

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-O-17396-RAP
)	
KEITH SCOTT WALKER,)	DECISION
)	
Member No. 73047,)	
)	
A Member of the State Bar.)	

Introduction¹

In this contested disciplinary matter, respondent **Keith Scott Walker** was charged in a single client matter with five counts of misconduct, including failing to perform legal services with competence; failing to provide a client with significant documents; failing to provide an accounting to a client; failing to promptly respond to reasonable client inquiries; and failing to cooperate in a State Bar investigation.

Having considered the facts and the law, the court finds respondent culpable on all counts and recommends, among other things, that he be suspended from the practice of law for a period of 30 days.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent on June 18, 2013. Respondent filed a response to the NDC on July 23, 2013.

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.

Trial in this matter was held on October 23, 2013. The State Bar of California (State Bar) was represented by Deputy Trial Counsel Kelsey Blevings. Respondent was represented by attorney Edward Lear. The matter was submitted for decision on October 23, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-17396 – The Wessel Matter

Facts

On April 14, 2011, Michael Wessel (Wessel) employed respondent to represent him in a dispute with his brother and sister-in-law involving a family trust (the trust matter). Wessel signed a fee agreement prepared by respondent. Wessel paid respondent \$5,000 in advanced attorney fees and costs for respondent's legal services in connection with the trust matter.

On or about May 2011, Wessel gave respondent an original copy of La Vern Wessel, Sr.'s death certificate, which was related to the trust matter.

Between May 10 and May 23, 2011, respondent filed multiple petitions related to the trust matter in the Los Angeles Superior Court on behalf of Wessel. Among the petitions were a petition to probate the will of La Vern Wessel, Sr.; a petition to determine title to real property in Phelan, California; and a petition for removal of Wessel's brother and sister-in-law as co-trustees.

On August 1, 2011, Wessel paid respondent an additional \$10,000 in advanced attorney fees and costs for respondent's legal services in connection with the trust matter. That same day, respondent sent Wessel an accounting of his legal fees for the period of April 14, 2011, through July 31, 2011.

On May 31, 2012, the trust matter went to mediation and a settlement was reached. As part of the settlement, Wessel was entitled to payment of \$6,500; title to a 1969 GTX automobile; and an enforceable release of his brother's and sister-in-law's interest in a parcel of real property located in Phelan, California. In return, all of the petitions in the trust matter were to be dismissed.

On July 17, 2012, respondent filed with the court a notice of settlement in the trust matter. On July 27, 2012, at respondent's direction, Wessel signed over the \$6,500 settlement check to respondent for additional advanced fees and costs. Wessel instructed respondent to provide him with a copy of the settlement check and an accounting of respondent's legal fees to date. Respondent subsequently cashed the settlement check, but did not provide Wessel with a copy of the check or an accounting.

In August 2012, Wessel again requested that respondent provide an accounting and a copy of the \$6,500 check. Wessel also requested that respondent provide a copy of the signed settlement agreement; return of the original death certificate of La Vern Wessel, Sr.; and provide a copy of the release for the Phelan property signed by Wessel's brother.

On August 21 and September 10, 2012, Wessel called respondent and left voicemail messages requesting an accounting of respondent's legal fees as well as the settlement documents. Respondent received the voicemail messages, but did not respond.

On August 30 and September 26, 2012, Wessel mailed letters to respondent requesting an accounting of respondent's legal fees as well as the settlement documents. Respondent received the letters, but did not promptly provide an accounting to Wessel.

Respondent failed to take any action on behalf of Wessel to enforce the settlement agreement until several months after he was notified by the State Bar of Wessel's complaint and subsequent State Bar investigation. Due to respondent's failure to take any action to enforce the

settlement, Wessel has been required to pay a premium on a bond in the amount of \$175 per year.

On May 15, 2013, respondent provided Wessel with a signed copy of the settlement agreement. In July 2013, respondent provided an accounting to Wessel.

To date, Wessel still has not obtained a perfected title to the Phelan property. Since Wessel's sister-in-law was a co-trustee in the estate matter, she must either renounce her position of co-trustee or sign the deed to the Phelan property, both of which she has refused to do.

Wessel has not terminated respondent because he has already paid him \$21,500 in legal fees in the trust matter and does not want to have to pay another attorney. Since re-engaging his representation of Wessel, respondent has not charged Wessel any additional attorney's fees for his services.

