FILED FEBRUARY 4, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **MICHAEL WAYNE CHAMP,** **Member No. 95784,** A Member of the State Bar.	)))))))	Case No.: **11-O-18914-RAH** **DECISION**

Introduction and Significant Procedural History[1]

The allegations that form the basis of this proceeding derive from the Notice of Disciplinary Charges (NDC) filed on July 26, 2012, designated by case number 11-O-18914. Trial commenced on November 5, 2012. This matter was submitted on November 7, 2012.

Findings of Fact and Conclusions of Law

Respondent Michael Wayne Champ was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-18914 - The Cuevas Matter

Facts

Respondent moved into his office at 21550 Oxnard Street, Woodland Hills, California in April 2004. Since March 2005, this address has been listed as his State Bar official membership records address. During the time he was there, he always used this address as his mailing

[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.

address and his official membership records address. The office is a floor with about 100 separate attorney offices whereby reception and mail services, and library and conference room facilities are provided by a management company and shared by all the tenants. Mail is delivered to a box assigned to each tenant.

For the entire period he has occupied the office, respondent has had problems with mail delivery. Mail is often delivered to the wrong tenant, and is sometimes returned to the receptionist with the notation "wrong box" or similar words written on the envelope. Despite knowledge of these problems, respondent never changed his membership records address.

In mid-November 2009, respondent received a call from another attorney who often referred him cases that looked like they would not settle, and required a trial. The attorney had a matter representing Francisca Cuevas (Cuevas) in an action filed in the Los Angeles Superior Court, case no. TCO22674, entitled *Cuevas v. Superior Super Warehouse* (the Cuevas legal matter).

The Cuevas legal matter was on the eve of trial. The case was a slip and fall personal injury matter. Respondent thought the case had some potential from the standpoint of liability and damages, since it was his understanding that no sweep sheets had been produced by the defendant and the plaintiff had medical expenses that would justify a substantial award. He estimated that the value of the case was about $50,000.

Unfortunately for respondent and Cuevas, the case proved to be not as valuable as he originally thought. After substituting into the matter, he learned that, in fact, there were sweep sheets showing that the area of the accident had been properly maintained. Further, the treating physician had his license suspended for participating in insurance fraud. Nevertheless, respondent continued to represent Cuevas in the matter.

Shortly before the final status conference, the parties settled the case. Defense counsel sent respondent the release, and respondent sent the release to his client to sign.

After she received the release from respondent in or about July 2011, Cuevas called respondent's office on multiple occasions to request a status report on the Cuevas legal matter and left detailed messages on respondent's voicemail requesting that respondent contact her about the release. Despite his receipt of the multiple messages from Cuevas which were left in the time period from July 2011 through October 2011, respondent failed to contact Cuevas about the status of her legal matter or otherwise respond to Cuevas's inquiries.

On July 26, 2011, respondent did not appear at the final status conference which was previously scheduled in the Cuevas legal matter. At the hearing, defense counsel appeared and represented to the court that the parties had reached a settlement. The court continued the final status conference to September 9, 2011, for an order to show cause (OSC) re dismissal pursuant to California Rule of Court 3.1385(b). Defense counsel was ordered to give notice of the September 9, 2011 hearing.

On July 28, 2011, defense counsel served a notice of ruling and notice of OSC re dismissal on respondent at his address of record in the Cuevas legal matter (which was also his State Bar membership records address). Respondent received proper notice of the September 9, 2011 OSC re dismissal hearing.

Respondent did not appear at the September 9, 2011 OSC re dismissal hearing. His client, Cuevas, was present with a Spanish speaking interpreter. Cuevas told the court that she had not signed the release respondent previously sent to her. The court continued the hearing on the OSC re dismissal to September 23, 2011. The court specifically ordered respondent to appear at the September 23, 2011 OSC re dismissal hearing.

The clerk of the court gave respondent proper notice of the September 23, 2011 OSC re dismissal hearing date at his address of record, and to defense counsel. Respondent received proper notice of the September 23, 2011 OSC re dismissal hearing.

On September 23, 2011, respondent did not appear at the hearing on the OSC re dismissal. Defense counsel appeared and told the court that settlement was reached, but the release had not been returned. Cuevas appeared and told the court that she received the release from respondent, but had not signed it.

