

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos. **09-O-13598-RAH** (09-O-14697)
)
LARRY SCOTT SPEARS,)
) **DECISION**
)
Member No. 195993,)
)
)
A Member of the State Bar.)

I. Introduction

In this default disciplinary matter, respondent **Larry Scott Spears** is charged with multiple acts of professional misconduct in two matters, including (1) failing to perform competently; (2) failing to communicate with client; (3) improper withdrawal from employment; (4) failing to comply with conditions of reproof; and (5) 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 he be suspended for a minimum of one year and until the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, rule 205).

II. Pertinent Procedural History

On June 23, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address in Herndon, Virginia. On June 29, 2010, the State Bar received a return receipt signed by "Peter Henry." A courtesy copy of the NDC was also sent to respondent and it was not returned as undeliverable. Respondent did not file a response.

Respondent's default was entered on August 18, 2010, and respondent was enrolled as an inactive member on August 21, 2010. The matter was submitted on September 6, 2010, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs 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).)

Respondent was admitted to the practice of law in California on June 10, 1998, and has since been a member of the State Bar of California.

A. The Cole Matter (Case No. 09-O-13598)

On or about August 18, 2008, Barbara Cole employed respondent to prepare a series of estate planning documents (i.e., a power of attorney, two wills and a trust) for her and Daniel Hill. Cole paid respondent \$1,500 in attorney fees for his services.

Respondent subsequently did not prepare any of the estate planning documents for Cole or Hill.

In or about October 2008, when Cole inquired about the status of her matter, respondent told Cole that he completed the work and would contact her after he returned from a trip to Denver.

But respondent did not contact Cole. In or about December 2008, Cole attempted to telephone respondent and found out that his telephone had been disconnected. Cole then learned that respondent had closed his office. Respondent did not provide Cole with a forwarding address or a new telephone number.

Previously, on or about March 15, 2008, respondent entered into and executed a stipulation regarding facts, conclusions of law, and disposition (“Stipulation”) in State Bar Court case No. 07-O-13015.

On or about April 18, 2008, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation, imposing upon respondent a private reproof with conditions (the “Order”).

On or about April 18, 2008, the Order was properly served by first-class mail upon respondent. Respondent received the Order and 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 one year, including but not limited to the following:

- Comply with the State Bar Act and the Rules of Professional Conduct during the reproof period; and
- Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the reproof period, certifying under penalty of perjury whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter.

On July 10 and October 10, 2008, and January 10, 2009, respondent signed and submitted to the Office of Probation his quarterly reports stating that he complied with all provisions of the State Bar Act and Rules of Professional Conduct.

But, in fact, he was not in compliance with all provisions of the State Bar Act and Rules of Professional Conduct because he failed, upon termination of his employment, to take reasonable steps to avoid foreseeable prejudice to his client, Barbara Cole, such as giving her due notice that he had moved.

On or about May 12, 2009, the State Bar opened an investigation pursuant to a complaint filed by Cole.

On October 6, 2009, a State Bar investigator wrote respondent a letter requesting him to respond in writing to specified allegations of misconduct being investigated by the State Bar in the Cole matter. The response deadline was October 20, 2009. Respondent received the letter but failed to respond.

On October 23, 2009, a State Bar investigator again wrote respondent a letter requesting a response to the letter sent on October 6, 2009. A copy of the October 6 letter was enclosed with the October 23 letter. The response deadline was November 6, 2009. Respondent received the letter and enclosure but failed to respond.

Conclusions of Law

Count 1: Improper Withdrawal from Employment (Rules Prof. Conduct, Rule 3-700(A)(2))¹

Rule 3-700(A)(2) states: “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.”

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

By failing to complete the services for which respondent was employed and failing to provide Cole with his valid telephone and address information, respondent willfully violated rule 3-700(A)(2) by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client.

Count 2: Dishonesty (Bus. & Prof. Code, § 6106)²

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

By preparing, signing and submitting quarterly reports to the State Bar on July 10 and October 10, 2008, and January 10, 2009, stating that he was in compliance with all provisions of the State Bar Act and Rules of Professional Conduct when he was not and, in fact, had abandoned his client in December 2008, respondent committed an act involving dishonesty in willful violation of section 6106.

Count 3: Failure to Comply with Repeal Conditions (Rules Prof. Conduct, Rule 1-110)

Rule 1-110 provides that an attorney must comply with the conditions attached to public or private reprimands imposed by the State Bar Court.

