

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 12-O-10028-PEM
)	
ANGELA LYNN MORGAN,)	DECISION
)	
Member No. 208585,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent **Angela Lynn Morgan**, is charged with multiple acts of misconduct in a probate matter. The charged misconduct includes: (1) seeking to mislead a judge; (2) committing acts of moral turpitude; and (3) collecting an illegal fee. Of these counts, this court only finds respondent culpable of collecting an illegal fee. Based on the facts and circumstances, as well as the applicable mitigating and aggravating factors, the court recommends, among other things, a one-year period of stayed suspension, with one year of disciplinary probation.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on August 28, 2012. On September 24, 2012, respondent filed a response to the NDC.

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 January 30, 2013, the parties filed a partial stipulation to facts and admission of documents. A three-day trial was held on January 30, February 28, and March 1, 2013. The State Bar was represented by Senior Trial Counsel Robert Henderson and Deputy Trial Counsel Christopher Vergara. Jerome Fishkin represented respondent. Following closing arguments, the court took this matter under submission on March 1, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on November 20, 2000, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-10028 – The Merlee Dowe Estate Matter

Facts

Merlee Dowe (Dowe) had several children with Jake Sasser (Jake). After Jake and Dowe broke up, Jake married Evelyn Sasser (Evelyn), one of Dowe's children. As a result, Dowe disinherited Evelyn in her will.

Dowe died on May 21, 2003. Dowe had a granddaughter, Erica Dowe, who was not the daughter of Jake and Evelyn. Dowe designated Erica as the primary beneficiary under the will. She left one dollar to Evelyn and one dollar and some real property in Texas to her second daughter Arte Dowe. Anyone who protested the will was to receive one dollar and no more. Dowe named her friend, Mary Wooten (Wooten), the executor of her estate. Wooten employed respondent to represent her.²

On August 18, 2003, Evelyn sent notice of Dowe's death to the Department of Health Services (DHS). On September 8, 2003, respondent filed the petition for probate in the Dowe Estate.

² Wooten was not the complaining witness in this proceeding. Wooten did not testify at trial and did not waive the attorney-client privilege.

On November 14, 2003, Evelyn filed a petition for probate in the Dowe Estate, even though the will designated Wooten as the executor. On December 3, 2003, the DHS filed a creditor's claim and served it on Evelyn, as Evelyn had filed a probate claim in pro per. The DHS did not serve the claim on respondent or Wooten.

On August 10, 2004, after a trial was held to determine whether Wooten or Evelyn would be the executor of the Dowe Estate, the court admitted the will to probate and appointed Wooten as executor. It also granted Wooten limited authority to act in accord with the Independent Administration of Estates Act (IAEA).

On August 16, 2004, respondent sent notice of Dowe's death to the DHS. The letter stated that Dowe was a possible recipient of its services and that Wooten was appointed the executor of Dowe's estate by the Alameda County Superior Court. Enclosed was also a copy of Dowe's death certificate. Respondent told the DHS to direct all correspondence to her attention, as she represented Wooten. The letter was not in compliance with the statutory form that is required to be sent.

On January 28, 2005, respondent filed a Rejection of Creditor's Claim, rejecting the DHS's claim in the Dowe Estate, as untimely. On April 15, 2005, Evelyn, Jake, and the DHS filed their respective adversary actions.³ On July 20, 2005, the court granted full authority to Wooten to administer the Dowe Estate.

On August 12, 2005, Wooten sold the real property of the Dowe Estate at 2701 75th Ave., Oakland, CA (the Oakland property). The DHS did not receive notice of the sale. On August 26, 2005, respondent filed a Notice of Proposed Action in the Dowe Estate. The

³ These adversary actions were creditor claims. Jake's claims were based on cleaning up the Oakland property. Evelyn's claims were based on funeral expenses. And the DHS's claims were based on medical bills owed Medi-Cal.

proposed action was the sale of the Oakland property. Respondent did not file a proof of service with the Notice of Proposed Action. DHS did not receive notice of the Oakland property sale.