The court continued the hearing on the OSC re dismissal to October 14, 2011. On the record and in the presence of both Cuevas and defense counsel, the court left a message for respondent on his voice mail at (818) 888-7900, providing notice of the continued hearing date for the OSC re dismissal. The court ordered defense counsel to give notice of the October 14, 2011 OSC re dismissal hearing to respondent.

On September 30, 2011, defense counsel served respondent, at his official membership records address, with notice of the October 14, 2011 OSC re dismissal hearing. Respondent received the September 30, 2011 notice.

On October 14, 2011, respondent failed to appear at the OSC re dismissal hearing. Cuevas and defense counsel appeared. The court relieved respondent as Cuevas's counsel in the Cuevas legal matter. Cuevas accepted the settlement on the record. The court continued the hearing to November 18, 2011, for an OSC re finalizing the settlement. The court ordered defense counsel to give notice of the rulings at the October 14, 2011 OSC to all parties, and to respondent.

On October 20, 2011, defense counsel served a notice of ruling giving respondent notice of the rulings at the October 14, 2011 hearing on respondent at his address of record.

Respondent claims that he did not receive the notices of many of the hearings described above. However, he cannot explain why he did not receive the above notices from the court or the telephone calls from the court or from Cuevas. From March 2011 through September 2011, respondent fairly regularly corresponded with both Cuevas and the opposing counsel about the status of the matter.[2]

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Despite respondent's denial of receipt of the letters, he was aware of the problems with his mail delivery in his office. For eight years, there was no evidence that he made any changes to correct this problem. By failing to appear at the July 26, 2011 final status conference and the September 9, 2011, September 23, 2011, and October 14, 2011 OSC re dismissal hearings in the Cuevas legal matter, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Two - (Section 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to respond to Cuevas's multiple requests for a status report on the Cuevas legal matter, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in

[2] See exhibits A, B, C, D, and E. Also, Cuevas lived at several addresses during this period, including 126th Place, 103rd Street, and Compton Ave. As such, it is possible that his letters were not received at Cuevas's then current address.

which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count Three - (Rule 3-700(A)(2) [Improper Withdrawal])

Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid foreseeable prejudice to the client's rights. By failing to appear at the July 26, 2011 final status conference and the September 9, 2011, September 23, 2011, and October 14, 2011 OSC re dismissal hearings in the Cuevas legal matter, and failing to respond to Cuevas's requests for a status report on her legal matter, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of rule 3-700(A)(2).

However, the appropriate resolution of this matter does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Since the same facts establish respondent's culpability in Counts One and Two, Count Three is duplicative. The court therefore assigns no additional weight to Count Three in determining the appropriate discipline.

Aggravation[3]

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has a prior record of discipline.

On December 10, 2010, the California Supreme Court issued an order (S186887) suspending respondent from the practice of law for two years, stayed, with two years' probation, including a thirty-day actual suspension. In this matter, respondent was found culpable of seven counts of misconduct in two client matters, including failing to perform competently, keep his

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

clients reasonably informed of significant developments, promptly pay out client funds, respond to reasonable status inquiries, take reasonable steps to avoid foreseeable prejudice upon termination of employment, and cooperate in State Bar investigations (two counts).[4] In mitigation, respondent had no prior discipline and cooperated with the State Bar by entering into a stipulation of facts and conclusions of law. In aggravation, respondent's misconduct caused significant harm to his client.

On May 21, 2012, the Supreme Court issued an order (S199379) suspending respondent from the practice of law for two years, stayed, with three years' probation. This case involved two client matters. In one matter, respondent failed to respond to client inquiries. In the second matter, he failed to promptly release a client's file.[5] In mitigation, respondent was experiencing health problems and extreme emotional difficulties in his personal life. In aggravation, respondent had a prior record of discipline.

Mitigation

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Respondent presented some evidence of difficulties he had with his in-laws. In September 2007, his mother-in-law suffered a seizure and broke her arm. She was placed on a 72-hour hold to reevaluate her medications. She remained in the hospital for eight weeks. She eventually had to be placed in a mental facility and later was diagnosed with Alzheimer's syndrome. He attended to both his mother and his father, who also suffered from ill health. Both lived in Victorville, California, which was a substantial drive for respondent. Two years after he moved them closer to his home so he could better care for them, they both died.

Similarly, respondent had his own medical issues involving surgeries on his kidneys.

