

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 12-O-17329 (12-O-17710;
)	12-O-18115) - RAH
JOHN VARGAS,)	DECISION
)	
Member No. 270181,)	
)	
A Member of the State Bar.)	

Introduction¹

At the time the misconduct commenced, respondent John Vargas had been a lawyer for approximately two years, had more clients than he could handle, and was experiencing difficult financial and personal problems in his life. As such, he failed to properly handle three matters. In one matter, he was sanctioned on two occasions for failing to appear in court. He failed to pay those sanctions. In another matter, he mishandled a bankruptcy matter, and in the third matter, he abandoned a client. When contacted by the State Bar, he failed to respond and provide explanations for his misconduct.

The State Bar requested that respondent receive a one-year actual suspension for these lapses. The court disagrees that such a severe discipline is warranted. Rather, the court recommends that respondent receive two years' stayed suspension and two years' probation with

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.

conditions, including 60 days' actual suspension. In addition, the court recommends several probation conditions designed to assure that the conduct underlying these matters does not recur.

Significant Procedural History

On June 21, 2013, the Notice of Disciplinary Charges (NDC) was filed in this matter. Respondent failed to timely file a pretrial statement. The court gave respondent an extension to do so, and he still failed to timely file his pretrial statement by the extension date, or at any other time. At trial, the court issued sanctions against respondent precluding him from offering any documentary or testimonial evidence at trial, other than his own testimony.

Trial commenced on October 24, 2013. The parties were invited to brief certain bankruptcy issues presented in the case. The matter was submitted for decision on November 12, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 1, 2010, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-17329 – The Gholian Matter

Facts

On May 25, 2012 respondent filed a case in the Los Angeles Superior Court, case No. BC485444, *Gholian v. Selen RMOF REO Acquisition* (the "*Gholian case*"). On May 29, 2012, the court sent a notice to respondent ordering him to appear at a July 27, 2012 Order to Show Cause Hearing (the "July 27 OSC") regarding his failure to file a proof of service of the summons and complaint in the *Gholian case*. Respondent received the notice. Also, on May 29, 2012, the court sent a "Notice of Case Management Conference" to respondent, informing him that a case management conference was to be held in the *Gholian case* on September 12, 2012. Respondent received the notice. Respondent failed to appear at the July 27, 2012 hearing. The

judge imposed a \$250 sanction to be paid to the court by August 13, 2012, for respondent's failure to appear at the July 27, 2012 hearing. (Exh. 21.) On July 27, 2012, the court mailed respondent a copy of the minute order regarding the \$250 sanction. Respondent received the minute order, but has not paid the sanction ordered by the court.

On August 2, 2012, the September 12, 2012 case management conference was continued to September 18, 2012. On August 2, 2012, opposing counsel in the *Gholian* case mailed respondent notice of the continuance, which respondent received. Respondent failed to appear at the September 18, 2012, case management conference. The judge imposed a \$350 sanction to be paid on or before October 11, 2012, for respondent's failure to appear at the September 18, 2012, case management conference. On September 18, 2012, opposing counsel in the *Gholian* case mailed the notice of the \$350 sanction to respondent. Respondent received notice of the \$350 sanction. Respondent never paid the sanctions as ordered by the court.

On October 26, 2012, the court in the *Gholian* case submitted a referral to the State Bar regarding respondent's failure to pay the sanctions. On February 12, 2013, an investigator from the State Bar mailed a letter to respondent requesting a written response, on or before February 28, 2013, to the allegations of misconduct in the *Gholian* case. Respondent received the letter. The record is unclear as to whether respondent ever provided a response to the allegations of the court's complaint.

Conclusions

Count One - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

By failing to pay the sanctions as ordered by the superior court, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Two - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

The State Bar failed to prove a violation of section 6068, subdivision (i) by clear and convincing evidence. As such, Count Two is dismissed with prejudice.

