

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **09-O-14305-RAP (11-O-10043;**
) **11-O-13102)**
RICK L. RAYNSFORD,)
) **DECISION and ORDER**
Member No. 105157,)
)
A Member of the State Bar.)
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Introduction¹

This matter involves a Stipulation Re Facts, Conclusions of Law and Disposition executed by the State Bar of California (State Bar) and respondent Rick L. Raynsford, and, thereafter, approved by the State Bar Court. That matter was later returned by the California Supreme Court for further consideration.

Significant Procedural History

On December 20, 2011, respondent signed a Stipulation Re Facts, Conclusions of Law and Disposition in the above-captioned matter; on December 21, 2011, respondent’s counsel in the matter and the State Bar also signed the Stipulation, which was approved and filed by the State Bar Court on January 10, 2012.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

On June 21, 2012, the Supreme Court issued order No. S200321 returning the stipulation “for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silvertown* (2005) 36 Cal.4th 81, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)”

Thereafter, the State Bar filed a Motion for Order Permitting the Introduction of Facts to Supplement Returned Stipulation, or Withdrawal from Same, and to File a Notice Of Disciplinary Charges. The court denied the motion on September 11, 2012.

On September 14, 2012, the State Bar filed a motion to stay proceedings until the Review Department resolved the State Bar’s petition for interlocutory review of the court’s September 11, 2012, order. Thereafter, the court denied the State Bar’s motion.

On September 17, 2012, the court denied the State Bar oral motions: (1) again requesting to be permitted to introduce facts to supplement the returned stipulation, or withdraw from same, and to file a notice of disciplinary charges and (2) requesting that a victim witness statement of harm be admitted into evidence.

Trial in this matter was held on September 17, 2012, and submitted for decision on that same date.

The State Bar was represented by Deputy Trial Counsel Agustin Hernandez. Respondent was represented by attorney Arthur L. Margolis.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar of California at all times since that date.

Case No. 09-O-14305 – The Pena Matter

Facts

On June 1, 2009, Carol and Gary Pena (the Penas) hired respondent to negotiate and obtain a modification of their residential home loan secured by real property in the State of California. On that same date, the Penas paid respondent \$1,000. In late June 2009, the Penas decided to terminate respondent's services. They told one of respondent's employees that they no longer wanted respondent's services and demanded a full refund.

In September 2009, respondent offered to refund the unearned portion of the \$1,000 that the Penas had paid him, and sent them an accounting for his services along with a check in the amount of \$709.25. The Penas were unable to negotiate respondent's check.

Respondent did not promptly take steps to issue another check to the Penas. In July 2011, however, respondent refunded in full the \$1,000 he received from the Penas.

Conclusions

Rule 3-700(D)(2) [Failure to Return Unearned Fees]

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

By failing to promptly refund any unearned portion of the \$1,000, which the Penas had paid him, upon termination of his employment in late June 2009, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case Nos. 11-O-10043 and 11-O-13102 – The Norwood Matter and The Sorrells Matter

Background Facts

In or about December 2008, two individuals, both of whom were non-attorneys involved in a real estate related business, approached respondent to handle bankruptcy work for clients of theirs who might need the services of a bankruptcy attorney. In early 2009, one of the individuals who had approached respondent in 2008, again approached respondent to incorporate

an entity to, among other things, process loan modifications. The entity was to be called Oxford Dunn Law Group (ODLG). The individual, who approached respondent in 2009, suggested that respondent set up ODLG, and then hire other attorneys to assist in the work. In late February 2009, respondent filed for incorporation of ODLG. But, as there were no clients seeking loan modification or other services from respondent and ODLG, respondent did not hire any other attorneys to work for ODLG. Unbeknownst to respondent, in or about March, April and May of 2009, the individual who had approached him regarding setting up ODLG began using letterhead and fee agreements with the name Oxford Dunn Group and/or Oxford Dunn Law Group to solicit and obtain loan modification clients about whom respondent had no knowledge. These clients paid fees to Financial Solutions Law Group (FSLG) or Quantum Escrow (QE) for loan modification services. Neither FSLG nor QE had any connection to respondent; respondent was not a signatory on FSLG or QE bank accounts. Respondent received no fees or payments from these loan modification clients or from anyone else. FSLG and QE were entities created and run by the two non-attorneys described *ante*, and by an attorney or attorneys other than respondent.

In early June 2009, after discovering that the non-attorney individual was using the Oxford Dunn firm name without respondent's knowledge or permission, and accepting legal fees from clients about whom respondent knew nothing, respondent shut down the Oxford Dunn Law Group and the office out of which ODLG operated. Respondent also disassociated himself from the non-attorney individual who had gotten him to form ODLG. At the same time, the non-attorney vacated his office (which was in the same building as ODLG), leaving behind files of loan modification clients whom he had solicited on his own and without respondent's knowledge or consent, and from whom this individual collected monies payable to FSLG or QE for loan modification services.

