

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 12-O-14753-PEM
)	(12-O-14914)
SEAN DONRAD)	
)	DECISION
Member No. 242665)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent Sean Donrad is charged with seven counts of misconduct in two client matters. The charged acts of misconduct include: (1) practicing law while not entitled; (2) charging or collecting an illegal fee; (3) failing to refund unearned fees; (4) failing to inform a client of significant developments (two counts); (5) failing to perform legal services with competence; and (6) failing to cooperate in a disciplinary investigation.

Respondent stipulated to culpability in counts five through seven. As to counts one through four, the court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Although he has two prior disciplines, the court recommends, among other things, that respondent be actually suspended for a period of six months. As laid out below, this

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.

recommendation takes into account the fact that the present misconduct occurred during the same time period as the misconduct comprising respondent's second discipline.

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 November 8, 2012. On December 4, 2012, respondent filed a response to the NDC. In addition to respondent stipulating to culpability as to counts five through seven in October 2013, respondent entered into a stipulation of facts and admission of documents on November 7, 2013.

A one-day trial was heard on November 7, 2013. The State Bar was represented by Deputy Trial Counsel Catherine Taylor. Respondent was represented by attorney Scott Drexel. On November 7, 2013, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

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.

Case No. 12-O-14914 – The Shokraipour Matter

Facts

On January 7, 2011, respondent was placed on "not entitled" status pursuant to section 6007, subdivision (e).² On September 9, 2011, the Supreme Court issued order number S194447 and imposed a 60-day actual suspension with restitution conditions. The Supreme Court order became effective on October 9, 2011. Respondent remained on "not entitled" status through September 6, 2012.

² Section 6007, subdivision (e), mandates the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure.

Prior to February 2011, Mohammed Shokraipour (Shokraipour) watched a television program in Farsi. He saw respondent on the program around ten times. On the program, respondent stated he could help with immigration and other legal issues.

On February 16, 2011, Shokraipour hired respondent and paid him \$300 for legal services relating to Shokraipour's application for the Cash Assistance Program for Immigrants (CAPI). At the time respondent received the \$300, he was not entitled to practice law. At no time did respondent ever inform Shokraipour that he could not practice law.

Respondent testified that he was only helping Shokraipour fill out required forms for CAPI and that he did not do so as an attorney, but as favor for his uncle. Respondent, however, was unable to explain why the words "legal fee" were written in the memo section of Shokraipour's check. Shokraipour credibly testified that he did not write respondent's name on the check and that he did not write the words "legal fee" on the check.³ Respondent testified that he wrote his own name on the check. However, when questioned about the words "legal fee," respondent was very evasive and said he did not know if it was his handwriting or not.

Based on Shokraipour's credible testimony, respondent's demeanor and less than credible testimony, the fact that the words "legal fee" were written on the check, and the circumstances surrounding this transaction the court concludes that respondent was acting in the capacity of an attorney.

After accepting the check from Shokraipour, respondent performed no legal services of value on Shokraipour's behalf. Shokraipour credibly testified he never heard from respondent after respondent accepted the check. By April 2011, Shokraipour had made numerous attempts

³ Shokraipour acknowledged that he mistakenly wrote "three thousand" rather than "three hundred" on the check. In any event, respondent cashed the check for \$300.

to contact respondent, but was unable to reach him.⁴ Finally, Shokraipour filed a complaint with the State Bar asking them to investigate his complaint and help him get his money back. At the latest, respondent was aware that Shokraipour wanted his money back in August 2012 when the State Bar investigator sent an investigation letter to respondent's counsel.

On September 30, 2013, respondent, through his counsel, wrote Shokraipour a check in the amount of \$380, which represented a refund of the \$300 paid by Shokraipour and interest in the amount of \$80. Shokraipour received the check and negotiated it on October 18, 2013.

Conclusions

Count One – § 6068, subd. (a) [Duty to Support All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Respondent willfully violated Business and Professions Code, section 6068, subdivision (a), by advertising or holding himself out as practicing or entitled to practice law when he was not an active member of the State Bar of California, in willful violation of sections 6125 and 6126. By violating sections 6125 and 6126, respondent failed to support the laws of this state, in willful violation of section 6068, subdivision (a).

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

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. By charging and collecting \$300 for legal services when he was not entitled to practice law, respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).

⁴ Shokraipour called respondent's cell phone number approximately five times during this time period. Respondent, however, was in Norway.

