FILED OCTOBER 30, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **RICHARD EDWARD COOMBS,** **Member No. 74281,** A Member of the State Bar.	)))))))	Case No.: **13-O-14659-LMA** **DECISION**

Introduction[1]

In this disciplinary proceeding, respondent Richard Edward Coombs is charged with six counts of misconduct in one client matter, including: (1) failing to maintain client funds; (2) misappropriating $485; (3) making a misrepresentation to the State Bar; (4) failing to perform competently; (5) failing to communicate with a client; and (6) failing to promptly refund unearned fees.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Based on the present misconduct, the factors in mitigation and aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, that he be placed on probation for three years and that he be actually suspended for 30 days.

[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.

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 April 22, 2014. On May 14, 2014, respondent filed a response to the NDC. The State Bar was represented by Deputy Trial Counsel Jonathan Cesena. Respondent represented himself.

A one-day trial was held on August 18, 2014, and the court took this matter under submission on the same day.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 28, 1977, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the testimony and evidence admitted at trial and the stipulated facts filed on August 18, 2014.

Facts

On December 12, 2012, Raman Jain (Jain) hired respondent to represent him in a debt collection matter. There was no written fee agreement. The agreed upon hourly rate was $275.

During all relevant time periods, respondent maintained three separate bank accounts with Wells Fargo Bank: (1) a client trust account, account number xxx1806 ("CTA"); (2) a general/operating account, account number xxx9360 ("general account"); and (3) a personal checking account, account number xxx2403 ("personal account").

On December 12, 2012, Jain obtained a cashier's check for $750 from Golden One Credit Union. This check was tendered to respondent for his legal fees.

On December 13, 2012, respondent deposited the first check, in the amount of $750 for attorney fees, into his personal account.

On December 17, 2012, respondent prepared a "skeletal" complaint and asked Jain for a second check in the amount of $485 to file the complaint. Jain obtained a second check from Golden One Credit Union for $485 for the filing fees on December 17, 2012, and signed the verification to the complaint.[2]

Respondent never filed the skeletal complaint.

On December 18, 2012, respondent's personal account had a negative balance of $59.68.

On December 19, 2012, respondent deposited the check, in the amount of $485 for filing fees, into his personal account, a non-trust account.[3]

On March 26, 2013, after nine attempted phone calls to respondent and after leaving nine voicemails for respondent, respondent answered the phone, put Jain on hold, and never took the call. On March 27, 2013, Jain called a final time and never spoke with respondent.

On June 19, 2013, Jain filed a complaint with the State Bar.

On September 23, 2013, a State Bar Investigator sent a letter to respondent informing him of the charges and requesting a response to the allegations by October 7, 2013. Respondent requested an extension until October 14, 2013, which was granted.

By October 29, 2013, the State Bar had not received a response.

On October 29, 2013, a State Bar Investigator called and spoke with respondent. During that conversation respondent stated he placed the advanced filing fees of $485 in the CTA. Respondent said he would forward the records showing proper deposit of the advanced filing

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[2] Respondent was not credible when he testified that he told Jain that the complaint was time barred and that he would not be filing it. Jain's testimony, however, was credible, corroborated by documentary evidence, that respondent asked for the $485 in filing fees because respondent was going to file the skeletal complaint.

[3] Respondent was not credible when he testified that the deposit into his personal account was inadvertent.

fees into his CTA. Respondent forwarded the account records via email. The records did not show the deposit.

On October 29, 2013, subsequent to the phone call, the same State Bar investigator sent an email to respondent again requesting documentation of the deposit of the filing fees into his CTA. Respondent replied, assuring the State Bar that he had mailed a copy of the trust account statement showing the balance. The State Bar received the mailed copy of the trust account statement; it did not provide proof that respondent had properly maintained the filing fees in trust.

On November 26, 2013, a State Bar Investigator emailed respondent requesting proof that he maintained the advanced filing fees in trust. No response was received.

