

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: **11-O-16456-DFM**
)
GREGORY PETER FALK,)
) **DECISION and ORDER**
Member No. 76361,)
)
A Member of the State Bar.)

INTRODUCTION/PROCEDURAL HISTORY

In this disciplinary matter, respondent **Gregory Peter Falk**, Member No. 76361, and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) reached an agreement regarding a stipulation to culpability and recommended discipline in the referenced case, involving a single client matter. That agreement was reached in December 2011 during an Early Neutral Evaluation Conference presided over by the undersigned. Pursuant to that negotiated settlement, Respondent stipulated to culpability for one count of professional misconduct, to wit, a willful violation of rule 3-110(A) of the Rules of Professional Conduct¹ (failure to perform services competently). As a further and integral component of that agreement, Respondent and the State Bar stipulated to the disposition to be recommended for that stipulated misconduct. After the agreement was committed to a formal written Stipulation re Facts, Conclusions of Law and Disposition, this court reviewed and approved the stipulation on January 18, 2012, and the stipulation and court recommendation was then forwarded to the California Supreme Court.

¹ Unless otherwise noted, all future references to rule(s) will be to the California Rules of Professional Conduct .

On July 3, 2012, the State Bar filed a motion with the Supreme Court, requesting the return of the above stipulation by the Supreme Court to the State Bar for further consideration. That motion was denied by the Supreme Court on August 27, 2012. In the same order, however, the Supreme Court, on its own motion, returned this disciplinary matter to the State Bar for further consideration “in light of the applicable attorney discipline standards.”

After the case was returned to this court, an initial status conference was held on September 24, 2012. At that time the parties stipulated that the undersigned could remain as the assigned judge on the matter. A trial date of November 20, 2012, was then scheduled.

The matter was called for trial on November 20, 2012. At that time, the parties agreed to certain amendments to the previously stipulated facts. In addition, counsel for the State Bar read into the record a “victim’s impact statement.”

The State Bar was represented in the above process by Deputy Trial Counsel Charles Calix. Respondent has acted as counsel for himself.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-16456 (Davis Matter)

On or about July 21, 2009, Patricia Ann Davis (Patricia) hired Respondent to represent her in a family law matter involving child custody, child support and visitation issues concerning her minor child, Matthew, in a matter titled *County of Kern v. Sean Arthur Hildebrand (In re Hildebrand)*. The matter had been filed by the District Attorney to compel payment of child support by Sean Arthur Hildebrand (Hildebrand). Respondent resolved the child custody, child support and visitation issues in a timely and appropriate manner to Patricia’s satisfaction.

On or about September 17, 2009, Respondent represented Patricia at an order to show cause hearing in *In re Hildebrand*. During the hearing, Patricia and Hildebrand agreed that Hildebrand's visitation and child support would be suspended pending the filing of a petition for termination of parental rights so that Patricia's husband, Tim Davis (Tim), could seek to adopt Matthew.

On or about September 17, 2009, Patricia and Tim (the Davises) hired Respondent to represent Tim in his step-father adoption of Matthew. The Davises completed adoption papers that were given to Respondent and paid Respondent \$1,500 in advance fees. Respondent told the Davises that the step-parent adoption process would take three to six months.

Between in or about September 2009 and on or about July 26, 2010, Respondent failed to perform any meaningful work on the step-parent adoption of Matthew.

On or about July 7, 2010, Respondent closed his sole law practice at the Falk Family Law Center, which was located at his prior official membership address – 5100 California Avenue, Suite 225, Bakersfield, CA 93309. Respondent joined Borton Petrini LLC, and moved his practice into its office located at 5060 California Avenue, Suite 700, Bakersfield, CA 93309 (Borton Petrini). Moving his practice to Borton Petrini caused a significant disruption in his practice and clients. Respondent's practice did not integrate well with the practice of Borton Petrini, which caused further disruption to his practice and clients.

Between on or about July 26, 2010, and March 18, 2011, Tim called, emailed or met with Respondent on approximately five occasions to facilitate the filing of the step-parent adoption of Matthew.

On or about April 12, 2011, Respondent filed a petition with the court concerning the step-parent adoption, but the court clerk returned it on or about April 14, 2011, due to procedural errors. Due to integration problems at Borton Petrini, Respondent was not informed that the petition had been returned.

On or about May 17, 2011, Tim sent an email to Respondent requesting a status report about the filing of the petition. Respondent contacted the court clerk and was advised by the clerk that the clerk had returned the petition for corrections. Respondent sent an email to Tim explaining that the clerk had returned the petition, but that he had no record that it had been received and it would have to be corrected, re-printed, re-signed, and re-filed. In this email, Respondent requested that certain required documents be executed and returned.

Respondent did not correct and re-file the petition with the court, but Respondent never received a response from Tim containing any executed documents.

On or about September 1, 2011, Respondent terminated his relationship with Borton Petrini, moved out of its office, and resumed his sole law practice, which caused further disruption to his practice and clients.

Respondent failed to perform any meaningful work on the step-parent adoption of Matthew and never completed the step-parent adoption for the Davises.

On or about September 17, 2012, Respondent paid restitution to the Davises of \$1,500 plus interest at 10% per annum from September 17, 2009, even though he believes that he provided \$1,830 in legal services. Respondent paid the restitution to demonstrate to the Davises and the State Bar his remorse and his awareness of or insight into his wrongdoing.

Without being requested or required to do so by the State Bar, Respondent adopted policies and procedures designed to track and monitor cases to ensure that cases and requests for communications by clients are handled in a timely and appropriate manner.