Count Three – 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. Although respondent ultimately returned the unearned fees to Shokraipour with interest, the refund was provided in or about October 2013, approximately two and a half years later. By failing to promptly refund Shokraipour's unearned fees, respondent willfully violated rule 3-700(D)(2).

Count Four – § 6068, subd. (m) [Failure to Inform Client of Significant Developments]

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. By failing to inform Shokraipour that respondent was not entitled to practice law and was prohibited from continuing to represent Shokraipour, respondent failed to keep a client reasonably informed of significant developments in a matter which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m). (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 575 (§ 6068, subd. (m) violated when suspended attorney failed to advise client that he was “incapacitated” to practice law and failed to communicate with client].)

Case No. 12-O-14753 – The Heshmat Matter

Facts

On January 22, 2010, respondent was hired by Mike Heshmat (Heshmat) to represent him in a civil litigation matter. That same day, respondent filed a civil suit on behalf of Heshmat in the Santa Barbara County Superior Court. The suit alleged several causes of action against Doron Amir and Diverse Financial Lead Insurance Group (Diverse Financial).

On August 20, 2010, Diverse Financial filed a demurrer. Respondent was properly served with the demurrer and received it. On July 28, 2010, the superior court issued an order setting a case management conference for September 22, 2010. Respondent was properly served with this order and received it.

On September 22, 2010, respondent failed to appear at the case management conference and the superior court sustained the demurrer with leave to amend by October 6, 2010. The superior court also issued an order setting a case management conference for December 8, 2010. Respondent was properly served with this order and received it.

On December 8, 2010, respondent failed to appear at the scheduled case management conference. Respondent had not filed the amended complaint by the October 6, 2010 deadline. The superior court issued an order setting another case management conference for February 9, 2011, and ruled that the matter would be dismissed if the plaintiff failed to appear on that date. Respondent was served with and received the superior court's ruling and order.

On February 9, 2011, the superior court dismissed Heshmat's case due to respondent's failure to file an amended complaint. On February 14, 2011, respondent was served with the notice of the dismissal. Respondent received the notice, but did not move to set aside the dismissal. At no time did respondent inform Heshmat of his failure to file an amended complaint.

On June 15, 2012, the State Bar opened two investigations based on complaints filed by Shokraipour and Heshmat (the Shokraipour and Heshmat matters). The State Bar was notified that respondent was represented by counsel in the Shokraipour and Heshmat matters. As such, all communication was directed to respondent's counsel. At all times relevant to the

Shokraipour and Heshmat matters, respondent had a duty to participate and assist in the investigation of both matters.

On August 16, 2012, a State Bar investigator wrote to respondent's counsel regarding the Shokraipour and Heshmat matters. The August 16, 2012 letter requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Shokraipour and Heshmat matters.

On August 27, 2012, respondent's counsel requested an extension of time to respond to the allegations of misconduct in the Shokraipour and Heshmat matters. Respondent's counsel was granted an extension to September 2012. Thereafter, respondent and his counsel failed to respond in writing to the allegations of misconduct in the Shokraipour and Heshmat matters.

Conclusions

Count Five – 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 appear at the scheduled case management conferences, failing to file an amended complaint, and failing to move to set aside the dismissal, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Six – § 6068, subd. (m) [Failure to Inform Client of Significant Development]

By failing to inform Heshmat that he had not filed the amended complaint and failing to inform Heshmat of the subsequent dismissal, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count Seven – § 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. By failing to provide a written response to the State Bar investigator's letter in the Shokraipour and Heshmat matters, respondent failed to cooperate and participate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

Aggravation⁵

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

Respondent has two prior records of discipline. On September 9, 2011, the Supreme Court of California issued an order in case no. S194447 (State Bar Court case no. 10-O-05018) suspending respondent for one year, execution of that period of suspension was stayed, and respondent was suspended for 60 days and/until: (1) he made restitution to his client and (2) a motion to terminate his suspension pursuant to former rule 205 of the Rules of Procedure was granted by the State Bar Court. The misconduct in this single-client default matter occurred in 2009. Respondent was found culpable of failing to perform legal services with competence, failing to return client documents, and failing to refund an unearned fee. In aggravation, respondent committed multiple acts of misconduct, caused significant harm to his client, and failed to participate in the disciplinary proceedings. No mitigating factors were found.

