



**PUBLIC MATTER
FILED**

JAN 14 2005

STATE BAR COURT
CLERKS OFFICE
LOS ANGELES

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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of
PETER S. JOHNSON,
Member No. 189710,
A Member of the State Bar.

Case No. 04-O-12894-RMT
Decision

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Margaret P. Warren appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Peter S. Johnson, did not appear in person or by counsel.

Respondent is charged with failing to perform with competence, improperly withdrawing from employment, failing to respond to client inquiries, failing to refund unearned fees, failing to return a client file, and failing to maintain a current membership records address. After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating all counts as charged.

Accordingly, the court recommends that Respondent be suspended for one year, that the suspension be stayed including 90 days actual suspension and until the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

II. SIGNIFICANT PROCEDURAL HISTORY

On August 18, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case number 04-O-12894. On that same date the State Bar properly served the NDC on Respondent at his official membership records address, by certified mail, return receipt requested, as provided in

1 Business and Professions Code section 6002.1 (c). The U.S. Postal Service returned the NDC with
2 the stamp "Return to Sender; Moved, Left No Forwarding Address."

3 On August 20, 2004, Respondent was properly served at his official membership records
4 address with a notice advising him, among other things, that an initial status conference would be
5 held on October 13, 2004. On August 26, 2004, Respondent was properly served at his official
6 membership records address with a notice advising him, that the initial status conference would be
7 continued to October 25, 2004. Respondent did not appear at the October 25, 2004, status
8 conference.

9 Respondent did not file a responsive pleading to the NDC. On September 28, 2004, the State
10 Bar filed and properly served a motion for entry of default on Respondent at his official membership
11 records address. The motion advised Respondent that minimum discipline of 90 days actual
12 suspension would be sought if he was found culpable. Respondent did not respond to the motion.

13 On October 26, 2004, the Court entered Respondent's default and enrolled him inactive
14 effective three days after service of the order. The order was properly served on Respondent at his
15 official membership records address on that same date by certified mail, return receipt requested.

16 On October 29, 2004, the court took this matter under submission for decision.

17 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 Unless ordered by the court based on contrary evidence, the factual allegations set forth in
19 the NDC are deemed admitted upon entry of default and no further proof is required to establish the
20 truth of such facts. (Bus. & Prof. Code, section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)
21 The court's factual findings are based on the allegations contained in the NDC.

22 **A. Jurisdiction**

23 Respondent was admitted to the practice of law in California on August 7, 1997, and has
24 been a member of the State Bar at all times since.¹

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26
27 ¹The NDC incorrectly alleges that Respondent was admitted to the practice of law in the
28 State of California on August 7, 1987. The Court considers this error typographical and, on its
own motion, takes judicial notice in accordance with Evidence Code section 452(h) of State Bar
membership records which reflect Respondent's admission date of August 7, 1997.

1 **B. Facts**

2 On or about June 27, 2003, William Griffin hired Respondent to represent him regarding a
3 family law matter. Griffin paid Respondent \$2,000.00 as advanced attorney fees.

4 On July 15, 2003, Respondent mailed Griffin a document for Griffin's review. Griffin made
5 corrections to the document and mailed it to Respondent on July 17, 2003. On that same date,
6 Griffin telephoned Respondent's office and Respondent's cellular telephone number and left voice
7 mail messages requesting a status report and a return telephone call. Respondent did not respond
8 to Griffin in any manner.

9 In July and August 2003, Griffin again telephoned Respondent's office and cellular telephone
10 numbers but was unable to leave messages because Respondent's voice mail was full and not
11 accepting any more messages.

12 In August 2003, Griffin visited Respondent's office and left a message with Respondent's
13 secretary requesting Respondent to contact Griffin regarding case status. Respondent did not
14 respond to the message in any manner.

15 On October 1, 2003, Griffin mailed Respondent a certified letter informing him of Griffin's
16 inability to contact him and requesting him to contact Griffin regarding his matter. Although
17 Respondent received Griffin's certified letter, Respondent did not respond to Griffin in any manner.

