

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT -- SAN FRANCISCO

In the Matter of)	Case No.: 09-O-12855-LMA
)	
GREGORY CHANDLER,)	
)	DECISION
Member No. 158260,)	
)	
A Member of the State Bar.)	
_____)	

I. INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **GREGORY CHANDLER**¹ with a total of six counts of professional misconduct. More specifically, the State Bar charges respondent with five counts of misconduct involving a single client matter and one count of failing to update his office address on the State Bar's membership records.

For the reasons set forth *post*, the court finds that respondent is culpable on only four of the six counts and concludes that the appropriate level of discipline for the found misconduct is a three-year suspension stayed subject to conditions, including three months' suspension

¹ Respondent was admitted to the practice of law in the State of California on June 8, 1992, and has been a member of the State Bar of California since that time. He has one prior record of discipline.

consecutive to the two-year suspension previously imposed in the Supreme Court's February 24, 2010 order in *In the Matter of Gregory Chandler on Discipline*, case number S178791 (State Bar Court case number 07-O-10093) (hereafter *Chandler I*).

The State Bar was represented by Deputy Trial Counsel Maria J. Oropeza. Respondent, however, did not appear in person or by counsel.

II. KEY PROCEDURAL HISTORY

On January 27, 2010, the State Bar filed a notice of disciplinary charges (hereafter NDC) against respondent and, in accordance with Business and Professions Code section 6002.1, subdivision (c),² properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar of California (hereafter official address). The record establishes that United States Postal Service (hereafter Postal Service) returned, to the State Bar, undelivered and stamped “Forwarding Order Expired” the copy of the NDC that was served on respondent.³ Thereafter, DTC Oropeza unsuccessfully looked for respondent’s new address and telephone number both on yellowpages.com and in Parker’s directory.⁴

Even though respondent never received the copy of the NDC that the State Bar served on him by mail, “The service [was] complete at the time of the mailing” (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) Moreover, even though respondent never

² Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

³ On December 7, 2009, the State Bar sent respondent a 20-day letter. Thereafter, the Postal Service returned that letter to the State Bar undelivered and stamped “No Longer Here.” This is strong evidence that respondent had moved his office sometime before or around early December 2009.

⁴ See DTC Oropeza’s declaration attached to the State Bar’s March 4, 2010 motion for entry of respondent’s default.

received the copy of the NDC that the State Bar served on him by mail, the respondent was given adequate notice of this proceeding for purposes of due process because the State Bar looked, albeit unsuccessfully, for respondent's new address and telephone number on yellowpages.com and in Parker's directory. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent's response to the NDC was to have been filed no later than February 22, 2010. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. And, on March 4, 2010, the State Bar filed a motion for the entry of respondent's default and served a copy of that motion on respondent by certified mail, return receipt requested, at his official address. Thereafter, respondent did not file a response to that motion or to the NDC, and the time in which he had to file each of those responses has run.

Because all of the statutory and rule prerequisites were met, this court filed an order on March 22, 2010, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that respondent be involuntary enrolled as an inactive member of the State Bar of California effective March 25, 2010.⁵

On April 12, 2010, the State Bar filed a request for waiver of default hearing and a brief on culpability and discipline. And, on March 13, 2010, the court took the matter under submission for decision without a hearing.

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⁵ Of course, an inactive member of the State Bar of California cannot lawfully practice law in this state. (§ 6126, subd. (b); see also § 6125.) Moreover, an attorney who has been enrolled inactive cannot lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under section 6088 and Rules of Procedure of the State Bar, rules 200(d)(1)(A) and 201(c), upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts.⁶ Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings. Briefly, those factual findings establish or fail to establish the following charged disciplinary violations by clear and convincing evidence.

A. Respondent's February 2008 Inactive Enrollment

In accordance with a February 7, 2008 order in State Bar Court case number 07-AE-14510-PEM, respondent was involuntarily enrolled as an inactive member of the State Bar of California effective February 12, 2008, because he refused to pay a final fee arbitration award to one of his former clients. (Bus. & Prof. Code, § 6203, subd. (d).)⁷ That February 7, 2008 order is hereafter referred to as "the February 2008 inactive enrollment order."

The February 2008 inactive enrollment order expressly provides that respondent will remain on involuntary inactive enrollment until (1) he pays the fee arbitration award of \$8,643.75 together with interest thereon, (2) he pays \$255.92 in costs, and (3) he makes and the State Bar Court grants a motion to terminate his inactive enrollment.

⁶ Notwithstanding the entry of respondent's default, "All reasonable doubts must [still] be resolved in [his] favor . . . , and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt [must] be accepted [by the court]. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

⁷ All further statutory references are to the Business and Professions Code.

A copy of the February 2008 inactive enrollment order was properly served on respondent by mail on February 12, 2008. Shortly thereafter, respondent actually received that copy of the order in the ordinary course of the mail.