On June 9, 2009, respondent formed Home Loan Solutions Law Group, (HLS) and filed for its incorporation on that same date. Respondent, doing business as HLS, undertook to perform legal services on behalf of individuals whose files were abandoned by the non-attorney individual who had surreptitiously solicited clients for himself through the improper and unauthorized use of the ODLG name. HSL ceased operations at the end of 2009.

Case No. 11-O-10043 – The Norwood Matter

Facts

On April 12, 2009, Debra Norwood (Norwood) entered into a written agreement with the Oxford Dunn Group to represent her in a residential loan modification matter. Norwood authorized the Oxford Dunn Group to debit her bank account in the amount of \$2,500 in fees. On April 15, 2009, \$2,500 was debited from Norwood's account and paid to the account of Financial Solutions Law Group. Respondent had not authorized anyone to use the name "Oxford Dunn Group" on his behalf or to sign Norwood as his client. Neither respondent's name nor initials appeared anywhere on the Oxford Dunn Group agreement, which was signed by Norwood. Respondent was not a signatory on any bank accounts in the name of Financial Solutions Law Group. Nor did respondent receive any portion of the \$2,500 that Norwood had paid to Financial Solutions Law Group.

Sometime in or after June 2009, respondent discovered Norwood's file, which had been abandoned by the non-attorney, who had improperly used the Oxford Dunn Group name and letterhead to solicit loan modification clients without respondent's knowledge or consent and who had pocketed the client fee payments.

Respondent undertook to work on Norwood's file. Respondent, however, did not complete the services he undertook to perform on Norwood's behalf. And, in December of 2009, when respondent shut down his business, HLS, he withdrew from representing Norwood

prior to completion of the services he had undertaken on her behalf. Respondent did not notify Norwood that he was withdrawing from her matter.

Conclusions

Rule 3-700(A)(2) [Improper Withdrawal from Employment]

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

By failing to notify Norwood that he was closing his business and would take no further action on her matter after December 2009, and that he was withdrawing from employment as her attorney, respondent improperly withdrew from employment with a client without taking steps to avoid reasonably foreseeable prejudice to the client's rights, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

Case No. 11-O-13102 – The Sorrells Matter

Facts

On April 12, 2009, Gregory Sorrells (Sorrells) entered into a written agreement with the Oxford Dunn Group to represent him in a residential loan modification matter. Sorrells authorized the Oxford Dunn Group to debit his bank account in the amount of \$2,500 in fees. On April 20, 2009, \$2,500 was debited from Sorrells's account and paid to the account of Financial Solutions Law Group. Respondent had not authorized anyone to use the name "Oxford Dunn Group" on his behalf or to sign Sorrells as his client. Neither respondent's name nor initials appeared anywhere on the Oxford Dunn Group agreement, which was signed by Sorrells. Respondent was not a signatory on any bank accounts in the name of Financial Solutions Law

Group. Nor did respondent receive any portion of the \$2,500 that Sorrells had paid to Financial Solutions Law Group.

Sometime in or after June 2009, respondent discovered Sorrells's file, which had been abandoned by the non-attorney, who had improperly used the Oxford Dunn Group name and letterhead to solicit loan modification clients without respondent's knowledge or consent and who had pocketed the client fee payments.

Respondent undertook to work on Sorrells's file. Respondent, however, did not complete the services he undertook to perform on Sorrells's behalf. And, in December of 2009, when respondent shut down his business, HLS, he withdrew from representing Sorrells prior to completion of the services he had undertaken on Sorrells's behalf. Respondent did not notify Sorrells that he was withdrawing from his matter.

Conclusions

Rule 3-700(A)(2) [Improper Withdrawal from Employment]

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

Respondent improperly withdrew from employment with a client without taking steps to avoid reasonably foreseeable prejudice to the client's rights, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct, by failing to notify Sorrells that he was closing his business and would take no further action on Sorrells's matter after December 2009, and that he was withdrawing from employment as Sorrells's attorney.

Aggravation²

There were no aggravating circumstances.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent has been a member of the State Bar of California since December 3, 1982, and has no prior record of discipline. His lack of a prior record of discipline in 26½ years of practice of law at the time his misconduct commenced in 2009 is a significant mitigating factor. “Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time.” (*In re Young* (1989) 49 Cal.3d 257, 269 [20 years without prior record of discipline]; see also, *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent was candid and cooperated with the State Bar during the disciplinary proceedings, including entering into a stipulation of facts. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.) Respondent cooperated with the State Bar in these proceedings and reached a stipulated disposition in this matter before any disciplinary charges were filed. The stipulation assisted the State Bar's prosecution by obviating the need for a trial on the merits as to culpability, and allowing the parties and the court to focus on the appropriate discipline. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent is no longer accepting any loan modification clients. Additionally, by stipulating to facts, legal conclusions and discipline, he has demonstrated recognition of wrongdoing.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (See also *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

Standard 1.6(a) provides, in pertinent part, 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. In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standard 2.10, which is the applicable standard in this matter, provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct, which are not otherwise specified in the standards pertaining to sanctions for professional misconduct found or acknowledged in original disciplinary proceedings, must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline. Violations of rule 3-700(A)(2) [improper withdrawal from employment] and rule 3-700(D)(2) [failure to return unearned fees] of the Rules of Professional Conduct fall under the rubric of standard 2.10.