On October 1, 2013, respondent filed an ex-parte application in the Los Angeles Superior Court to enforce the settlement agreement in the trust matter. The court denied the ex-parte application, but scheduled a hearing on November 1, 2013, regarding enforcement of the settlement agreement.²

Respondent has no explanation for why he stopped working on behalf of Wessel in the trust matter and the court cannot find any justifiable excuse for respondent's failure to perform. Respondent cannot claim that he forgot about the Wessel matter or that it fell through the cracks since he made court appearances on behalf of Wessel on September 4, 2012; October 17, 2012; November 27, 2012; and January 13, 2013. As respondent asserts, there is no explanation for his misconduct.

² Wessel has not been able to register the 1969 GTX automobile with the Department of Motor Vehicles due to problems with the title. Wessel, however, does not fault respondent for these title problems.

The State Bar Investigation

On November 20, 2012 and February 7, 2013, a State Bar investigator mailed letters to respondent regarding Wessel's complaint. The investigator's letters requested that respondent respond in writing to specified allegations of professional misconduct being investigated in Wessel's January 24, 2013 State Bar complaint. Respondent did not respond to the investigator's letters.

Respondent contends that he was not aware of the State Bar investigator's two letters until he was contacted by a State Bar prosecutor on April 15, 2013. Sometime after this telephone conversation, respondent located the February 7, 2013 letter in an accordion file located in his law office.

Respondent's former receptionist, Ruth Ann George (George), testified that as part of her office duties, she opened and distributed the daily mail delivery. If an envelope was marked "personal and confidential," George would not open the letter. Instead, she would place it on her desk for direct hand delivery to respondent. Otherwise, George would stamp the received mail when delivered, open the envelope, and then place the mail in an accordion file behind her desk for respondent to review.

George testified that she distinctly recalls receiving the two State Bar letters addressed to respondent and marked "personal and confidential." George maintains that she handed both letters to respondent.

Respondent testified that George is biased because she is a disgruntled former employee that was terminated from employment in March 2013. Respondent's testimony is partially supported by the testimony of Kathleen McCormick (McCormick), an attorney who shared an office suite with respondent.

Like respondent, McCormick received reception services from George. Respondent and McCormick testified that George was terminated for cause due to her inability to work with other employees. It is clear to the court that George was not terminated for performance-related issues, but due to her inability to work well with other office employees. In addition, McCormick described George as “devoted” to respondent and stated that George would not do anything to sabotage respondent.

It is clear that the State Bar investigator’s two letters to respondent were received in respondent’s office. Whether or not George personally handed the letters to respondent is irrelevant because, as respondent testified, he discovered one of the letters in the accordion file designated for mail for respondent’s review. At a minimum, respondent was grossly negligent for his failure to promptly review his mail.

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. The court finds that there is clear and convincing evidence that respondent failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to diligently prosecute the Wessel trust matter.

Count Two – Rule 3-500 [Failure to Comply with Significant Document Request]

Rule 3-500 provides that an attorney must keep a client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for copies of significant documents when necessary to keep the client so informed. The court finds that there is clear and convincing evidence that respondent failed to provide a client with significant documents, in willful violation of rule 3-500, by failing to return the certified copy of the death certificate of La Vern Wessel, Sr., and failing to promptly provide

Wessel with copies of the \$6,500 settlement check, a copy of the signed settlement agreement, and a copy of the Phelan property release.

Count Three - Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. The court finds that there is clear and convincing evidence that respondent failed to render accounts of client funds, in willful violation of rule 4-100(B)(3), by failing to promptly provide an appropriate accounting to Wessel as illustrated above.

Count Four – § 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. The court finds that there is clear and convincing evidence that respondent failed to communicate with a client, in willful violation of section 6068, subdivision (m), by failing to respond to multiple telephone messages from Wessel requesting information on his trust matter.

Count Five – § 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 court finds that there is clear and convincing evidence that respondent failed to cooperate in a State Bar investigation, in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar investigator's two letters requesting information on the Wessel complaint.

Aggravation³

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline. On February 18, 2009, the State Bar Court Hearing Department issued an order of public reproof for respondent's misconduct in State Bar Court case numbers 07-O-13354 and 07-O-11739. In this two-client matter, respondent stipulated to two counts of failing to perform legal services with competence, two counts of failing to respond to reasonable client inquiries, and one count of failing to return client documents. In mitigation, respondent was suffering from emotional/physical difficulties (depression) and had no prior record of discipline. No aggravating factors were involved. Respondent was required to comply with various conditions attached to the reproof, including the payment of restitution.

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

Respondent's misconduct evidences multiple acts of wrongdoing. Respondent's multiple acts of misconduct warrant some consideration in aggravation.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent's misconduct has significantly delayed the completion of the trust matter. As a result, Wessel continues to pay \$175 per year on a surety bond. Accordingly, the significant harm caused by respondent's misconduct warrants some consideration in aggravation.