Case No. 12-O-17710 – The Aubry Matter

Facts

On June 25, 2012, Tom Aubry ("Aubry") employed respondent to file a Chapter 7 bankruptcy petition on his behalf and to represent him in that proceeding. On June 28, 2012, respondent filed a Chapter 7 bankruptcy petition on behalf of Aubry. On July 18, 2012, the Bankruptcy Court dismissed Aubry's Chapter 7 bankruptcy petition, because respondent had failed to file the required schedules, statements, and plan.

On August 9, 2012, respondent filed a second Chapter 7 bankruptcy petition on behalf of Aubry. On August 29, 2012, the Bankruptcy Court dismissed Aubry's second Chapter 7 bankruptcy petition, because respondent failed to file the required schedules, statements, and plan.

Aubry attempted to contact respondent over 50 times during the period of respondent's representation. Respondent did not respond to Aubry's attempts.

On January 14, 2013, a State Bar investigator mailed a letter to respondent requesting a written response, on or before January 30, 2013, to the allegations of Aubry's complaint. Respondent received the letter but did not respond. On February 12, 2013, a State Bar investigator mailed a second letter requesting that respondent provide a written response on or before February 28, 2013, to the allegations of Aubry's complaint. Respondent received the letter. The record is unclear as to whether respondent ever responded to the second letter.

Conclusions

Count Three - (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.

By failing to file the proper documents, which resulted in the dismissal of the Chapter 7 petitions, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Four - (§ 6068, subd. (i) [Failure to Cooperate])

By failing to respond to the allegations of Aubry's complaint in the first letter sent by the State Bar, respondent failed to cooperate and participate in a disciplinary investigation, pending against respondent, in willful violation of section 6068, subdivision (i).

Case No. 12-O-18115 – The Pina Matter

Facts

On June 15, 2012, Blanca Pina ("Pina") employed respondent to assist her in an issue regarding the distribution of her ex-husband's pension. On June 15, 2012, Pina paid respondent a \$500 advanced fee.

Thereafter, respondent failed to take any action on Pina's behalf. At the time respondent withdrew from Pina's representation, he had earned none of the advanced fee. Respondent never refunded any of the \$500 to Pina.

On March 4, 2013, a State Bar investigator mailed a letter to respondent requesting a written response, not later than March 20, 2013, to the allegations of Pina's complaint. Respondent did not respond to the State Bar's letter. On April 18, 2013, a State Bar investigator mailed a second letter to respondent, requesting a written response, not later than April 24, 2013, to the allegations of Pina's complaint. The record is unclear as to whether respondent ever responded to the second letter sent by the investigator.

Conclusions

Count Five - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])²

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

The State Bar charged respondent with failing to perform legal services with competence and with improperly withdrawing from employment “by failing to take any action on Pina’s behalf.” Count Five and Count Six rely on the same factual allegations. The court finds that respondent’s misconduct is more aptly charged as an improper withdrawal from employment. (Cf. *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622 [failure to ensure payment of medical lien better addressed by failure to properly pay entrusted funds than by failure to perform].) As Count Five relies on the same underlying facts as Count Six, the court dismisses Count Five as duplicative. (See *Furey v. Commission on Judicial Performance*

² As set forth, *ante*, rule 3-110(A) prohibits an attorney from intentionally, recklessly, or repeatedly failing to perform legal services with competence.

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

(1987) 43 Cal.3d 1297, 1307 [although filing duplicative charges are proper if supported by evidence, duplicative finding of misconduct is nevertheless dismissed when identical facts underlie multiple allegations of misconduct].)

Accordingly, the court finds that by failing to take any action on Pina's behalf, respondent effectively withdrew from his representation of her without notice. By withdrawing from representation without notice to the client and without completing the work he was hired to do, 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) .

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

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

As the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), it declines to find respondent also culpable of wilfully violating rules 3-700(D)(2). The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than either rule 3-700(D)(1) (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280) or rule 3-700(D)(2). (Cf. *Ibid.*) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of unearned fees. Thus, an attorney's failure to promptly return unearned fees may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) Because respondent's failure to return unearned fees is encompassed in the finding that he violated the rule prohibiting prejudicial withdrawal, the court rejects a separate finding of culpability under rule 3-700(D)(2).⁴

⁴As respondent's failure to return unearned fees is included in the finding that he improperly withdrew from employment, respondent will be required to make restitution regarding the \$500 unearned fee that he received from his client, Pina.