On December 13, 2013, a State Bar Investigator sent a second letter informing respondent that the State Bar had received his CTA records and that those records did not show a deposit of the filing fees.

On January 29, 2014, respondent stated if the filing fees were not in the CTA they must have been deposited in his general account. But the advanced fees were not deposited in his general account.

On February 4, 2014, the State Bar sent respondent a copy of the cashier's check for $485.

On February 7, 2014, respondent admitted he endorsed the advanced filing fees check and deposited it into his personal account.

On June 16, 2014, respondent refunded $544 to Jain, representing the $485 in filing fees plus interest.

Conclusions

Count One – (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

By failing to deposit the $485 received on behalf of Jain as advanced costs into his CTA, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A).

Count Two – (§ 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.

By depositing the client's $485 check for filing fees into his personal account, instead of into his CTA, respondent had dishonestly or grossly negligently misappropriated $485 in willful violation of section 6106.

Count Three – (§ 6106 [Moral Turpitude])

By stating to a State Bar investigator on October 29, 2013, that he had placed the advanced filing fees of $485 in the CTA when he knew or was grossly negligent in not knowing that the statement was false, respondent committed an act involving dishonesty in willful violation of section 6106.

Count Four – (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 complaint on behalf of Jain in his debt collection matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Five – (§ 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.

Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's multiple status inquiries regarding the debt collection matter in which respondent had agreed to provide legal services.

Count Six – (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.

Respondent performed no services of value on behalf of Jain and had earned none of the advanced fees paid. Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the $750 advanced fees paid by Jain upon the termination of his employment on March 27, 2013.

Aggravation[4]

Multiple Acts (Std. 1.5(b).)

Respondent's failure to perform services, failure to promptly refund unearned fees, failure to communicate with a client, failure to maintain client funds, misappropriation of client funds,

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

and misrepresentation to the State Bar involve multiple acts of misconduct and are considered an aggravating factor.

Mitigation

No Prior Record (Std. 1.6(a).)

Respondent had an unblemished record with the State Bar for 35 years prior to the misconduct found in this case. Respondent is entitled to substantial mitigation for this extensive discipline-free period.

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

Respondent testified that he had to care for his sick parents but no proof was provided. Thus, the mitigating weight accorded to this testimony is diminished.

Respondent admits to heavy alcohol consumption – normal for a pint of vodka a day. On July 12, 2014, respondent checked in at Recovery Center, an in-patient alcohol treatment facility, in St. Helena for three weeks.

Extreme personal difficulties are a mitigating factor where expert testimony establishes that the difficulties were directly responsible for the attorney's misconduct, and the attorney has demonstrated through clear and convincing evidence that he no longer suffers from such difficulties and the recurrence of further misconduct is unlikely. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 700-702.)

Here, there is no clear and convincing evidence that respondent's substance abuse difficulties have ceased to be a problem or that they no longer pose a risk that he will commit misconduct. In fact, he is still suffering from alcoholism. Therefore, his personal difficulties are given minimal weight in mitigation.

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 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.)

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 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.) Although 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.)

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.

Standards 1.7(b) and 1.7(c) provide, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, and if the net effect demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline then it is appropriate to impose or recommend a greater or lesser sanction.

In this case, the standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.1(b), 2.2, 2.5(c), and 2.7 apply in this matter.

Standard 2.1(b) provides that disbarment or actual suspension is appropriate for misappropriation involving gross negligence.

Standard 2.2(a) provides that actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds. Standard 2.2(b) provides that suspension or reproval is appropriate for other violation of rule 4-100.

Standard 2.5(c) provides that reproval is appropriate for failing to perform legal services or properly communicate in a single client matter.

Finally, standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

The State Bar argues that respondent be actually suspended for six months and until he has shown rehabilitation from alcoholism.

Respondent urges no actual suspension but agrees to take the steps and undergo treatment necessary to address his alcohol abuse issue.

The following case provides some guidance on the appropriate level of discipline.