Since 1989, Respondent has been certified by the Board of Legal Specialization as a Certified Family Law Specialist.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”

The parties have stipulated, and the court finds, that Respondent's failure to perform meaningful work on the step-parent adoption for two years constituted a willful violation by Respondent of rule 3-110(A).

Aggravation

Prior Discipline

Respondent has been disciplined on two prior occasions.

In case No. 84-O-24, effective on April 19, 1985, the court takes judicial notice that Respondent received a six-months' stayed suspension and six months of probation for failing to communicate with a client and failing to perform legal services competently.

In case No. 92-O-11519, Respondent was publicly reprimanded on March 25, 1995 for two counts of violating Business and Professions Code section 6068, subdivision (m) [failure to communicate with client].

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)²

Significant Harm

Respondent's misconduct significantly harmed his client. (Std. 1.2(b)(iv).) The parties stipulated, and this court finds, that "The clients were harmed by Respondent's failure to complete the step-parent adoption process within two years of being hired." As set out in Tim's victim's impact statement, this harm consisted of the clients' frustration, "time and effort in trying to get [Respondent] to take action to complete the adoption."

Mitigation

Candor/Cooperation

Respondent displayed spontaneous candor and cooperation with the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent

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.

was candid about the misconduct and cooperated with the State Bar during the investigation and in entering into the stipulation regarding culpability and discipline. For such conduct, Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Character Evidence

Respondent's good character is attested to by a wide variety of references in the legal and general communities who are aware of the full extent of his misconduct. Respondent's good character was attested to by several attorneys, clients, and a judicial officer. All of those individuals indicated that they were aware of the misconduct and believe that Respondent is of good character.

Respondent has been involved in sports administration for more than 20 years. He was on the region IV board of U.S. Youth Soccer and the past President of the California State Soccer Association South (Cal South). He also served on the Board of Cal South for over eight years. During the time that he served on the Board, Cal South had a budget of over \$5,000,000 and serviced over 150,000 players. He served as an administrator, coach and referee for over 15 years without pay.

Respondent has served as a judge pro tem for over ten years for the Superior Court of California, County of Kern.

Remorse/Recognition of Wrongdoing/Additional Mitigating Circumstances

By stipulating to culpability in this matter, Respondent has demonstrated his recognition of wrongdoing.

Further, as previously noted, without being requested or required to do so by the State Bar, Respondent adopted policies and procedures designed to track and monitor cases to ensure

that they progress in a timely and appropriate manner and that requests for communications by clients are addressed in a timely and appropriate manner.

Finally, the parties have stipulated, and the court finds, that the impact on Respondent's practice caused by his move to the Borton Petrini law firm, where his practice did not integrate well, and the disruption to his practice caused by that move are mitigating factors.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The potentially most severe sanction for Respondent's misconduct is found in standard 1.7(b), which provides: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Standard 2.4(b) also applies in this matter. Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member's culpability of willfully failing 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.

The parties have stipulated "that it would be manifestly unjust to apply Standard 1.7(b) in this matter without deviation... Respondent's first discipline was 26 years ago, his second discipline was 16 years ago, and both disciplines were low level. Respondent has practiced family law for most of his career as a sole practitioner or in a small firm and the imposition of [discipline] in only three minor matters in 34 years does not appear to the parties to warrant disbarment."

This court agrees with that assessment, which is also supported by ample case law. (See, e.g., *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [rejecting strict application of disbarment language]; *Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704; *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713; *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 105; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, 729 [prior discipline that is remote in time and minor in nature is not an aggravating factor; instead, many years of discipline-free practice since prior discipline is

a mitigating factor]; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 539 [“we are not required to apply standard 1.7(b) rigidly, without regard to the facts of the prior matters.”].) As explained by the Review Department of this court in *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136: “[S]tandard 1.7 cannot be applied without regard to the other provisions of the standards, particularly standard 1.3 which describes the primary purposes of the Standards as ‘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’. To properly fulfill these purposes of lawyer discipline, we must examine the nature and chronology of respondent's record of discipline. (Compare, e.g., *McCray v. State Bar* (1985) 38 Cal.3d 257, 274.) Merely declaring that an attorney has three impositions of discipline, without more analysis, may not adequately justify disbarment in every case.”

The conclusion reached by the Review Department is buttressed by standard 1.6(b), which provides: “The appropriate sanction shall be the sanction imposed unless: ... (ii) Mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.”

Respondent has been found culpable, in one client matter, of failing to perform legal services with competence. The circumstances surrounding that failure to properly represent Respondent's clients, the subsequent steps taken by Respondent to avoid the recurrence of any such misconduct in the future, and his response to the disciplinary process make clear that the discipline previously stipulated to by the parties, consisting of one year of stayed suspension and

three years of probation with no actual suspension, is more than adequate to protect the public, the profession and the courts from any recurrence of misconduct by Respondent in the future. That discipline is also consistent with standards 1.3, 1.6, 1.7(a), and 2.4(b) and with existing case law. (See, e.g., *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.).

Recommendation

It is recommended that respondent **Gregory Peter Falk**, Member No. 76361, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation³ for a period of three years subject to the following conditions:

1. 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.
2. 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.
3. 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 or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
4. 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

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.)

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.

5. 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.
6. 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.⁴

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 to be paid in equal amounts with his membership fees for each of the membership years 2014 and 2015. Such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

⁴ Because Respondent made restitution to the Davises after entering into the original Stipulation, that condition of probation, contained in the original stipulation, is no longer necessary or appropriate.

Order

The order filed January 18, 2012, approving the parties' prior Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter, is hereby vacated.

Dated: December _____, 2012

DONALD F. MILES
Judge of the State Bar Court