

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-O-13989-PEM
)	(10-O-00291)
LARRY PAUL JAMES)	
)	
Member No. 183769)	DECISION
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary proceeding, respondent **Larry Paul James**, is charged with multiple acts of misconduct in two client matters. The charged misconduct includes (1) failing to perform competently; (2) failing to return unearned fees; (3) failing to keep clients reasonably informed of significant developments; and (4) committing an act of moral turpitude.

This court finds, by clear and convincing evidence, that respondent is culpable in two client matters of five acts of misconduct. Based upon the serious nature and the extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends that respondent be actually suspended for two years and until he makes restitution and complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct¹, among other things.

¹ Future references to standard or std. are to this source.

II. Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges on November 17, 2010, which respondent answered on January 7, 2011.

On February 24, 2011, the parties submitted a partial stipulation of facts which the court approves.

A three-day trial was held March 1-3, 2011. The State Bar was represented by Deputy Trial Counsel Wonder Liang. Respondent represented himself. On March 3, 2011, following closing arguments, the court took this matter under submission.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence, stipulations and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 28, 1996, and has been a member of the State Bar of California since that time.

B. Case No. 09-O-13989 (The Vu Matter)

On February 5, 2007, Thong Thai Vu, a South Carolina resident who had an 11th-grade education in Vietnam and is not fluent in English, was ordered removed from the United States to Vietnam. He located respondent, whose office was in Sacramento, California, from a Vietnamese-language newspaper ad placed by Mr. Bui, a Vietnamese translator who did contract work for respondent. Essentially, the ad stated that persons facing deportation should contact Bui, who would find a lawyer to handle the deportation order. Vu contacted Bui who told him he had to come to California and pay respondent \$15,000 to take his case.

In February 2007, Vu went to Sacramento to meet respondent for the first time. He hired respondent on February 13, 2007, to file an appeal with the Board of Immigration Appeals (BIA) of the judge's February 7, 2007, decision in case no. A73-347-072 (immigration matter) and paid him \$7,500 as advanced fees. Thereafter, Vu paid respondent \$6,000 on May 8, 2007 and \$1,500 on May 15, 2008, as advanced fees on the immigration matter. The advanced fees totaled \$15,000.

Respondent filed a notice of appeal with the BIA on March 7, 2007. On September 13, 2007, respondent was given a briefing schedule. He had until October 4, 2007, to file an appeal brief. As of October 24, 2007, he had not done so.

On October 25, 2007, the Department of Homeland Security (DHS) filed a motion for summary dismissal of Vu's appeal based on respondent's failure to file an appeal brief. Although respondent received a copy of the motion, he did not oppose it or file an appeal brief for Vu. On September 23, 2008, the BIA dismissed Vu's appeal because respondent did not file an appeal brief. Respondent readily admits he did not file an appeal brief with the BIA.

In 2008, Vu contacted Tin T. Nguyen, a North Carolina attorney, to discuss Bui's² advice about moving to California so his case could be in the Ninth Circuit Court of Appeals.

Upon learning that respondent was Vu's appellate immigration lawyer, Nguyen called respondent's office and Bui on several occasions but was unable to reach respondent. He and Bui got into an argument as Bui claimed he knew everything about immigration law.

In a February 2008 letter from respondent to Vu, respondent never mentioned that he did not file a brief in Vu's matter. After hearing all the evidence in this case, this court believes that respondent did not tell Vu until 2009 that he did not file a brief.

² Bui was the only person from respondent's office with whom Vu had contact.

In 2009, Vu terminated respondent's services and requested a refund of unearned fees. Although respondent received Vu's request, he did not refund any portion of the \$15,000 Vu paid him as advanced fees.

Pursuant to Vu's complaint against respondent, the Sacramento Bar Association scheduled a fee arbitration hearing on September 9, 2009. Nguyen went to Sacramento from North Carolina to attend the hearing and Vu participated by telephone from South Carolina. It was the first time Nguyen spoke to respondent.

Prior to the hearing, respondent and Nguyen entered into an agreement that Vu would withdraw the complaint if respondent refunded \$12,000 to him. Nguyen did not put the agreement in writing because he was a "green attorney" and was very trusting that respondent would honor his word. Vu withdrew the complaint based upon this "gentlemen's agreement" with respondent. Respondent did not honor the agreement and, to date, has not paid Vu any portion of the agreed-upon \$12,000. Respondent admits that he agreed to pay Vu \$12,000 and that he has not paid Vu any of it.

Count 1(A): Not Performing Competently (Rules of Prof. Conduct, rule 3-110(A))³

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not performing any work on Vu's behalf after filing a notice of appeal; by not filing an appeal brief; and by not filing an opposition to DHS' motion for summary dismissal, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

³ References to the rules are to the Rules of Professional Conduct, unless otherwise stated.

Count 1(B): Not Refunding Unearned Fees (Rules of Prof. Conduct, rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned.

