

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. <b>09-O-14520-RAH</b>
	)	
<b>RICHARD ANTHONY TORRES II,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 164848,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Richard Anthony Torres II** is charged with multiple acts of professional misconduct in a single client matter, including (1) committing an act of moral turpitude (misrepresentation); (2) failing to render appropriate accounts to a client regarding client funds; (3) failing to return unearned fees of \$15,000; (4) failing to promptly release a client file; 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 respondent be suspended from the practice of law for a minimum of one year and remain suspended until he makes specified restitution, as set forth below, and until the State Bar Court

grants a motion to terminate his suspension pursuant to former rule 205 of the Rules of Procedure of the State Bar of California.<sup>1</sup>

## II. Pertinent 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 (NDC) against respondent. On April 21, 2010, the NDC was filed and served, via certified mail, return receipt requested, on respondent at 2150 Mayview Drive, Los Angeles, California 90027, which was not respondent's official membership records address, but an alternative address for respondent of which the State Bar was aware. That mailing was returned to the State Bar, bearing a stamp, "4/30/10 Return to Sender Attempted—Not Known Unable to Forward."

However, on May 4, 2010, the NDC was properly filed and served on respondent, via certified mail, return receipt requested at his official membership records address, which was at that time and which remains, 3699 Wilshire Blvd., Suite 1140, Los Angeles, California 90010.<sup>2</sup> Respondent did not file a response.

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<sup>1</sup> Effective, January 1, 2011, the Rules of Procedure of the State Bar of California were substantially amended. The new rules must be applied to all pending and future matters filed in this court unless one of three specified exceptions applies. The exceptions include a "proceeding pending as of the effective date in which the court orders the application of a former rule(s) based on a determination that injustice would otherwise result." ( Rules Proc. of State Bar (eff. January 1, 2011), Preface.)

This default proceeding was initiated by the filing of a Notice of Disciplinary Charges pursuant to former rule 101 of Rules of Procedure. Respondent's default was entered under former rule 200 of the Rules of Procedure. All evidence submitted to the court was received prior to the effective date of the new rules. All notices provided to respondent, setting forth the consequences that would ensue if he defaulted, referenced the consequences set forth under the former rules.

As a result, this court finds that the above described exception applies and that an injustice would result if this case were to proceed under the new rules of which respondent had no notice. Accordingly, the court **ORDERS** that the former Rules of Procedure, which were in effect at the time respondent was served with the Notice of Disciplinary Charges and the Order of Entry of Default in this matter, will apply to this proceeding.

<sup>2</sup> Deputy Trial Counsel Bitu Shasty incorrectly stated in her declaration, attached to the State Bar's Notice of Motion and Motion for Entry of Default, that the NDC was served on

On July 1, 2010, the State Bar filed a Notice of Motion and Motion for Entry of Default in this matter. Thereafter, on July 12, 2010, respondent tendered his resignation from the State Bar with charges pending; and, on August 4, 2010, this court abated the instant matter, pending acceptance of respondent's resignation from the State Bar.<sup>3</sup>

On September 8, 2010, the State Bar filed an Opposition to Abatement Order. No briefs were filed by respondent. On October 1, 2010, the court, finding good cause, terminated its August 4, 2010 Abatement Order.<sup>4</sup> Respondent's default was entered on October 6, 2010, and respondent was enrolled as an inactive member on October 9, 2010, under Business and Professions Code section 6007, subdivision (e).

On October 21, 2010, the State Bar filed its brief on culpability and discipline.

On October 25, 2010, respondent filed a motion to set aside the default in this matter. The State Bar filed a response to respondent's motion to set aside the default on November 3, 2010. On November 4, 2010, the court issued its Order Denying Motion to Set Aside Default.

The matter was thereafter submitted for decision.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC 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).)<sup>5</sup>

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respondent at his official membership records address on April 21, 2010, and that a courtesy copy was also sent to the alternative address that the State Bar had for respondent. However, the proofs of service filed in this matter indicate that the NDC was served on respondent at his official membership records address on May 4, 2010, and that the NDC that was served on April 21, 2010, was sent to the alternative address.