Jake testified that he did not get notice of the sale of the Oakland property and only stumbled upon the sale of the property after he hired an attorney to help him retrieve his claims under the will. In any event, the notices of sale of the Oakland property were mailed after the property was sold. Although Wooten had the authority to sell the property under Probate Code § 10511, she was still required to follow procedural requirements for the notice of proposed actions per Probate Code §§ 10508-81.

On August 22, 2005, respondent accepted \$8,300 from the Dowe Estate. At that time, however, there was no court order authorizing the \$8,300 payment.

On October 5, 2005, respondent filed a Notice of Proposed Action in the Dowe Estate. The proposed action was the purchase of 6118 Village Green Dr., in Stockton, CA (the Stockton property), for the benefit of Erica Dowe. Respondent did not file a proof of service with the Notice of Proposed Action. The DHS and Jake did not receive notice of the purchase of the Stockton property.

On January 10 and February 28, 2006, respondent defended the deposition of Wooten in *Shewry v. Wooten*.⁴ On April 30, 2007, this matter proceeded to trial on the issue of whether the DHS was entitled to a judgment against Dowe's estate.

On November 26, 2007, the Alameda County Superior Court filed a Statement of Decision in *Shewry v. Wooten*. In its decision, the court ruled in favor of the DHS and entered a judgment against Wooten. On February 27, 2009, the court of appeal upheld the judgment.

On May 5, 2009, respondent filed a Petition for Final Distribution and Allowance of Fees for Statutory and Extraordinary Services. On June 2, 2009, the Petition of Jake Sasser for Final

⁴ *Shewry v. Wooten* was the adversarial action brought by the DHS.

Accounting and Surcharge of Mary Wooten, Personal Representative was filed in the Dowe Estate. On July 20, 2009, respondent filed her Declaration in Support of Petition for Final Distribution and Correcting Items 1-8.

On October 8, 2009, respondent filed a correction to the Petition for Final Distribution. And on October 9, 2009, Jake's attorney, Ivy McCray (McCray), served a discovery record subpoena on Bank of the West to produce bank records for the Dowe Estate. And on November 12, 2009, respondent filed a Motion to Quash the October 9, 2009 subpoena.

On December 28, 2009, McCray prepared a subpoena to Bank of the West to produce records for trial set for January 3, 2010. And on January 5, 2010, McCray filed an opposition to respondent's November 12, 2009 Motion to Quash. The next day, respondent filed a reply to January 5, 2010 opposition. On January 13, 2010, the judge denied the Motion to Quash.

Finally, on January 26, 2010, respondent filed a Declaration in Support of Petition for Final Distribution and Allowance of Fees for Statutory and Extraordinary Services. In her Declaration respondent stated: "Two debits were omitted from the accounting. On August 24, 2005, check #105 - \$8,300.00, the statutory fee at the time owed to Mary Wooten and check #102 -\$8,300.00, the statutory fee at the time owed to Morgan & Associates. At the time, although there was not a preliminary distribution filed, Morgan & Associates represented the estate in three separate lawsuits filed against the estate for rejected claims caused by the claimants own errors. Instead of charging the estate for services rendered and to be rendered, the statutory fee was paid to retain my office."

On February 25, 2010, respondent served four Motions in Limine. One of the Motions, denominated Motion in Limine #3, contained copies of the two Notice of Proposed Action pleadings filed by respondent on August 26 and October 5, 2005. The purported copies of the

Notice of Proposed Action pleadings attached to respondent's Motion in Limine #3 differed from the originally filed pleadings in that the purported copies contained proofs of service.⁵

Motion in Limine #3, however, was never filed with the court. Instead, respondent recognized that the motion contained inaccurate proofs of service and abandoned the motion.

On August 13, 2010, the Alameda County Superior Court issued a decision for a surcharge against Wooten. Wooten was directed to reimburse the Dowe Estate in the amount of \$267,724.85.

Conclusions

Count One (A) – Rule 4-200(A) [Illegal Fee]⁶

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. The State Bar alleged that respondent violated rule 4-200(A) by accepting \$8,300 in attorney's fees from the Dowe Estate without court approval. The court agrees. California Rules of Court, rule 7.700(a) states that the attorney for the personal representative must not receive statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing payment.