18 On March 29, 2004, Griffin mailed Respondent another certified letter terminating
19 Respondent's services and requesting an accounting, a refund and his client file. Griffin's certified
20 letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of
21 California membership records address. The certified letter was properly mailed by first class mail,
22 postage prepaid, by depositing for collection by the United States Postal Service. The U.S.P.S.
23 returned Griffin's certified letter with a notation that delivery was "Attempted Not Known."

24 Respondent never filed any documents in relation to Griffin's family law matter.

25 Respondent never provided Griffin with an accounting.

26 At no time did Respondent refund any portion of the \$2,000.00 Griffin paid him in advanced
27 attorney fees.

28 At no time did Respondent release Griffin's file or communicate with Griffin regarding how

1 Griffin could obtain the file.

2 In May 2004, the State Bar opened an investigation (Case No. 04-O-12894) pursuant to a
3 complaint filed by Griffin. On July 20, 2004 a State Bar investigator wrote to Respondent regarding
4 Griffin's matter. On that same date the letter was placed in a sealed envelope correctly addressed
5 to Respondent at his State Bar of California membership records address. The letter was properly
6 mailed by first class mail, postage prepaid, by depositing for collection by the U.S.P.S. in the
7 ordinary course of business. On July 23, 2004, the U.S.P.S. returned the State Bar investigator's
8 letter as undeliverable with the notation "Return to Sender; Moved Left No Address."

9 On August 4, 2000, a State Bar investigator telephoned Respondent's membership records
10 telephone number twice. Each time, the line was disconnected.

11 Respondent did not notify the membership records office of the State Bar of a change in
12 Respondent's office address and telephone number within 30 days of the change.

13 Respondent did not notify Griffin of his new office address.

14 **Legal Conclusions**

15 **Count One: Rule 3-110(A) (Failing to Perform Competently)**

16 Rule 3-110(A) of the Rules of Professional Conduct² prohibits an attorney from intentionally,
17 recklessly or repeatedly failing to perform legal services competently.

18 By not filing any documents in relation to Griffin's family law matter and by failing to
19 provide Griffin a requested accounting, Respondent intentionally, recklessly or repeatedly did not
20 perform legal services competently, in wilful violation of rule 3-110(A).

21 **Count Two: Section 6068(m) (Failure to Respond to Client Inquiries)**

22 Section 6068(m) of the Business and Professions Code³ requires an attorney to respond
23 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of
24 significant developments in matters with regard to which the attorney has agreed to provide legal

25 _____
26 ²Unless otherwise noted, all further references to "rule(s)" refer to the Rules of
Professional Conduct.

27
28 ³Unless otherwise noted, all further references to "section" refer to the Business and
Professions Code.

1 services.

2 By not responding to Griffin's letters, telephone messages and personal message left with
3 Respondent's secretary, regarding the status of Griffin's matter, Respondent did not respond
4 promptly to Griffin's client's reasonable status inquiries, in wilful violation of section 6068(m).

5 **Count Three: Section 6068(j) (Failure to Update Membership Address)**

6 Section 6068(j) requires an attorney to comply with the requirements of section 6002.1.
7 Section 6002.1 requires an attorney to maintain a current office address and telephone number, or
8 if no office is maintained, the address to be used for State Bar purposes or purposes of the agency
9 charged with attorney discipline.

10 By not updating his membership address between March through July 2004, Respondent did
11 not maintain a current address, in wilful violation of section 6068(j).

12 **Count Four: Rule 3-700(A)(2) (Improper Withdrawal from Employment)**

13 Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney
14 has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

15 By moving his office without notifying Griffin of his new address, Respondent constructively
16 withdrew from representation of Griffin.

17 By failing to give notice to Griffin that he was withdrawing from the case and by failing to
18 provide Griffin with a reasonable opportunity to employ other counsel, Respondent withdrew from
19 employment without taking reasonable steps to avoid foreseeable prejudice, in wilful violation of
20 rule 3-700(A)(2).

