

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: 10-O-05018-PEM
)
SEAN DONRAD)
) DECISION
)
Member No. 242665)
)
A Member of the State Bar.)

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on January 24, 2011. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Mark Hartman. Respondent Sean Donrad (“respondent”) failed to timely participate in this matter.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on October 29, 2010. That same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Former Rules of Procedure of the State Bar of California (“Former Rules of Procedure”).¹

¹ Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Based on the court’s determination that injustice would otherwise result, the court applied the Former Rules of Procedure in this proceeding.

As respondent did not timely file a response to the NDC, on December 14, 2010, the State Bar filed and properly served on respondent a motion for the entry of respondent's default.² When respondent failed to file a written response within ten days after service of the motion for the entry of his default, the court, on January 4, 2011, filed an order of entry of default and involuntary inactive enrollment.³ A copy of said order was properly served on respondent at his membership records address; however, it was subsequently returned to the court by the U.S. Postal Service as undeliverable. Thereafter, the State Bar waived a hearing in this matter, and it was submitted for decision on January 24, 2011.

On January 27, 2011, however, respondent filed a motion to set aside the default judgment ("motion to set aside"). On February 2, 2011, the State Bar filed an opposition to the motion to set aside.

On February 7, 2011, both parties were present for a status conference. During the status conference, the court indicated that it was going to grant the motion to set aside. However, upon further examination, the court found that it could not grant the motion to set aside because it did not contain a verified proposed response as required by rule 203(c)(3) of the Former Rules of Procedure. Consequently, the court issued an order, on February 8, 2011, indicating that the motion to set aside was denied without prejudice to respondent's filing a proper motion to set aside. In addition, the court ordered that any subsequent motion to set aside must be filed by respondent on or before 5:00 p.m. on February 16, 2011.

Respondent failed to timely comply with the court's February 8, 2011 order. On February 21, 2011, the court received a faxed copy of respondent's verified answer. On

² The State Bar also requested that the court take judicial notice of respondent's official membership records address history. The court grants this request.

³ Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

February 22, 2011, the court issued an order denying respondent's motion to vacate default and this matter remained submitted as of January 24, 2011.

II. Findings of Fact & Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Former Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 1, 2006, and has been a member of the State Bar of California at all times since that date.

B. Findings of Fact

On or about July 27, 2008, Sharon Wichaël ("Wichaël") hired respondent to represent her in a patent infringement claim. On or about July 27, 2008, Wichaël executed a Service Agreement with respondent, agreeing to pay \$5,000 to respondent to "research, send demand letters and ask the state or court entity DMV to remove the immunity so that they can be sued." Wichaël gave respondent \$5,000 pursuant to the contract.

Respondent met with Wichaël on June 25, 2008, and gave respondent various documents relating to her patent-infringement claim. Wichaël also met with respondent on July 24, 2008, February 4, 2009 and February 19, 2009.

Thereafter, respondent failed to take any action of substantive value on behalf of Wichaël. Respondent failed to show Wichaël that he had sent demand letters to the DMV or asked the DMV to remove immunity for suit. Respondent failed to provide Wichaël with information regarding research on the potential patent claim.

In or about February 2009, Wichaël terminated respondent's services. Since March 5, 2009, Wichaël repeatedly asked respondent to return her files to her, including her documents on

her patent infringement claim. Respondent received Michael's request for the return of the file. Respondent sent Michael several emails indicating that he intended to return the materials. However, as of October 29, 2010, respondent had failed to return Michael's file and documents to her.⁴

At or near the time Michael terminated respondent's services, she also asked for a refund of the \$5,000 she gave to respondent. Respondent failed to earn the \$5,000 he received from Michael. Respondent owes the full amount of \$5,000 to Michael.

C. Conclusions of Law

1. Count 1: Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)⁵ [Failure to Perform with Competence]

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to take substantive action on behalf of Michael, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

2. Count 2: Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property. By failing to return Michael's documents and files to her, at the request of Michael, respondent failed to release promptly, upon termination of employment, to his client, at the request of the client, all the client's papers and property, in willful violation of rule 3-700(D)(1).

⁴ The NDC was filed on October 29, 2010. There is no indication in the record that respondent has since returned Michael's file.

⁵ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

3. Count 3: Rule 3-700(D)(2) [Failure to Refund Unearned Fee]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund any part of the \$5,000 fee paid by Wichael, respondent failed to refund promptly fees paid in advance that had not been earned, in willful violation of rule 3-700(D)(2).

III. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factors were submitted into evidence and none could be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶

B. Aggravation

1. Multiple Acts

Respondent was found culpable of three acts of misconduct. Multiple acts of misconduct constitute an aggravating factor. (Std. 1.2(b)(ii).)

2. Failure to Cooperate

Respondent's failure to participate in the present proceeding constitutes an additional factor in aggravation. (Std. 1.2(b)(vi).)

3. Significant Harm

Respondent's misconduct resulted in significant financial harm to his client. (Std. 1.2(b)(iv).) Said harm includes his failure to refund \$5,000 in unearned fees to Wichael.

IV. 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

⁶ All further references to standard(s) are to this source.

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. In this case, the standards call for discipline ranging from reproof to suspension depending on the extent of the misconduct and the degree of harm to the client. (Standard 2.4(b).)

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.) 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 State Bar has requested, among other things, that respondent be actually suspended for six months. In support of this recommendation, the State Bar cites *King v. State Bar* (1990) 52 Cal.3d 307.

In *King*, the attorney abandoned two clients, failed to forward their files promptly to successor counsel, and gave false assurances to one of the clients regarding the status of his case. The attorney demonstrated a failure to accept responsibility for his actions and to appreciate the severity of his misconduct. The attorney’s misconduct also resulted in an \$84,000 default judgment against his client. In mitigation, the attorney had no prior record of discipline. Additionally, he was experiencing depression and financial difficulties, and was going through a marital dissolution. The Supreme Court ordered that the attorney be suspended for four years, stayed, with four-years’ probation, and three-months’ actual suspension.

The court finds respondent's misconduct to be considerably less egregious than *King*. *King* involved two clients, plus the added elements of deceit and extensive client harm. Although this matter warrants less discipline than *King*, respondent's failure to timely participate, despite his having knowledge of the present proceedings, is a significant factor in aggravation. Accordingly, the court recommends, among other things, that respondent be suspended from the practice of law for a minimum of 60 days.

V. Recommended Discipline

The court recommends that respondent **Sean Donrad** be suspended from the practice of law for one year, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for 60 days and until:

(1) The court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California; and

(2) He makes restitution to Sharon Wichael in the amount of \$5,000 plus 10% interest per annum from March 1, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Sharon Wichael, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation.⁷

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See Rules Proc. of State Bar, rules 5.400-5.411.)

⁷ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

The court further recommends that if respondent remains suspended for 90 days or more, he be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁸

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein or during the period of his actual suspension, whichever is longer.

VI. 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: March _____, 2011

PAT McELROY
Judge of the State Bar Court

⁸ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)