Here, the court finds respondent either did not know of or understand California Rules of Court, rule 7.700(a) at the time of the misconduct. Although respondent believed that she could charge and collect fees without court approval, this belief was not reasonable. Therefore, by accepting \$8,300 in attorney's fees from the Dowe Estate without court approval, respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).⁷

⁵ Both proofs of service were purportedly served on Estela Contreras (Contreras) at the DHS. Contreras, however, was not in the Recovery Section of the DHS at the time these pleadings were allegedly served.

⁶ The captions on each of the charging paragraphs contained in the NDC contain the name "Beverley Meyers." This appears to have been a typographical error.

⁷ The evidence does not establish that respondent charged an unconscionable fee.

Count One (B) – § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar alleged that respondent committed an act involving moral turpitude, dishonesty, or corruption by failing to disclose \$8,300 in advanced fees received on August 22, 2005, until on or about January 2010, and by requesting \$7,010 as a statutory fee in May 2009, without disclosing the \$8,300 payment. The court finds that the evidence does not establish moral turpitude by clear and convincing evidence. Instead, the court finds that respondent, who prepared the accounting four years after the fact, mistakenly omitted the \$8,300 payment.⁸ This was a negligent mistake and did not rise to the level of gross negligence or intentional dishonesty. Respondent filed a correction to the Petition for Final Distribution on Wooten's behalf after she became aware of the mistake. Consequently, Count One (B) is dismissed with prejudice.

Count One (C) – § 6068, subd. (d) [Duty to Employ Means Consistent with Truth]

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. The State Bar alleged that respondent violated section 6068, subdivision (d), by failing to disclose to the probate court the \$8,300 in advanced fees received on August 22, 2005, until on or about January 2010, and by requesting \$7,010 as a statutory fee in May 2009.⁹ For the same reasons illustrated in Count One (B), the court finds that the State Bar did not establish a violation of section 6068, subdivision (d), by clear and convincing evidence. Count One (C) is therefore dismissed with prejudice.

⁸ The court found respondent's testimony on this subject to be credible.

⁹ The NDC appears to contain another typographical error in the charging paragraph of Count One (C). There it states that respondent sought \$7,010 in statutory fees in or around January 2010. In the previous count the State Bar alleged that respondent sought \$7,010 in statutory fees in May 2009.

Count One (D) – § 6106 [Moral Turpitude]

The State Bar alleged that respondent committed acts involving moral turpitude, dishonesty, or corruption by preparing the August 26 and October 5, 2005 proofs of service purportedly serving Estella Contreras with the Notices of Proposed Action. While the court agrees that the proofs of service were inaccurate, there is insufficient evidence to establish that respondent knew about or prepared the proofs of service. The court found credible respondent's testimony that the proofs of service were prepared by her staff and that she did not catch the erroneous proofs of service until after Motion in Limine #3 was served on the parties. Respondent's testimony on this subject was bolstered by the fact that she declined to file the motion after discovering the erroneous proofs of service. Consequently, the State Bar did not establish Count One (D) by clear and convincing evidence, and that count is dismissed with prejudice.

Aggravation¹⁰

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

The State Bar argued that respondent's misconduct harmed significantly a client, the public, or the administration of justice. The court finds insufficient evidence of client harm, as Wooten did not testify in the proceedings.

In addition, the court declines to accept the State Bar's argument that respondent's actions caused harm to the public or administration of justice. The State Bar alleged that DHS, Jake, and Evelyn were forced to litigate for what they were entitled to under the Probate Code (DHS recovery for medical liens, Jake for cleaning her yard, and Evelyn for funeral expenses). While this may be true, it is not clear that respondent should be held accountable. Wooten was

¹⁰ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

the executor of the Dowe Estate. And it was Wooten who did not pay the third-party claims. While one could speculate that Wooten was relying on respondent's advice, Wooten did not testify and this fact has not been established by clear and convincing evidence. Therefore, the court does not consider significant harm as a factor in aggravation.