This court takes judicial notice of the official court file in case number 07-AE-14510-PEM and notes that respondent has never filed a motion to terminate his involuntary inactive enrollment under the February 2008 inactive enrollment order. Accordingly, it is clear that respondent has continuously been on involuntary inactive enrollment under that order from February 12, 2008, to the present.

B. Respondent's July 2008 Suspension

In accordance with a June 12, 2008 order in Supreme Court case number S164208, respondent was suspended from the practice of law in California effective July 1, 2008, because he failed to pay his State Bar of California annual membership fees for the year 2008. That June 12, 2008 order is hereafter referred to as "the 2008 suspension order." And, as of about July 1, 2008, respondent knew that he was suspended from practice for not paying his 2008 annual membership fees.

This court takes judicial notice of the State Bar of California's official membership records and notes that respondent has continuously been suspended from practice under the Supreme Court's June 12, 2008 order from July 1, 2008, to the present.

C. The Scott Client Matter

On about October 11, 2007, Shawn Scott retained respondent to represent him in a civil matter against the Glen Eagle Golf Course. Thereafter, respondent represented Scott in that matter until about September 2008, when respondent ceased performing work for Scott. During that time, respondent never told Scott he was not entitled to practice law. Instead, respondent

held himself out as being entitled to practice law. In other words, respondent deliberately concealed the material fact of his disqualification to act as an attorney from his client Scott.

In February and March 2008, respondent sent letters to the opposing counsel in that civil matter. In March 2008, respondent also sent a letter to Scott. In each of these letters to opposing counsel and to Scott, respondent affirmatively represented that he was entitled to practice law because the letters were written on letterhead using the title “Attorney at Law.”

On about June 17, 2009, a State Bar investigator sent respondent a letter asking respondent to respond in writing to specific allegations of misconduct involving his representation of Scott. Respondent received that letter, but failed to respond to it.

Count One – Unauthorized Practice of Law (§§ 6068, subd. (a); 6125, 6126)

The record clearly establishes that respondent deliberately engaged in the unauthorized practice of law in willful violation of both section 6068, subdivision (a) and section 6126, subdivision (b), when he continued to represent Scott in the civil matter after February 12, 2008, and when he affirmatively represented that he was entitled to practice law in his February and March 2008 letters to opposing counsel and to Scott, which were written on respondent’s “Attorney at Law” letterhead. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 604.)

Count Two – Moral Turpitude (§ 6106)

The record clearly establishes that, by deliberately concealing the material fact of his disqualification to act as an attorney from his client Scott and by affirmatively misrepresenting that he was entitled to practice law in his February and March 2008 letters to opposing counsel and to Scott, respondent deliberately engaged in conduct involving both moral turpitude and dishonesty in willful violation of section 6106. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 576-577.) “Concealment can be dishonest and involve moral turpitude within the meaning of section 6106. [Citation.]” (*Id.* at p. 576.)

Count Three – Failure to Communicate (§ 6068, subd. (m))

In count three, the State Bar charges that respondent willfully violated his duty, under section 6068, subdivision (m), to keep his clients reasonably informed of significant developments in the matter in which respondent has agreed to provide legal services “By failing to inform Scott that he was not entitled to practice law after on or about February 12, 2008, while he was still representing Scott in the civil matter” involving the Glen Eagle Golf Course. The court agrees. Nonetheless, the court declines to find respondent culpable of willfully violating section 6068, subdivision (m) because the court has already relied on respondent’s failure to disclose his inactive enrollment and suspension to Scott to find respondent culpable of engaging in acts involving moral turpitude and dishonesty in willful violation of section 6106 in count two, *ante*. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 536; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787.) In other words, count three is duplicative of count two. Duplicative findings of misconduct are generally inappropriate and serve no purpose. Indeed, the level of discipline for an act of misconduct does not depend upon how many rules or statutes proscribe the act. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 148; see also *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 594.)

Count Four – Improper Withdrawal (Rules Prof. Conduct, rule 3-700(A)(2))

In count four, the State Bar charges that “respondent effectively withdrew from employment on behalf of Scott” in about September 2008 when he ceased performing work for Scott and that “At no time prior to withdrawing from employment on behalf of Scott did respondent notify Scott of his withdrawal or take any other steps to avoid reasonably foreseeable prejudice to Scott.” In that same count, the State Bar further charges that “By not giving Scott notice of his termination of employment with Scott, respondent improperly withdrew from

employment with a client in willful violation of rule 3-700(A)(2) [of the Rules of Professional conduct].” The court cannot agree.

First, count four is clearly duplicative of count three *ante*. Second, whether an attorney has effectively withdrawn from employment is a conclusion that can only be determined from the totality of the circumstances. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680; see also *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979.) The factual allegations in the NDC, which are deemed admitted by the entry of respondent’s default, do not establish sufficient circumstances from which this court can conclude, by clear and convincing evidence, that “respondent effectively withdrew from employment on behalf of Scott.” The fact that respondent ceased performing legal services for Scott sometime around September 2008 simply does not establish that respondent effectively withdrew from employment in the Scott matter. (*Ibid.*)

Third, rule 3-700(A)(2) “has no applicability to attorneys practicing while suspended [or involuntarily enrolled inactive].” (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.) For these three reasons, count four is dismissed with prejudice.