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.) As 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.)

Respondent has been found culpable in one client matter of failing to promptly return unearned fees (one count) and two counts of improperly withdrawing from employment in two additional client matters. There were no aggravating factors. Mitigating circumstances include no prior discipline in 26½ years of practice at time the misconduct commenced, candor and cooperation, and remorse and recognition of wrongdoing.

The State Bar urges that respondent be actually suspended from the practice of law for six months. Respondent believes that a period of stayed suspension is appropriate under the facts and surrounding circumstances.

In determining the appropriate discipline to be imposed in this matter, the court has found the following cases to be instructive: *Gadda v. State Bar* (1990) 50 Cal.3d 344, *Matthew v. State Bar* (1989) 49 Cal.3d 784, and *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267.

In *Matthew v. State Bar*, the attorney abandoned two clients and failed to return unearned fees to them. He also completed the work for a third client more than four years after he was hired. The Supreme Court imposed a three-year stayed suspension and a three-year period of probation, including a sixty-day actual suspension as a condition of his probation. (*Matthew v. State Bar, supra*, 49 Cal.3d 784, 792.) The aggravating circumstances included financial harm to

the clients from the attorney's refusal to return unearned fees totaling \$4,393.56 plus interest and his indifference toward rectification of and atonement for the consequences of his misconduct.

Here, unlike the attorney in *Matthew*, respondent did return the unearned fees, albeit belatedly. And, unlike the *Matthew v. State Bar* matter, no aggravating circumstances were found in the instant matter and several mitigating circumstances were found, including: (1) respondent's lack of a prior record of discipline at the time his misconduct commenced in the instant matter, (2) cooperation with the State Bar, and (3) recognition of wrongdoing. While the misconduct in the instant matter is similar to the misconduct in *Kennon*, in the instant matter three clients were affected, whereas in *Kennon* only two clients were involved.

In *Kennon, supra*, 1 Cal. State Bar Ct. Rptr. 267, 277, the attorney, who had no prior record of discipline, was actually suspended for 30 days with a two-year stayed suspension and a two-year probation for his abandonment of two clients and a failure to return unearned fees of \$2,000 to one client.

In *Gadda, supra*, 50 Cal.3d 344, 356-357, the attorney was found culpable of unreasonable client neglect in three immigration matters, aggravated by deceit in two matters. Specifically, the attorney neglected client matters, instructed a client to lie to an American consul, failed to supervise an associate law to whom he assigned a client matter, and advertised falsely. The Court found the attorney's failure to recognize the seriousness of his misconduct as a further aggravating factor. And, the court found the attorney's pro bono work in the area of immigration as a mitigating factor. The Supreme Court ordered a two-year suspension from the practice of law, execution of which was stayed and a three-year probation period with conditions, including actual suspension for the first six months and payment of restitution.

Respondent's misconduct although serious, is not nearly as egregious or extensive as that in found in *Gadda*. In the instant matter, respondent's misconduct does not involve deceit or

dishonesty. Moreover, there are no aggravating factors and there is greater mitigation. Respondent has shown insight into his wrongdoing as demonstrated by his willingness to stipulate to the facts, has demonstrated cooperation and candor in his dealings with the State Bar, as well as recognition of wrongdoing, and has a long history prior to the commencement of the misconduct in the instant matter of no prior record of misconduct.

Accordingly, having considered the evidence, the standards and the case law, the court concludes that a 60-day actual suspension from the practice of law, among other things, is sufficient to protect the public, the courts and the legal profession from further wrongdoing by respondent.

Recommendations

It is recommended that respondent Rick L. Raynsford, State Bar Number 105157, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation³ for a period of two years subject to the following conditions:

1. Respondent Rick L. Raynsford is suspended from the practice of law for the first 60 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person

³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. 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.)

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline 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.

Costs

It is 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. It is also recommended that

respondent be ordered to pay one-half of the costs with his membership fees for each of the years 2014 and 2015; and, that if he fails to pay any installment as described, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

Order

The order filed on January 10, 2012, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby **VACATED**.

The Stipulation Re Facts, Conclusions of Law and Disposition filed on January 10, 2012, is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition filed on January 10, 2012, from the State Bar's website.

Dated: November 26, 2012

RICHARD A. PLATEL
Judge of the State Bar Court