By not refunding unearned fees after Vu terminated his services, respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

C. Case No. 10-O-00291 (Singh/Devi Matter)

On September 6, 2005, respondent was hired by Vijay Singh (Singh) and Parmila Devi to file an appeal with the BIA in case nos. A070-342-653 (Singh case) and A070-342-652 (Devi case). They paid him \$3,000 as advanced fees to do so.

On September 19, 2005, respondent filed a notice of appeal with the BIA in their matter. The BIA issued a briefing schedule on April 19, 2006. Although respondent received a copy of it, he did not file an appeal brief with the BIA or perform any other work on behalf of Singh and Devi in their immigration matter.⁴

On January 9, 2007, the BIA issued a decision dismissing Singh and Devi's appeal, noting that respondent had not filed an appeal and that the argument made in the notice of appeal did not address the reason for the immigration judge's denial. Respondent never informed Singh or Devi that the BIA had dismissed their appeal.

From April 2006 through August 2009, Singh and Devi, through their son, Vijay Praneel Singh (Praneel), talked to respondent by telephone on numerous occasions to discuss the status of their immigration matter. During that same time period, Praneel visited respondent's office on a few occasions to discuss the status of his parents' immigration matter with him. During the telephone and in-person conversations with Praneel, respondent misled him, indicating that he was waiting for the BIA's briefing schedule.

⁴ However, respondent did immigration work on behalf of their children and, in fact, completed their immigration matter satisfactorily manner for which he was paid \$1,000.

Singh and Devi became aware that respondent had not filed a brief in their immigration matters when a friend gave Praneel an “800” number to the court system. Praneel punched in his parents’ case numbers and found out their cases had been dismissed because respondent had not filed a brief.

Within a day of learning about the dismissal, Devi and Singh contacted an attorney, Dominic Capeci, suggested by the friend who had given them the “800” number. Capeci gave Praneel a form to retrieve the client file from respondent. He did so and gave it to Capeci. Capeci credibly testified that he saw no documents in the file indicating that respondent notified anyone in the Singh family of the dismissal.

On December 23, 2009, Capeci filed a motion to reopen the immigration proceedings based on respondent’s ineffective assistance of counsel. On June 24, 2010, the BIA granted the motion to reopen and vacated its January 9, 2007 decision because respondent did not file an appeal brief or otherwise challenge the various findings of the immigration judge.

The court believes that Praneel testified truthfully that respondent did not tell him that he had not filed a brief in this matter. Quite simply, this court does not believe respondent’s testimony that he told Devi, Singh or Praneel about the dismissal due to his not filing a brief. The court believes that, if Devi and Singh had known their case was dismissed, they would have done what they did when they say they found out it had been dismissed: immediately employ another lawyer to look into their case.

Count 2(A): Not Performing Competently (Rules of Prof. Conduct, rule 3-110(A))

By not performing any work on behalf of Singh and Devi in the immigration matter after filing a notice of appeal and by not filing an appeal brief, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 2(B): Not Informing Client of Significant Development (Bus. & Prof. Code, §6068(m))⁵

Section 6068(m) requires an attorney, in relevant part, to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Singh and Devi that the BIA had dismissed the appeal, respondent did not keep clients reasonably informed of significant developments in a matter in which he had agreed to provide legal services.

Count 2(C): Moral Turpitude (Bus. & Prof. Code, §6106)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106. During the telephone and in-person conversations with Praneel, respondent stated that he was waiting for the briefing schedule from the BIA although he knew the statements to be false. By knowingly making false statements to Praneel regarding the status of Singh's and Devi's immigration matters, respondent committed acts involving moral turpitude, dishonesty or corruption.

Respondent introduced evidence that, he claimed, was proof that Singh and Devi knew that their case had been dismissed as early as 2008. The court finds that the affidavits respondent introduced in support of his claim were not convincing. In any event, this evidence immaterial because it does not prove that respondent told them from January 9, 2007 until February 18, 2008, that their case was dismissed. Even if respondent had them sign the affidavits in 2008, their case was dismissed in 2007 and they should have been advised of the dismissal prior to February 2008. Also, the affidavits are couched in misleading language. They do not explain

⁵ References to section are to the Business and Professions Code, unless otherwise indicated.

the ramifications of failing to meet an appeal deadline in April 2006 or make any explicit mention that respondent failed to file a brief. Moreover, the affidavits are couched in terms that respondent can continue with an appeal on the case that had been dismissed because he failed to file a brief. Further, the affidavits presume that respondent can and will file a request to reopen based on his own incompetence. The court does not believe that the affidavits are fabricated as the State Bar avers but they also are misleading and do not support respondent's claims.

IV. Mitigating and Aggravating Circumstances

A. Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent has one prior disciplinary record. In S188570 (State Bar Court case no. 07-O-10328), respondent was found culpable in four client matters of violating rules 3-110(A) (three counts) and rule 3-700(D)(2) (two counts) and sections 6068 subdivisions (i) and (m) (one count each). Aggravating factors include multiple acts of misconduct, client harm and indifference. Mitigation includes good character evidence, no prior discipline (eight and one-half years) and family and financial issues (some mitigating weight).