Mitigation

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

A lack of a prior record over *many* years of practice warrants consideration in mitigation. (See std. 1.2(e)(i); see also *In re Naney* (1990) 51 Cal.3d 186, 196 [in practice only seven years prior to misconduct not a strong mitigating factor]; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without misconduct insufficient mitigation]; *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years without prior discipline not strong mitigation]; *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years prior to misconduct not enough]; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [six or seven years not enough time to be considered as substantial mitigation].) Respondent was in practice for less than five years prior to her misconduct. Consequently, her lack of a prior record of discipline is not a weighty mitigating factor.

Youth and Inexperience

The court gives some consideration to respondent's youth and inexperience in probate law at the time of the misconduct. As noted above, the court found that respondent's acceptance of an illegal fee was predicated by mistake rather than malicious intent. Consequently, respondent's youth and inexperience in probate law warrant some consideration in mitigation. (See *Matthew v. State Bar* (1989) 49 Cal.3d 784, 791 [youth and inexperience may warrant milder discipline].)

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

Respondent presented a showing from a wide range of witnesses attesting to her good character. The court heard testimony from four witnesses. Three of these witnesses were lawyers, and the fourth was a captain in the Oakland Police Department who has known respondent for 30 years. Each of the witnesses praised respondent's good character, honesty, and volunteer work.

Respondent also presented declarations from four additional witnesses attesting to her work ethic and good character. The witnesses praised respondent for her honesty, integrity, work ethic, and legal skill.

Respondent's good character testimony and declarations warrant significant consideration in mitigation.

Community Service

Service to the community is a mitigating factor. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799) Respondent has an outstanding record of volunteer work, including her community work with the Joe Morgan Youth Foundation and the Interchange Organization. Through her volunteer work, respondent has demonstrated a dedication to "giving back" and helping inner-city youth. Respondent's community service warrants some consideration in mitigation.

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

Respondent entered into a partial stipulation as to facts and admission of documents in this matter and is entitled to some mitigation for her cooperation.

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.

Standard 2.10 is applicable to the misconduct in this matter. Standard 2.10 provides that culpability of a member of a violation of rule 4-200(A) shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim.

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.)

The court also looked to the case law for guidance. While no recent case law is directly on point, the court found *Coviello v. State Bar* (1953) 41 Cal.2d 273, to be somewhat helpful.

In *Coviello*, the governing commission approved a settlement that included a \$75 attorney fee. Upon receipt of payment, the attorney entered into a new agreement with his client, permitting him to retain an additional \$170. The attorney’s misconduct violated the provisions of Labor Code section 4906, which prohibited attorney fees in excess of the amount permitted by the governing commission. No mitigating or aggravating factors were identified, with exception to the fact that the attorney had no prior record of discipline.¹¹ The Supreme Court ordered that the attorney be suspended for 30 days.

¹¹ It is unclear how many years the attorney had practiced prior to the misconduct.

The present case is somewhat similar to *Coviello*. Respondent charged and collected a fee in violation of the California Rules of Court. That being said, two factors distinguish the present matter from *Coviello*. First, the present matter involves more factors in mitigation. And second, respondent, unlike the attorney in *Coviello*, has been found to have been unaware of her violation of the California Rules of Court at the time of the misconduct. While ignorance does not insulate her from culpability, the fact that respondent was not intentionally violating the law by charging an illegal fee is relevant in determining the appropriate level of discipline.

Therefore, having considered the evidence, the standards, and the case law, the court concludes that a stayed suspension, among other disciplinary conditions, is sufficient to protect the public, the courts, and the legal profession.¹²

Recommendations

Accordingly, it is recommended that respondent **Angela Lynn Morgan**, State Bar Number 208585, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation for a period of one year¹³ subject to the following conditions:

- i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If

¹² The court also considered the Review Department's analysis in *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. In *Harney*, the court found that unreported cases involving simple charging or collecting of illegal fees in excess of MICRA limits have generally resulted in public reproof. (*Id.* at p. 284.) This court, however, gives limited weight to this finding, since it was predicated on unreported cases.

¹³ The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein;
- iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with her 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;
- vi. 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); and

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

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the discipline herein 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.

Dated: June _____, 2013

Pat McElroy
Judge of the State Bar Court