Count Eight - (§ 6068, subd. (i) [Failure to Cooperate])

By failing to respond to the allegations of Pina's complaint, as requested of respondent in the State Bar's March 4, 2013 letter to him, respondent failed to cooperate and participate in a disciplinary investigation, pending against him, in willful violation of section 6068, subdivision (i).

Aggravation⁵

Multiple Acts of Wrongdoing (Std. 1.5(b).)

The above-found misconduct involved multiple acts, which constitute an aggravating factor.

Harm to Client (Std. 1.5(f).)

Respondent's failure to refund the \$500 to Pina caused her significant harm.

Lack of Cooperation to Victims (Std. 1.5(h).)

By failing to remain in contact with Aubry, thereby placing the onus on Aubry to attempt to reach respondent (Aubry made over 50 attempts to contact respondent), respondent failed to cooperate with his client, which is an aggravating factor.

Mitigation

Extreme Emotional/Physical Difficulties (Std. 1.6(d).)

From May through September 2012, respondent was suffering from financial problems. His house was in foreclosure and he filed a Chapter 13 bankruptcy. In addition, due to the stress of these financial problems, he had marital problems. His personal problems caused him to become distracted from his duties as the attorney for clients. Respondent's personal problems

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, effective January 1, 2014.

have subsided and he is now taking affirmative steps, so that he is better able to address his professional responsibilities.

Recognition of Wrongdoing (Std. 1.6(e)(vii).)

During the trial, respondent acknowledged his failures and showed sincere remorse for his misconduct. Respondent does not blame others, but rather takes responsibility for what happened. He recognizes that he failed to effectively deal with his professional responsibilities. Respondent allowed himself to be overwhelmed by the confluence of financial, personal, and professional issues with which he was confronted.⁶ Respondent has learned from his experience and acknowledges that he was the person who should have “stood up and fixed” the problems. Now his attitude in dealing with difficult issues and problems is to confront them when they present themselves and not avoid them or expect them to disappear, as he had done during the period of his misconduct. Respondent has taken affirmative steps to avoid similar professional problems in the future. Recognizing his limitations, he has modified the way he does business by taking on fewer cases so that he can better represent his clients and meet his professional responsibilities. The court finds respondent’s testimony, wherein he acknowledges his wrongdoing and the need to change his way of practicing law, to be both sincere and credible.

Respondent’s remorse and recognition of his wrongdoing are factors warranting mitigative credit.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible

⁶ While respondent does not attempt to minimize the seriousness of his misconduct by blaming it on his inexperience, the court notes that respondent had only been in practice for about two years when he was faced with losing his home, bankruptcy, a case load that was too large for an inexperienced, solo practitioner, and serious marital problems.

professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

Standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

Standard 1.7(c) provides that if mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

In this case, the standards provide for the imposition of a sanction ranging from reproof to suspension. (Standards 2.5(c), 2.8(b), and 2.15.)

Standard 2.15 provides that a member's violation of a provision of the Business and Professions Code or the Rules of Professional Conduct warrants a reproof or suspension not to exceed three years.

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, 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.)

In addition to looking to the standards, this court has also looked to case law for guidance and, in so doing, has found *Matthew v. State Bar* (1989) 49 Cal.3d 784 and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, to be instructive.

In *Matthew*, the attorney was found culpable of failing to timely perform legal services in three client matters. In two of these matters, the attorney also failed to return unearned fees, totaling \$4,393.56. The Supreme Court found that the attorney's misconduct was not trivial in that his clients suffered financial and other harm. The Court also found that the attorney's misconduct was aggravated by his demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. While the attorney had no prior record of discipline, the court determined that his lack of a prior record did not merit mitigating credit, due to his brief legal career. (*Matthew v. State Bar, supra*, 49 Cal.3d at p. 792.) The Supreme Court

ordered that the attorney be suspended for three years, stayed, with three years' probation, including a 60-day actual suspension.