The misconduct in the prior disciplinary matter occurred around the same time as the misconduct at hand.⁶ Accordingly, the aggravating effect of this prior discipline is diminished as it is not indicative of respondent's inability to conform to ethical norms and the court will consider the totality of the findings in both cases to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

⁶ In the prior case, the misconduct occurred between June 2004 and June 2008. In the present case, the misconduct occurred between April 2006 and September 2009.

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) Vu is training to be a nail technician and currently makes \$350 a week working six days a week and 8-10 hours a day. He borrowed from his 401(k) plan, used his credit cards and borrowed from his parents to pay respondent \$15,000 for his incompetent legal services. He is still paying off his credit card for some portion of the \$15,000. Vu also had to retain other counsel to assist him and to pursue fee arbitration against respondent.

When Singh and Devi found out that their case had been dismissed, they were scared that they would be deported immediately.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct in that he has never apologized to Singh and Devi for his misconduct. Instead, he accuses them of knowing that he did not file a brief and remaining silent because they wanted him to continue representing their children. Moreover, respondent still has not paid Vu any portion of the \$12,000 he agreed to refund as unearned advanced fees.

B. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

Extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the misconduct may be mitigating factors. (Std. 1.2(e)(iv).) In 2008, respondent, an only child, was dealing with the knowledge that his mother has been diagnosed with congestive heart issues and that she did not have long to live. She had bypass surgery and died in 2008. In addition, his father suffered a massive stroke in 2008. In 2009, respondent had to lay off his entire office staff. Furthermore, respondent was struggling financially as his house was “under water” and his loan modification was not approved. Respondent was overwhelmed by these events and his own health issues. The court gave some mitigating weight to these issues. These

mitigating factors also applied in respondent's prior disciplinary matter. Since the misconduct in this and the prior matter happened around the same time, if they had been tried together, these same mitigating factors would apply.⁷

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve 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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

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 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3, 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is

⁷ The good character evidence considered in the prior matter is not considered as to the present misconduct as those witnesses were unaware of it.

found at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

After trial, the State Bar sought respondent's disbarment while respondent sought one year's actual suspension.

As previously stated, the court will consider the totality of the findings in this and the prior disciplinary matter to ascertain what the discipline would have been had both matters been brought as one case.

In this matter, respondent has been found culpable in two client matters of violating rules 3-110(A) (two counts) and 3-700(D)(2) (one count) and sections 6068(m) and 6106 (one count each). Aggravating factors include multiple acts of misconduct, client harm, indifference and a prior disciplinary record (effect diminished as previously discussed). Mitigation includes family and financial difficulties that were considered in the prior disciplinary matter and afforded some weight.

In the prior disciplinary matter, respondent has been found culpable in four client matters of violating rules 3-110(A) (three counts) and rule 3-700(D)(2) (two counts) and sections 6068 subdivisions (i) and (m) (one count each). Aggravating factors include multiple acts of misconduct, client harm and indifference. Mitigation includes good character evidence, no prior discipline (eight and one-half years) and family and financial issues (some mitigating weight).

The court found instructive *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. In *Valinoti*, the attorney was suspended for five years, stayed, and placed on probation for five years with an actual suspension of three years for his misconduct in nine immigration client matters. Even though he had no prior record, his aggravated misconduct was excessive and repeated during a period of more than two years, which included the failure to

perform, client abandonments, acts of moral turpitude, aiding and abetting nonattorneys in the unauthorized practice of law, failure to properly manage his office, misrepresentations to the State Bar, and lack of remorse. The instant case presents less misconduct than *Valinoti*.

The court believes that, in consideration of the nature of the misconduct, the parties' contentions and the aggravating and mitigating factors, actual suspension for two years and until he complies with standard 1.4(c)(ii) is sufficient to protect the public.

VI. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **Larry Paul James** be suspended from the practice of law for three years; that execution of that suspension be stayed, and that respondent be placed on probation for three years, with the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to Thong Thai Vu in the amount of \$12,000 plus 10 percent interest per year from September 9, 2009 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Thong Thai Vu, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - ii. He makes restitution to Vijay Singh and Parmila Devi in the amount of \$3,000 plus 10 percent interest per year from September 19, 2005 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Vijay Singh and Parmila Devi, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;and

- iii. He must 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. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
 3. 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;
 4. Respondent must submit written quarterly reports to the State Bar 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;
 5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

6. It is not recommended that respondent be ordered to successfully complete the State Bar's Ethics School or the Multistate Professional Responsibility Examination as he was ordered to do so in connection with Supreme Court order no. S188570 (State Bar Court case no. 07-O-10328).

7. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for three years will be satisfied and that suspension will be terminated.

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.⁸

VII. 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

PAT McELROY
Judge of the State Bar Court

⁸ Rule 9.20 of the California Rules of Court was previously numbered rule 955. Noncompliance with former rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he or she has no clients to notify. (Cf. *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)