Count Five -- Failure to Cooperate in Disciplinary Investigation (§ 6068, subd. (i))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations when he failed to respond to State Bar investigator’s June 17, 2009 letter regarding the Scott client matter.

D. Respondent’s Failure to Update Office Address

Since June 22, 2007, respondent's official address has been: 101 California St #2450, San Francisco, CA 94111. On about October 15, 2009, respondent stopped receiving mail at that address. And, as noted above in footnote 3 *ante*, in December 2009, the Postal Service

returned, to the State Bar, a letter that the State Bar sent respondent's official address that bares the Postal Stamp "No Longer Here." Accordingly, it is clear that respondent moved his office from 101 California Street sometime in late 2009. Respondent, however, has not updated his official address.

Count Six – Failure to Update Official Address (§ 6068, subd. (j))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (j), to failing to comply with the requirements of section 6002.1, which requires members of the State Bar to maintain, on the official membership records of the State Bar of California, the member's current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes because respondent moved his office sometime in late 2009 and has not yet updated his address with the State Bar of California's Office of Membership Records.

IV. AGGRAVATION & MITIGATION

A. Aggravation

Respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁸ Respondent's prior record of discipline is the Supreme Court's February 24, 2010 order in *Chandler I* in which respondent was suspended for three years, stayed subject to conditions including a two-year suspension that will continue until respondent pays the \$8,643.75 fee arbitration award that is the subject of State Bar Court case number 07-AE-14510-PEM.

Respondent's misconduct in this proceeding involves multiple acts of misconduct. (Std. 1.2(b)(ii).)

⁸All further references to standards are to this source.

Respondent failed to file a response to the NDC in the present proceeding and, thereby, allowed his default to be entered. Even though respondent's failure to file a response is an aggravating circumstance (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805), its weight in aggravation is limited because the conduct on which it is based closely equals the misconduct relied on 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. Mitigation

The record does not establish any mitigating circumstances.

V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to caselaw for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

In the present proceeding, the most severe sanction for respondent's misconduct is found in standard 2.3, which applies to respondent's acts involving moral turpitude and dishonesty in concealing his disqualifications to act as an attorney in willful violation of section 6106.

Standard 2.3 provides:

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The court must also consider standard 1.7(a), which directs that the discipline imposed on an attorney who has one prior record of discipline is to "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.”

However, under standard 1.7(a), the aggravating force of *Chandler I* is greatly diminished because respondent’s unauthorized practice of law in the Scott client matter from February 12, 2008, through about September 2008 occurred during the same time period, if not before, that respondent engaged in the unauthorized practice of law for which he has been disciplined in *Chandler I*. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619; *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 351.) Thus, the correct analysis requires that this court (1) consider the totality of the findings in both the present proceeding and *Chandler I* and (2) determine what the discipline would have been had all the misconduct been brought as one case. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

After considering the totality of the findings in the present proceeding and in *Chandler I*, the court concludes that, if all the misconduct had been brought in one case, the recommended discipline would have been a three-year stayed suspension and a two-year three-month suspension continuing until respondent made and the State Bar Court granted a motion to terminate the suspension under Rules of Procedure of the State Bar, rule 205 and until respondent established his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii). In order to effectively impose that level of discipline on respondent, this court will recommend that the two-year three-month suspension in this proceeding begin retroactively on March 26, 2010, which is the effective date of the Supreme Court's February 24, 2010 order in *Chandler I*.

The court's conclusion that the two-year suspension in *Chandler I* would have increased by three months (i.e., from two years to two years and three months) had all of the misconduct been brought in one case is supported by *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. In *Mason*, the attorney was placed on three years' stayed suspension and three years' probation on conditions, including a three-month suspension. In *Mason*, the attorney, knowing the effective date of his suspension, made one court appearance in a single client matter six days after his suspension began. The attorney's unauthorized practice of law was found to involve moral turpitude. And there were four aggravating factors (one prior record of discipline; multiple acts of misconduct; harm to administration of justice; and uncharged misconduct) and no mitigating factors.

This court does not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20 or to take and pass the Multistate Professional Responsibility Examination because those requirements were recently imposed on respondent in *Chandler I*.

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent **GREGORY CHANDLER**, State Bar number 158260, be suspended from the practice of law in the State of California for three years and that execution of the three-year suspension be stayed, subject to the following conditions:

1. Gregory Chandler be suspended from the practice of law in California for a minimum of two years and three months beginning retroactively on March 26, 2010, and he will remain suspended until the following requirements are satisfied:
 - ii. The State Bar Court grants a motion to terminate Gregory Chandler's suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and
 - iii. Gregory Chandler provides 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. Gregory Chandler must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

VII. COSTS

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

Dated: July ____, 2010.

LUCY ARMENDARIZ
Judge of the State Bar Court