[4] This misconduct occurred between 2003 and 2008.
[5] This misconduct occurred between 2009 and 2010.

While these burdens certainly were taxing and time-consuming, they all occurred about a year before the misconduct in this matter. Further, in his prior discipline, exhibit 15, he was given mitigation for these issues. As such, the court gives nominal weight in mitigation to these difficulties.

Good Character (Std. 1.2(e)(vi).)

Respondent presented several witnesses to his good character. Several were attorneys and all were aware of the current misconduct.[6] Each witness testified very favorably of respondent and, significantly, many commented that he was very conscientious in following up with them and with clients, a trait that is questioned by the charges in this proceeding. The court considers these witnesses' testimony to be substantial mitigation.

Respondent participates in some charitable activities. He assists the Multiple Sclerosis Society–participating in walks and donating money. Respondent also provides help for Organizing for America. There he spent two days a week at a phone bank, getting people registered for the last election. He was an advisor to Chaminade High School for their mock trial team. He has also volunteered as part of the Red Cross's shelter team. He also has been a volunteer judge at Pepperdine Law School.

Respondent also handles at least one or two pro bono legal cases a year. These cases are typically referred from the Los Angeles County Bar Lawyer Referral and Information Service when the clients cannot pay.

Respondent has been a guest lecturer on insurance topics at the West Valley Claims Organization, a group of insurance agents. When he was a partner at Spray, Gould, & Bowers from 1981 to 1999, he trained many attorneys in trial practice, provided in-house training of

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[6] Some of the witnesses did not go into great detail on the extent of their knowledge of the charges in this case, but each at least evidenced knowledge of the existence of the pending disciplinary matter.

other colleagues, and lectured at client seminars. In June 1999, he became a member of the American Board of Trial Advocates and The American Trial Lawyers Association.

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."

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.

In this case, the standards call for the imposition of a minimum sanction ranging from reproval to disbarment. (Stds. 1.7(b), 2.4(b), and 2.6.) The most severe sanction is found at standard 1.7(b), which provides that when an attorney has two prior records of discipline, "the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Although the present case marks respondent's third discipline, the court gives diminished weight to respondent's prior discipline due to the fact that the present misconduct occurred before respondent entered into the stipulation in his most recent prior discipline. In addition, since neither of his prior matters resulted in a period of actual suspension over 30 days, it would be punitive to increase the recommendation in this proceeding to disbarment. Thus, '[t]he nature and extent of respondent's two prior records of discipline are not sufficiently severe to justify our recommending disbarment in this proceeding under standard 1.7(b)." (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct, Rptr. 697, 704.)

The State Bar urges that respondent be disbarred. Respondent, on the other hand, argued that the matter should be dismissed due to lack of culpability.

In determining the appropriate level of discipline, the court is guided by *Conroy v. State Bar* (1991) 53 Cal.3d 495. In *Conroy*, the attorney, who had been twice disciplined in the past,[7] was found culpable of misconduct in a single client matter. Said misconduct included failing to perform, failing to communicate, improper withdrawal, making misrepresentations to the client, and failing to cooperate with the State Bar. In aggravation, the Supreme Court noted the attorney's prior record of discipline and his failure to cooperate in the State Bar Court proceedings. No mitigating circumstances were found. The Supreme Court ordered that respondent be suspended from the practice of law for five years, stayed, with five years' probation including a one-year period of actual suspension.

While the facts and circumstances involved in the present case are less egregious than *Conroy*, the court is concerned by the fact that respondent's present discipline involves a repetition of some of

[7] The attorney's prior disciplines resulted in a private reproval and a 60-day actual suspension. His second discipline involved his failure to comply with probationary conditions attached to his first discipline.

the misconduct found in his first discipline. Accordingly, the court finds that a level of discipline similar to *Conroy* is warranted.

Having considered the parties' contentions, as well as the facts, standards, relevant law, mitigation, and aggravation, the court determined that, among other things, a one-year period of actual suspension is the appropriate level of discipline to protect the public and preserve public confidence in the profession.

Recommendations

It is recommended that respondent Michael Wayne Champ, State Bar Number 95784, 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 probation[8] for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first year 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 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,

[8] 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.)

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.

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

It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as he completed Ethics School on June 9, 2011.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so on December 10, 2010, in Case No. S186887.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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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.

Dated: February _____, 2013

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RICHARD A. HONN
Judge of the State Bar Court