On August 14, 2013, the Supreme Court of California issued an order in case no. S211290 (State Bar Court case nos. 10-O-07779; 11-O-12670 (11-O-13264; 11-O-13322; 11-O-14876)) suspending respondent for two years, execution of that period of suspension was

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.

stayed, and respondent was placed on probation for two years, including a one-year suspension and/until payment of restitution. The misconduct in this matter occurred between 2009 and 2011. Respondent was found culpable in three client matters of failing to perform legal services with competence, failing to refund an unearned fee, failing to render an accounting, failing to inform clients of significant developments, committing an act of moral turpitude by misrepresentation, misleading a judge, and engaging in the unauthorized practice of law.⁶ In aggravation, respondent committed multiple acts of misconduct, had a prior record of discipline, demonstrated indifference, and caused significant client harm. In mitigation, respondent presented good character evidence.

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 caused significant harm to his clients. Respondent withheld Shokraipour's funds for well over two years and his misconduct led to the dismissal of Heshmat's action. Respondent's significant harm to his clients warrants some consideration in aggravation.

Mitigation

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

Respondent stipulated to culpability as to counts 5 through 7 and entered into a stipulation of facts and admission of documents on the remaining counts. These stipulations saved the court time in trying this case and therefore warrant some consideration as a factor in mitigation.

⁶ The misconduct in this matter occurred between 2009 and 2011.

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; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

Standard 1.7 provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances.

In this case, the standards provide for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.3(b), 2.5(c), 2.6(a), and 2.15.) Most notably, standard 2.6(a) states that disbarment or actual suspension is appropriate when a member engages in the practice of law or holds himself out as entitled to practice law when he is on involuntary inactive enrollment under section 6007, subdivision (e). Standard 2.6(a) further provides that the degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current suspension: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters

coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities.⁷

The standards, however, are guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards. [Citation.]” (*Id.* at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar argued that respondent should be disbarred. Respondent, on the other hand, contended that the present misconduct was contemporaneous to respondent's prior discipline and urged that the court recommend, at most, a 60-day period of actual suspension.

While the present matter involves some repetition of prior offenses, the court takes into consideration the timing of respondent's prior discipline. Although the present case marks respondent's third discipline, the court gives diminished weight to respondent's prior discipline due to the fact that the present misconduct occurred in the same time period as respondent's second discipline. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) The court therefore considers the totality of the findings in respondent's present and second discipline to determine what the discipline would have been had all the charged misconduct in this period been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

The court found additional guidance in *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. In *Burckhardt*, discipline consisting of two years stayed

⁷ The standards were revised on January 1, 2014. Before that date, former standard 1.7(b) applied to members with two or more records of discipline. Standard 1.8(b) is similar but more limited than former standard 1.7(b).

suspension with one-year actual suspension was imposed. In this default proceeding involving two client matters, the attorney failed to communicate, failed to competently perform and improperly withdrew from employment in both matters, collected an illegal fee in one matter, practiced law while suspended and committed an act of moral turpitude by intentionally deceiving a client in one matter, and failed to cooperate with the State Bar investigation in both matters. The attorney's thirteen years of practice without prior discipline was a factor in mitigation.⁸ In aggravation, the court found client harm, multiple acts of wrongdoing, and indifference toward rectification of the misconduct.

The present case contains many similarities to *Burckhardt*. Respondent, like the attorney in *Burckhardt*, was found culpable of failing to communicate, failing to perform, collecting an illegal fee, and practicing law while suspended. While these two cases contain many similarities, one significant difference is that the present matter does not involve a finding of moral turpitude. And while respondent had a prior record of discipline, this circumstance is somewhat offset by the fact that the attorney in *Burckhardt* demonstrated indifference and failed to participate in the proceedings. The court therefore recommends a lower level of discipline than that which was recommended in *Burckhardt*.

Accordingly, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years, including a six-month period of actual suspension.

⁸ Although the attorney had a prior record of discipline, the misconduct occurred contemporaneously with the offenses of the current proceeding.

Recommendations

It is recommended that respondent **Sean Donrad**, State Bar Number 242665, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation⁹ for a period of three years subject to the following conditions:

1. Respondent Sean Donrad is suspended from the practice of law for the first six months 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.
6. 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

⁹ 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.)

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.

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

It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on August 14, 2013, by the Supreme Court in case no. S211290.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on September 9, 2011, by the Supreme Court in case no. S194447.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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 _____, 2014

Pat McElroy
Judge of the State Bar Court