21 **Count Five: Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

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

24 There is no evidence that Respondent provided services of any value to Griffin in order to
25 earn any portion of the advanced fees Griffin paid Respondent. Thus, by not refunding the advanced
26 fees, after Griffin terminated his employment, Respondent did not refund a fee paid in advance that
27 had not been earned, in wilful violation of rule 3-700(D)(2).

28 **Count Six: Rule 3-700(D)(1) (Failure to Release File)**

1 Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly
2 release to the client, at the client's request, all client papers and property.

3 By not returning Griffin's file after termination of his employment and after Griffin's request,
4 Respondent wilfully violated rule 3-700(D)(1).

6 **IV. LEVEL OF DISCIPLINE**

7 **A. Aggravation**

8 Respondent's multiple acts of misconduct are an aggravating factor. (Rules Proc. of State
9 Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)⁴

10 Respondent's conduct deprived Griffin of the \$2,000.00 he paid Respondent in advanced fees
11 which significantly harmed Griffin. (Standard 1.2(b)(iv); *In the Matter of Hunter* (Review Dept.)
12 3 Cal. State Bar Ct. Rptr. 63, 77.)

13 Respondent's lack of candor and cooperation with the State Bar during a disciplinary
14 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating
15 circumstance. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.)

16 **B. Mitigating Circumstances**

17 Respondent bears the burden of establishing mitigation by clear and convincing evidence,
18 and since he did not participate in these proceedings, no mitigating evidence was presented.⁵
19 (Standard 1.2(e).)

20 **Discussion**

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

24
25 ⁴All further references to standards are to this source.

26
27 ⁵Although membership records of the State Bar indicate that Respondent has no prior
28 record of discipline, this does not warrant any weight in mitigation since Respondent had been in
practice for almost six years prior to the start of his misconduct in the Griffin matter. (*In the
Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [Attorney's six
years of practice prior to the start of misconduct was not mitigating].)

1 1.3.)

2 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
3 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
4 imposing discipline.

5 Standard 2.4(b) provides for reproof or suspension for failing to perform services or
6 communicate with a client not demonstrating a pattern of misconduct.

7 Standard 2.6(a) provides for disbarment or suspension for violations of section 6068.

8 The standards, however, are guidelines from which the court may deviate in fashioning the
9 most appropriate discipline considering all the proven facts and circumstances of a given matter.
10 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
11 or mechanical manner.” (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

12 In a single client matter, Respondent has been found culpable of failing to perform,
13 improperly withdrawing from employment, failing to communicate, failing to refund unearned fees,
14 failing to return a client file, and failing to maintain a current membership records address. In
15 aggravation, the court has found client harm, multiple acts of misconduct, and a lack of candor and
16 cooperation. There is no mitigation.

17 The court finds the following cases instructive in determining the appropriate level of
18 discipline:

19 In *Gold v. State Bar* (1989) 49 Cal.3d 908, discipline consisting of a 30-day actual suspension
20 was imposed. In two client matters the attorney was found culpable of failing to perform, improperly
21 withdrawing from employment, and failing to communicate. The attorney also committed an act of
22 moral turpitude and dishonesty by intentionally misrepresenting case status to one of the clients. The
23 attorney received significant mitigation for having no record of prior discipline over 25 years of
24 practice. Although no aggravating factors were discussed, the attorney’s misconduct involved
25 multiple acts of wrongdoing.

26 In *Wren v. State Bar* (1983) 34 Cal.3d 81, discipline consisting of a two-year stayed
27 suspension, a two-year probation, and a 45-day actual suspension was imposed. The attorney was
28 found culpable of failing to perform, failing to communicate with his client, and knowingly

1 misrepresenting the status of the case to his client. In mitigation, the attorney had no prior record
2 of discipline in approximately sixteen years of practice. Although the Court did not discuss
3 aggravating factors, the attorney's misconduct involved multiple acts of wrongdoing as well as
4 uncharged misconduct for attempting to mislead the State Bar by giving false testimony before the
5 hearing panel.