Mitigation

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

Respondent's father died in December 2010. Upon his father's death, respondent was assumed responsibility for his elderly mother, who currently resides in a nursing home.

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.

Respondent's father's passing caused respondent to experience additional stress/depression. These issues still affect respondent to this day.

Respondent also suffers from detached retinas to his eyes requiring him to use a magnifying glass to read most documents. On occasion, respondent is required to undergo medical treatment for his condition, including injections to his eyes.

Respondent's emotional difficulties and medical condition warrant consideration in mitigation. However, the weight of this mitigation is diminished by the fact that respondent continues to suffer from these difficulties/disabilities. Accordingly, respondent's emotional and physical difficulties warrant nominal consideration in mitigation.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent has cooperated in the State Bar Court case and entered into an extensive stipulation as to facts and the admission of documents. Although he failed to answer the State Bar investigator's letters as noted above, respondent is entitled to some mitigation for his cooperation in the present proceedings.

Good Character and Pro Bono Evidence

For over a decade, respondent has administered the Guardianship clinic at the Pomona Superior Court, assisting people who would not normally have access to an attorney. In addition to meeting with people at the clinic, respondent recruited other attorneys to participate and scheduled their appearances. Respondent also served on the Superior Court's Probate Panel Volunteer Court for a number of years.

Respondent also presented declaration testimony from eight impressive character witnesses (five attorneys and three former clients), including a California Probate Referee. All the witnesses were aware of respondent's misconduct and praised his good character, honesty, hard work, and dedication.

Accordingly, respondent's presentation of good character and pro bono evidence warrants some consideration in mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Standard 1.1 provides that the primary purposes of disciplinary proceedings are the protection of the public, the courts, and the legal profession; the maintenance of the highest professional standards; and the preservation of public confidence in the legal profession.

Standard 1.2 provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances.

Standard 1.8(a) provides that, when an attorney has one prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Standard 2.2(b) provides that a member's culpability of a violation of rule 4-100—not including commingling or failing to pay out entrusted funds—warrants a reproof.

Standard 2.5(c) provides that a member's culpability of willfully failing to perform legal services or properly communicate in a single client matter warrants a reproof.

Standard 2.8 provides that a member's culpability of a willful violation of section 6068, subdivision (i), warrants a reproof.

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

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.)

The State Bar recommended that respondent be suspended from the practice of law for a period of 90 days. Respondent, on the other hand, argued for a period of stayed suspension.

Although it predates the standards, the court finds *Stuart v. State Bar* (1985) 40 Cal.3d 838, to be somewhat instructive. In *Stuart*, the client's personal injury claim was dismissed due to the attorney's failure to answer defense interrogatories. The attorney also failed to communicate with his client, despite his client's numerous attempts to contact him. In aggravation, the attorney had a prior record of discipline consisting of a private reproof. Noting the attorney's carelessness in running his office and demonstrated lack of diligence and concern for his client's interests, the Supreme Court found that, "Some actual suspension is necessary to bring home to [the attorney] the high degree of care and fiduciary duty he owes to those he represents." (*Id.* at p. 847.) The attorney received a one year suspension, stayed, with one year probation, including a 30-day actual suspension.

The present case is fairly similar to *Stuart*. Although respondent has been previously disciplined for failing to competently perform legal services, failing to respond to client

inquiries, and failing to return client documents, it did not prevent the present misconduct.

Similar to the Supreme Court's assessment in *Stuart*, this court is disturbed by the fact that the present misconduct occurred shortly after respondent's public reproof and so closely mirrored the misconduct therein. Accordingly, a period of actual suspension is now warranted. That being said, the court is mindful of the fact that the misconduct in the present case was limited to a single client matter. Consequently, the court finds appropriate a level of discipline similar to that recommended in *Stuart*.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of that period of suspension be stayed, and that he be placed on probation for two years, including a 30-day period of actual suspension.

Recommendations

It is recommended that respondent Keith Scott Walker, State Bar Number 73047, 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 probation⁴ for a period of two years subject to the following conditions:

1. Respondent Keith Scott Walker is suspended from the practice of law for the first 30 days of probation.
2. Respondent must also comply with the following additional conditions of probation:
 - 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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the

⁴ 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.)

preceding calendar quarter. If 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 him personally or in writing, relating to whether he 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 his 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; and
 - 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.)
3. 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 (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 enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: January 8, 2014

RICHARD A. PLATEL
Judge of the State Bar Court