<sup>3</sup> On November 24, 2010, the Review Department of the State Bar Court declined to accept respondent's resignation with charges pending.

<sup>4</sup> The Order Terminating Abatement was filed and served on the parties on October, 6, 2010.

<sup>5</sup> All references to the Rules of Procedure are to former rules of procedure which were in effect prior to January 1, 2011, unless otherwise stated.

**A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 7, 1993, and has been a member at all times since that date.

**B. The Salcedo Matter (Case No. 09-O-14520)**

On or about March 26, 2008, Juan Salcedo (Salcedo) employed respondent to represent him in a criminal matter and at a related restraining order hearing brought against him by his former girlfriend. Respondent agreed to represent Salcedo in connection with both matters for a flat fee of \$30,000. On or about March 26, 2008, Salcedo paid respondent \$15,000.

On or about March 31, 2008, a detective from the sheriff's office telephoned Salcedo directly and informed him that criminal charges would not be filed against him because of insufficient evidence. As of March 31, 2008, respondent had not performed any legal services of value on behalf of Salcedo.

On or about April 1, 2008, respondent appeared on behalf of Salcedo at the restraining order hearing. The restraining order hearing was continued to April 17, 2008, because Salcedo's former girlfriend failed to properly file the application for the restraining order.

On or about April 1, 2008, after the restraining order hearing, respondent represented to Salcedo that respondent had caused Salcedo's criminal case to be transferred from Pomona to El Monte and that the criminal case was dismissed due to respondent's efforts. In fact, the matter was never transferred and respondent did not perform any legal services on behalf of Salcedo. On or about April 1, 2008, respondent knew that Salcedo's criminal case had not been transferred and the he had not performed any legal services on Salcedo's behalf in connection with the criminal matter.

On or about April 2, 2008, respondent sent Salcedo an e-mail in which he agreed to void his original agreement with Salcedo. In the e-mail, respondent agreed to apply the \$15,000 as an

advanced fee for his representation of Salcedo in connection with the restraining order. On or about April 3, 2008, Salcedo replied to the e-mail by requesting a meeting with respondent to discuss respondent's proposal with respect to the revised fee agreement.<sup>6</sup> The meeting never took place and Salcedo never agreed to respondent's proposal with respect to the revised fee agreement.

Respondent did not perform any services of value on behalf of Salcedo in connection with the criminal matter or the related restraining order brought against Salcedo by his former girlfriend. Respondent did not earn any portion of the \$15,000 that Salcedo had paid to him; nor did respondent refund any portion of the \$15,000 to Salcedo.

On or about April 16, 2008, Salcedo terminated respondent's employment. And, on or about April 16, 2008, respondent stated in an e-mail to Salcedo that he would send a closing letter, a copy of his file, and an accounting. At no time did respondent provide Salcedo with a closing letter, a copy of his file, or an accounting.

On May 26, 2008, Salcedo mailed respondent a letter via certified mail, return receipt requested. In the letter Salcedo again requested a copy of his file and an accounting. Respondent received the letter. Respondent did not respond to Salcedo's letter or otherwise provide Salcedo with his file or accounting.

On or about July 23, 2009, Salcedo made a complaint against respondent to the State Bar.

On or about September 8, 2009, a State Bar investigator mailed a letter to respondent regarding Salcedo's complaint. The letter requested that respondent respond in writing to

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<sup>6</sup> In paragraph 10 of the NDC, it is apparent from the context that the April 2<sup>nd</sup> and April 3<sup>rd</sup> e-mails referred to in that paragraph were sent in "2008," not "2010," as set forth in the NDC. Thus, in this Decision, the findings of fact reflect that the April 2<sup>nd</sup> and 3<sup>rd</sup> e-mails were sent in the year "2008." Whether the e-mails, referred to in paragraph 10 of the NDC were sent in 2008 or in 2010, in no way bears on the findings as to respondent's culpability. Thus, the paragraph 10 references to the year "2010" are found to be harmless error.

specified allegations of misconduct under investigation by the State Bar raised by Salcedo's complaint.