In the instant matter, respondent, like the attorney in *Matthew*, is charged with misconduct in three client matters. However, respondent's misconduct is not as extensive as that of the attorney in *Matthew*. Additionally, mitigating circumstances surround respondent's misconduct, while no mitigating circumstances were found regarding the misconduct at issue in *Matthew*. Respondent, herein, harmed one of his clients by failing to return an unearned fee of \$500. The attorney in *Matthew* harmed all of his clients. He failed to return unearned fees to two clients and caused other harm to each of his clients.

In *Greenwood*, the attorney was found culpable of misconduct in two matters. In the first matter, the attorney failed to perform, improperly withdrew from representation, and failed to cooperate with a State Bar investigation. In the second matter, the attorney failed to perform, failed to communicate, violated a court order, failed to return a client's file, and failed to cooperate in a State Bar investigation. In aggravation, the attorney caused both of his clients' lawsuits to be dismissed. No mitigating circumstances were found. The review department recommended that the *Greenwood* attorney be suspended for eighteen months, that execution of that suspension be stayed, and that he be placed on probation for two years, on the condition that he be actually suspended for 90 days.

In the instant matter, respondent's misconduct is not as extensive as that of the attorney in *Greenwood*. Moreover, the aggravation in the *Greenwood* matter is greater than that found in the instant matter. And unlike the instant matter, in *Greenwood* no mitigation was found.

The court finds the present matter to be on par with *Matthew*. Considering respondent's misconduct, the surrounding mitigating and aggravating circumstances, the standards, and case law, the court concludes that a period of actual suspension equivalent to that ordered in *Matthew*

to be appropriate in the instant matter. Accordingly, the court recommends, among other things, that respondent be actually suspended from the practice of law for 60 days.

Recommendations

Accordingly, it is recommended that respondent John Vargas, State Bar Number 270181, 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 probation⁷ for a period of two years subject to the following conditions:

1. Respondent John Vargas is suspended from the practice of law for the first 60 days of probation;
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation;
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation;
4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period;
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;

⁷ 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.)

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.);
7. Within one year after the effective date of the discipline herein, respondent must develop a law office management/organization plan which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Office of Probation. This plan must include procedures for sending periodic reports to clients, documentation of telephone messages received and sent, file maintenance, meeting deadlines, withdrawing as attorney, whether of record or not, when clients cannot be contacted or located, and training and supervision of support personnel;
8. Within one year after the effective date of discipline, respondent must make restitution to Blanca Pina in the amount of \$500 plus 10 percent interest per year from June 15, 2012, (or reimburse the Client Security Fund to the extent of any payment from the fund to Blanca Pina, in accordance with Business and Professions Code section 6140.5) and furnish 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);
9. Within one year after the effective date of discipline, respondent must pay to the Superior Court of California, County of Los Angeles, the sanction, which that court awarded on July 27, 2012, against respondent as set forth in the "Minutes Entered 7/27/12 County Clerk," in case No. BC485444, *Gholian v. Selen RMOF REO Acquisition* in the amount of \$250 plus 10 percent interest per year from August 13, 2012, and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles, and furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles;
10. Within one year after the effective date of discipline, respondent must pay to the Superior Court of California, County of Los Angeles, the sanction, which that court awarded on September 18, 2012, against respondent as set forth in the "Notice of Ruling Re Sanctions Against Plaintiffs Joseph Gholian and Alice Gholian, and Plaintiffs' Counsel John Vargas. . . .," filed on September 19, 2012, in case No. BC485444, *Gholian v. Selen RMOF REO Acquisition* in the amount of \$350 plus 10 percent interest per year from October 11, 2012, and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
11. Within one year after the effective date of discipline, respondent must submit to the Office of Probation satisfactory evidence of completion of six hours of Minimum Continuing Legal Education (MCLE) approved courses in Law Office Management or Legal Ethics. This requirement is separate from any MCLE requirement, and respondent will not receive MCLE credit for attending these courses. (Rules Proc. of State Bar, rule 3201.)

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

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, to be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: February ____, 2014

RICHARD A. HONN
Judge of the State Bar Court