984) 36 Cal.3d 199 (2 years' stayed suspension, 2 years' probation and 30 days' actual suspension).

In *Colangelo v. State Bar* (1991) 53 Cal.3d 1255, the Supreme Court imposed no actual suspension in a matter involving several counts of failure to communicate, withdrawing from employment without taking reasonable steps to avoid prejudice to the rights of his clients in three counts, and failing to refund fees in three cases.

Chefsky v. State Bar (1984) 36 Cal.3d 116 involved misrepresentations in court and misappropriated funds, as well as failure to perform services and/or failure to communicate with several clients, and withdrawing from representation without taking steps to prevent prejudice to his five clients. The misconduct was far more serious than we have here.

In *Wells v. State Bar* (1984) 36 Cal.3d 199, the attorney and the State Bar stipulated to facts and discipline including 30 days' actual suspension for misconduct involving failing to communicate and failure to perform services diligently. The Court would have imposed a reproof but for two prior instances of prior discipline in 1975 and 1978.

In this matter, respondent has been found culpable in one client matter of failing to perform with competence and failing to respond to client inquiries. The State Bar argues that a 30-day actual suspension is appropriate, while respondent argues that the proper discipline is stayed suspension.

Looking to the cases cited above, it appears that the misconduct in *Chefsky v. State Bar*, *supra*, 36 Cal.3d 116, was more serious than the misconduct presently before the court, because

misrepresentation and misappropriation were involved, while the present proceeding has greater mitigating circumstances. Here, respondent suffered from extreme emotional and physical difficulties during the time of her misconduct. She was in a very abusive relationship, receiving a total of three restraining orders against her daughter's father; she had gestational diabetes; and she suffered from several miscarriages. These problems directly contributed to her inattention in the Johns' case.

Likewise, in *Wells v. State Bar*, *supra*, 36 Cal.3d 199, the misconduct was accompanied by two prior records of discipline. In this matter, there are no such aggravating circumstances. The case that appears most analogous to that before the court is *Colangelo v. State Bar*, *supra*, 53 Cal.3d 785. The court notes that although the misconduct was more serious in *Colangelo*, there was no actual suspension imposed by the Supreme Court.

The primary purposes of discipline are protection of the public, the courts, and the legal profession as well as the maintenance of high professional standards. (*In re Morse* (1995) 11 Cal.4th 184, 205.) After examining the circumstances of this matter as a whole, as well as the standards and relevant case law, the court concludes that a one-year stayed suspension and a period of probation is sufficient to fulfill these purposes.

Recommendations

Accordingly, the court recommends that Lorraine Dickson, State Bar Number 220841, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation for a period of eighteen months subject to the following conditions:

1. During the probation period, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, and to the State Bar Office of Probation, all changes of

information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

4. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these conditions herein;
5. Within one (1) year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar of California's Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
6. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
7. At the expiration of the period of this probation, if Lorraine Dickson has complied with the terms of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is also recommended that Lorraine Dickson take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's disciplinary order in this matter 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

suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs

It is further 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: June _____, 2011

RICHARD A. HONN
Judge of the State Bar Court