In *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, the attorney was actually suspended for three months with a stayed suspension of four years for misappropriating and commingling his client funds of $11,000. In particular, he appropriated $6,000 of client funds to his own use, treating it as a loan from his client without his client's authority. His misconduct was not excused in any way merely because his client ultimately suffered no loss as he had repaid the client. (*Id*. at p. 903.) The attorney remained unrepentant and maintained that he was justified in using his client's funds and taking out the loan.

Like *Greenbaum*, respondent had repaid the client the misappropriated amount of $485 plus interest ($544), which was significantly less than that of *Greenbaum* ($6,000). The gravamen of respondent's misconduct was not only his one client abandonment, but more seriously, was his dishonesty to the State Bar by claiming that he had deposited the client funds in the CTA, when he had placed the check in his personal account.

While a problem with alcoholism may explain respondent's conduct, it does not excuse it. (See *In re Vaughn* (1985) 38 Cal.3d 614, 619.) Nevertheless, the court commends respondent's recognition of his alcoholism and willingness to participate in a program to control his alcoholism such that it will not further affect his law practice in the future. (*Tarver v. State Bar* (1984) 37 Cal.3d 122, 134 [recognition and treatment of an alcohol problem is laudable].) But the purpose of disciplinary proceedings is protection of the public, preservation of confidence in the legal profession, and maintenance of high professional standards.

In light of respondent's misconduct in a single client matter, insignificant amount of misappropriation which he had later refunded to the client, his admitted alcohol addiction, and his 35 years of discipline-free practice, the court finds that a short period of actual suspension with a lengthy probationary period of stringent conditions addressing his substance abuse problem would be proper. While he had obtained treatment at the Recovery Center for three weeks on the eve of trial in this matter, respondent must continue to show a meaningful and sustained period of successful rehabilitation and a solid pattern of recovery restoring confidence that respondent's representation of future clients would not be marred by the conduct that occurred in this case. (*Ridge v. State Bar* (1989) 47 Cal.3d 952, 960.) Respondent must demonstrate that he no longer suffers from the alcohol or any other substance abuse problems.

Accordingly, having considered the evidence, the standards, the case law, and the mitigating and aggravating factors, the court concludes that a one-year stayed suspension and

three-year probation with a 30-day actual suspension would be appropriate to protect the public, the courts and the legal profession.

Recommendations

It is recommended that respondent Richard Edward Coombs, State Bar Number 74281, 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 probation[5] for a period of three years subject to the following conditions:

1. Respondent Richard Edward Coombs is suspended from the practice of law for the first 30 days of probation.

2. It is recommended that during the period of probation, respondent must make restitution to Raman Jain in the amount of $750 plus 10 percent interest per year from March 27, 2013 (or reimburse the Client Security Fund to the extent of any payment from the fund to Raman Jain, 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).

3. 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.

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. 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.

6. 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

[5] 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.)

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.

7. 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.

8. 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.)

9. Respondent must abstain from using alcoholic beverages and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

10. Respondent must attend at least four meetings per week of an abstinence program, such as Alcoholics Anonymous or Other Bar, and must provide to the Office of Probation satisfactory proof of attendance with each quarterly report. Respondent must contact the Office of Probation and obtain written approval for the program respondent has selected prior to attending the first meeting.

11. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must arrange to have the laboratory perform, on a monthly basis and at respondent's expense, an ethyl glucuronide (EtG) test and a ten-panel drug test which will test for amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by a laboratory pursuant to Department of Transportation guidelines and testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens. Respondent must be tested within the first three days of each month of the probation period and must cause the laboratory to provide to the Office of Probation, within one week of testing and at respondent's expense, the results or screening reports from such tests.

    Respondent must maintain with the Office of Probation a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning substance testing within 12 hours. For good cause, the

Office of Probation may require respondent to have additional tests as described above performed by the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires additional testing or additional screening reports.

12. At the Office of Probation's request, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

13. 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 Exam

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: October _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court