On or about September 13, 2009, respondent sent the investigator a letter via facsimile in response to the investigator's September 8, 2009 letter. In his letter, respondent requested 30 days, or until October 15, 2009, to provide a substantive response to the investigator's letter.

At no time did respondent provide any further response to the State Bar, or otherwise cooperate with the State Bar's investigation. At no time did respondent provide a substantive response to the investigator's letter.

### **Conclusions of Law**

#### ***Count 1: Moral Turpitude (Bus. & Prof. Code, § 6106)***<sup>7</sup>

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

By misrepresenting to his client, Salcedo, that the client's criminal case had been transferred from Pomona to El Monte as a result of respondent's efforts and the criminal case was dismissed due to those efforts, when respondent knew that the case had not been transferred, knew that he had not performed any legal services that caused the case to be dismissed, and also knew that he had not performed any legal services on Salcedo's behalf in connection with the criminal matter, respondent committed an act of dishonesty and moral turpitude in willful violation of section 6106.

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<sup>7</sup> References to section(s) are to the provisions of the Business and Professions Code.

***Count 2: Failure to Render Accounts of Client Funds (Rules of Prof. Conduct, Rule 4-100(B)(3))***<sup>8</sup>

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in his possession and render appropriate accounts to the client.

By not providing Salcedo with an accounting for the \$15,000 that Salcedo had paid him, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

***Count 3: Failure to Return Unearned Fees (Rules Prof. Conduct, rule 3-700(D)(2))***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

Upon his termination of employment on April 16, 2008, respondent willfully failed to promptly refund any portion of the \$15,000 paid to him by Salcedo for legal representation, despite the fact that he had not performed any legal services of value and had not earned any portion of the \$15,000, in willful violation of rule 3-700(D)(2).

***Count 4: Failure to Return Client File (Rule 3-700(D)(1))***

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client papers and property.

Respondent willfully violated rule 3-700(D)(1) by failing to return the client file to Salcedo, despite his April 16, 2008 e-mail to Salcedo wherein he stated that he would be sending Salcedo a copy of the client file and despite his receipt of Salcedo's May 26, 2008 letter, wherein Salcedo requested a copy of his file and an accounting.

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<sup>8</sup> References to rule(s) are to the Rules of Professional Conduct, unless otherwise indicated.

***Count 5: Failure to Cooperate With the State Bar (§ 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.

By failing to provide a substantive response to the State Bar's September 8, 2009 letter and by failing to otherwise cooperate with the State Bar's investigation of the Salcedo matter, respondent willfully failed to cooperate and participate in a 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,<sup>9</sup> 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 one prior record of discipline. (Std. 1.2(b)(i).) On December 17, 2001, respondent was ordered, among other things, suspended from the practice of law for one year, stayed, and placed on probation for three years on condition that he be actually suspended for 30 days for misconduct in four trust account matters and for failing to cooperate in with the State Bar. Respondent stipulated to misconduct which included violating: (1) rule 4-100(A) by commingling funds and using his CTA to issue checks for his personal use; (2) section 6068, subdivision (i) by failing to cooperate in State Bar investigations; and (3) section 6106 by issuing checks from his CTA when there were insufficient funds to cover the checks. (Supreme

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<sup>9</sup> Future references to standard(s) or std. are to this source.



Court case No. S101274; State Bar Court case Nos. 99-O-11923 (99-O-13035; 00-O-11506); 00-O-12741 (Cons.).)

Respondent committed multiple acts of misconduct by committing an act of moral turpitude, failing to render an accounting of client funds, failing to return unearned fees, failing to return a client file, and failing to cooperate with the State Bar. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed his client. (Std. 1.2(b)(iv).)  
Respondent's failure to return unearned fees deprived Salcedo of his funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent has not yet reimbursed his client with his funds or returned the client file.

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 1.7, 2.2, 2.3, 2.6, 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.) The standards are not mandatory and 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 1.7(a) provides that if the member has a record of one prior imposition of discipline, the degree of discipline in the current proceeding should 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. Here, respondent's prior discipline was imposed in December 2001, for misconduct, involving four trust account matters, that occurred from 1998 through 2000.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, which offense does not result in willful misappropriation of entrusted funds or property, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty must result in actual suspension or disbarment.