By failing to complete the services for which respondent was employed by his client, Barbara Cole, and failing, upon termination of employment, to take reasonable steps to avoid foreseeable prejudice to his client, respondent failed to comply with the State Bar Act and the Rules of Professional Conduct during the reprimand period as required by the conditions attached to a private reprimand administered by the State Bar in willful violation of rule 1-110.

Count 4: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 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.

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

By failing to respond to the State Bar's October 6 and 23, 2009 letters and failing to cooperate in the State Bar's investigation of the Cole's complaint, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

B. The Ford Matter (Case No. 09-O-14697)

In or about December 2004, Melvin Ford employed respondent to represent him in a lawsuit against the Dominican Sisters of Mission San Jose.

Respondent subsequently failed to serve the complaint within three years of the commencement of the action pursuant to Code of Civil Procedure section 583.210(a). Accordingly, the suit was dismissed. Respondent appealed the dismissal in the Court of Appeal of the State of California, First Appellate District, Division Five, Mendocino County Superior Court case No. SCUK-CVPO-03-91571. The Court of Appeal affirmed the dismissal of the case on January 23, 2008.

Respondent did not inform Ford at any point that his case against the Dominican Sisters of Mission San Jose was dismissed.

On or about June 24, 2009, the State Bar opened an investigation pursuant to a complaint filed by Ford.

On October 7, 2009, a State Bar investigator wrote respondent a letter requesting that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ford matter.³ The response deadline was October 21, 2009. Respondent received the letter but failed to respond.

³ The NDC incorrectly alleged that respondent did not respond to the State Bar's letters regarding the Cole matter in count 7. The correct matter should have been the Ford matter, not the Cole matter. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

On October 23, 2009, a State Bar Investigator again wrote respondent a letter requesting a response to the letter sent on October 7. A copy of the October 7 letter was enclosed with the October 23 letter. The response deadline was November 6, 2009. Respondent received the letter and enclosure but failed to respond.

Count 5: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

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

By failing to serve the complaint in the Ford matter within the time period required by the statute of limitations, respondent intentionally or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 6: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

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 failing to inform Ford that his case was dismissed, respondent failed to keep a client informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

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

By failing to respond to the State Bar's October 7 and 23, 2009 letters and failing to cooperate in the State Bar's investigation of the Ford matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁴ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In 2008, respondent stipulated to a private reproof for his failure to perform services in one client matter. (State Bar Court case No. 07-O-13015, effective May 9, 2008.)
2. On November 4, 2010, respondent was suspended for two years, stayed, and actually suspended for 90 days and until the State Bar Court terminates his suspension for violating several of the conditions attached to his private reproof. (Supreme Court case No. S184799; State Bar Court case No. 09-H-15876.)⁵

Respondent committed multiple acts of wrongdoing by abandoning the Cole and Ford matters. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed Ford in that his case was dismissed due to respondent's failure to serve the complaint. (Std. 1.2(b)(iv).) And Cole paid respondent \$1,500 for services that respondent never completed.

⁴ Future references to standard(s) or std. are to this source.

⁵ The court takes judicial notice that respondent's second prior record of discipline, Supreme Court case No. S184799 (State Bar Court case No. 09-H-15876), was filed October 5, 2010 and became effective November 4, 2010, after this instant matter was submitted.

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.3, 2.4, 2.6, 2.9 and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

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.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty 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.

Standard 2.9 provides that culpability of a violation of rule 1-110 must result in suspension.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges two years of actual suspension, citing, among others, *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, in support of its recommendation.

The attorney in *In the Matter of Bach* was actually suspended for nine months for his two client abandonments and was previously disciplined for a third abandonment occurring at roughly the same time.

Similarly, in this matter, respondent's misconduct involved two client abandonments and one of which occurred at about the same time as the previously disciplined misconduct for failure to perform services (State Bar Court case No. 07-O-13015). But unlike *Bach*, respondent has two prior records of discipline.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Therefore, balancing all relevant factors – respondent's misconduct, the standards, the case law and the aggravating evidence, the court concludes that placing respondent on a suspension for a minimum of one year would be appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommendations

A. Discipline

Accordingly, the court hereby recommends that respondent **Larry Scott Spears** be suspended from the practice of law in California for two years, that said suspension be stayed, and that respondent be suspended from the practice of law for a minimum of one year. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent remains suspended for two years or more as a result of not satisfying the preceding conditions, he will remain suspended until he has shown proof to the State Bar Court of his 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.)

B. Multistate Professional Responsibility Exam

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in S184799.

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁶

D. 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: November _____, 2010

RICHARD A. HONN
Judge of the State Bar Court

⁶ 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.)