6 *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, involved a
7 default proceeding relating to an attorney's misconduct in a single client matter. The attorney was
8 found culpable of failing to perform competently, failing to communicate with his client, failing to
9 cooperate with the State Bar's investigation of the client's complaint, and committing acts of moral
10 turpitude by lying about case status to the client and improperly holding himself out as entitled to
11 practice law while he was suspended. The attorney received a one-year stayed suspension with a
12 two-year probation conditioned upon a 60-day actual suspension. The attorney had no prior record
13 of discipline in 12 years of practice, but his misconduct significantly harmed his client and his failure
14 to participate in the proceeding was considered in aggravation. *

15 The State Bar recommends a minimum discipline of a 90-day actual suspension.

16 Although Respondent's misconduct is distinguishable from the client abandonments
17 described in the above cases due to the absence of acts involving dishonesty or moral turpitude, his
18 misconduct involves the additional acts of not refunding unearned fees and not returning a client's
19 file. The Court also observes that, although Respondent's aggravating factors are analogous to those
20 in the above cases, Respondent has no mitigating factors to temper the seriousness of his ethical
21 violations. For these reasons, the Court concludes that Respondent's misconduct warrants more
22 severe discipline than that imposed in the above cases and concurs with the State Bar's discipline
23 recommendation.

24 After considering Respondent's misconduct and the law, and balancing the aggravating and
25 mitigating factors, the court recommends, among other things, actual suspension of 90 days and until
26 Respondent complies with rule 205.

27 **V. DISCIPLINE RECOMMENDATION**

28 Accordingly, it is hereby recommended that Respondent PETER S. JOHNSON be suspended

1 from the practice of law for one year, that said suspension be stayed, and that he be actually
2 suspended from the practice of law for 90 days and until the State Bar Court grants a motion to
3 terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the
4 court. (Rules Proc. of State Bar, rule 205(a), (c).)

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

8 If the period of actual suspension reaches or exceeds two years, it is further recommended
9 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar
10 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to
11 Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (Rules Proc. of
12 State Bar, rule 205(b).)

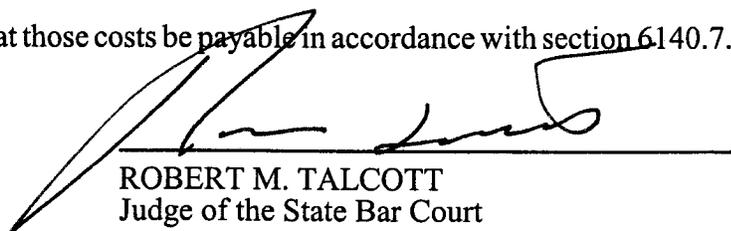
13 It is recommended that Respondent comply with rule 955 of the California Rules of Court,
14 and that he perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130
15 days, respectively, after the effective date of the Supreme Court order in this matter. Failure to
16 comply with rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,
17 131). Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
18 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

19 It is further recommended that Respondent be ordered to take and pass the Multistate
20 Professional Responsibility Examination given by the National Conference of Bar Examiners within
21 one year of the effective date of the discipline imposed and furnish satisfactory proof of such to the
22 State Bar's Office of Probation within said period.

23 **VI. COSTS**

24 The court recommends that costs be awarded to the State Bar pursuant to Business and
25 Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7.

26
27 Dated: January 13, 2005

28 
ROBERT M. TALCOTT
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 14, 2005, I deposited a true copy of the following document(s):

DECISION, filed January 14, 2005

in a sealed envelope for collection and mailing on that date as follows:

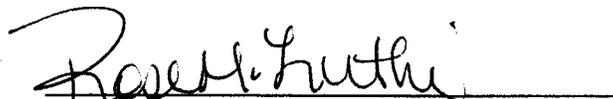
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PETER S. JOHNSON, ESQ
LAW OFFICE PETER S. JOHNSON
5060 SHOREHAM PL#200
SAN DIEGO CA 92122-5977

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MARGARET WARREN, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 14, 2005**.



Rose M. Luthi
Case Administrator
State Bar Court