Standard 2.6 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.

Finally, 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

reproval 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 the following cases in support of its recommended level of discipline: *Lester v. State Bar* (1976) 17 Cal.3d 547; *Alkow v. State Bar* (1971) 3 Cal.3d 924; and *Propp v. State Bar* (1942) 20 Cal.2d 387.<sup>10</sup> In these three cases the level of discipline ranges from 60 days to disbarment. The court finds these cases to be of some guidance.

In *Lester*, the Supreme Court actually suspended an attorney for six months for failing to perform services in four matters, failing to refund any portion of advanced fees, failing to communicate with clients and with misrepresentation. Aggravation included his lack of candor before the State Bar and general lack of insight into the wrongfulness of his actions.

In *Alkow*, the California Supreme Court ordered the attorney therein disbarred for misconduct involving five clients. The court held that disbarment was the appropriate discipline for the attorney, who had two prior records of discipline, which resulted in suspensions of three years and six months, respectively. The court was particularly concerned by the fact that Alkow's recent misconduct involved acts of moral turpitude and other misconduct similar to that for which he had been disciplined in his prior matters—namely engaging in acts of moral turpitude, accepting fees without performing services, deceiving clients about the status of their cases, and issuing insufficiently funded checks.

In *Propp*, the respondent was suspended for 60 days for a misrepresentation to a client.

The court also finds *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 and *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 to be instructive.

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<sup>10</sup> The court assumes the State Bar is referring to *Propp v. State Bar* (1942) 20 Cal.2d 387, which it incorrectly cites as *Propp v. State Bar* (1942).

In *Dahlz*, the attorney was found culpable, in one client matter, of failing to perform, failing to communicate, improperly withdrawing from representation and committing an act of moral turpitude, namely misrepresenting to an insurance adjuster that his client no longer wanted to pursue her claim. In aggravation, the court found multiple acts of misconduct, one prior instance of discipline, client harm and lack of candor toward the court and the State Bar investigator. In mitigation, the court afforded slight weight to pro bono services rendered by Dahlz, because his involvement was not great and was remote in time. As a result, Dahlz was suspended for four years, stayed, and was placed on probation for four years on conditions, including one-year actual suspension.

In *Trillo*, the attorney was hired by two clients to pursue a civil matter for both of them and a wage claim against the same parties for one of the clients. Trillo was found culpable of failing to perform legal services competently, failing to communicate, failing to return unearned fees, failing to deposit client funds in a client trust account, failing to provide an accounting of client funds, failing to refund the client funds upon the client's request and engaging in acts of moral turpitude, which included making a misrepresentation to his clients. The Review Department recommended, among other things that the attorney be suspended for three years, stayed, and placed on probation for three years on conditions, including a one year actual suspension.

Here the gravamen of respondent's misconduct is his dishonesty to his client and his failure to return fees of \$15,000, which he did not earn. Respondent's misconduct reflects a blatant disregard of his professional responsibilities.

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.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in

this disciplinary proceeding. 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.

While the State Bar's recommendation that respondent be actually suspended from the practice of law for two years is too severe under the circumstances of this case, substantial discipline is required.

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 recommends that respondent **Richard Anthony Torres II** be suspended from the practice of law in California for two years and that execution of that period of suspension be stayed, subject to the following conditions:

1. Respondent is actually suspended from the practice of law for a minimum of one year and will remain suspended until the following requirements are satisfied:
  - i. Respondent makes restitution to Juan Salcedo in the amount of \$15,000 plus 10 percent interest per annum from April 16, 2008 (or reimburses the Client Security Fund to the extent of any payment from the fund to Juan Salcedo, in accordance with Business and Professions Code section

6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

- ii. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and
- iii. If he remains suspended for two years or more as a result of not satisfying the preceding requirements, respondent must also 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. Respondent must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.

**B. Multistate Professional Responsibility Examination**

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**C. California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule

within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>11</sup>

**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 be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April \_\_\_\_\_, 2011

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**RICHARD A. HONN**  
Judge of the State Bar Court

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<sup>11</sup> 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.)