

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 05-O-04265-LMA
)	
MOHINDER SINGH,)	DECISION AND ORDER
)	
Member No. 67575,)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent MOHINDER SINGH (respondent) is charged with two counts of misconduct in a single-client matter. The court finds, by clear and convincing evidence, that respondent is culpable of (1) failing to promptly release his client’s file upon termination of employment and (2) failing to keep his client informed of significant developments.

For the reasons stated below, it is ordered that respondent be **PRIVATELY REPROVED**.

II. PERTINENT PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on April 30, 2007. On May 21, 2007, respondent filed a response to the NDC. The State Bar was represented by Deputy Trial Counsel Maria J. Oropeza. Respondent was represented by H. Tim Hoffman and Morgan Mack.

Trial was held on October 26, 2007. That same day, the parties filed a partial stipulation of facts. Following the trial, respondent filed a post-trial declaration regarding mitigating circumstances and the State Bar’s filed a response. The court took this case under submission on November 26, 2007.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the evidence and testimony introduced at this proceeding. The court's findings of fact are based in large part on credibility determinations.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 18, 1975, and since that time has been a member of the State Bar of California.

B. Findings of Fact

On May 23, 2001, respondent was hired by Swaran Singh to represent him in an asylum claim. On January 30, 2002, respondent, on behalf of Swaran Singh, prevailed in a contested Immigration Court hearing on the asylum claim.

After being granted asylum, Swaran Singh had two years in which to file an I-730 application to bring his family to the United States. Swaran Singh retained respondent to help him bring his family to the United States.

On July 2, 2002, respondent filed the I-730 application on behalf of Swaran Singh and his wife and children. On January 15, 2003, the Immigration and Naturalization Service (INS) sent respondent a request for additional documentation relating to Swaran Singh's I-730 application (Request for Evidence). Respondent promptly forwarded the Request for Evidence to Swaran Singh; however, the requested documentation was not provided to the INS in a timely fashion.¹

As a result, on May 13, 2003, the INS sent respondent a letter notifying him that Swaran Singh's I-730 application had been denied for failure to provide the requested documentation. This letter further advised that a new application may be filed, or that a Motion to Reopen could be filed within 30 days. Respondent received this letter, but failed to promptly notify Swaran Singh that the I-730 application had been denied.

Ultimately, respondent did not contact Swaran Singh until November 2003, approximately six months after respondent received notice that Swaran Singh's I-730 application had been denied.

¹The parties stipulated to this fact, but the collateral issue of why the requested documents were not provided to the INS in a timely fashion remains unclear.

It was then that respondent first informed Swaran Singh that his case had been denied. Respondent told Swaran Singh that they could reapply.

On May 21, 2004, respondent wrote to the INS resubmitting the I-730 application and providing the documents the INS had requested in their Request for Evidence. By this time, the two years Swaran Singh had to file his I-730 application had already lapsed.

Thereafter, in February 2005, Swaran Singh terminated respondent's services and hired the Law Offices of David M. Sturman to handle all of his INS matters.

On February 25, 2005, the Law Offices of David M. Sturman sent a letter to respondent informing him that they had been retained by Swaran Singh for all his immigration matters, requesting a copy of Swaran Singh's file, and providing a Federal Express account number for mailing costs. Respondent received this letter, but did not send the file.

In April 2005, Susan Javidan (Javidan), an agent for the Law Offices of David M. Sturman, attempted to contact respondent regarding Swaran Singh's file. She telephoned respondent at his office telephone number many times, but there was no answer.

On August 22, 2005, Javidan, on behalf of the Law Offices of David M. Sturman, telephoned respondent at his office and requested a copy of Swaran Singh's file. Respondent received this request, but did not respond.

On September 6, 2005, respondent contacted Javidan and told her he would forward Swaran Singh's file. Subsequently, respondent did not forward the file.

On September 15, 2005, the Law Offices of David M. Sturman sent respondent a copy of a State Bar complaint wherein Swaran Singh complained about not receiving his file. Respondent received this letter but still did not forward the file.

On October 25, 2005, Pamela Hartman, on behalf of the Law Offices of David M. Sturman, sent respondent a letter notifying him that they still needed a copy of Swaran Singh's file. Respondent received this letter but did not respond.

On April 6, 2007, respondent sent the Law Offices of David M. Sturman a copy of Swaran Singh's file. On April 11, 2007, two years after they had originally requested Swaran Singh's file,

the Law Offices of David Sturman received it from respondent.²

Count 2³– Failure to Release Client File

Respondent wilfully violated Rules of Professional Conduct of the State Bar of California, rule 3-700(D)(1),⁴ by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows: By not releasing Swaran Singh's file to the Law Offices of David M. Sturman for over two years, respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers and property.

Count 3: Failure to Inform Client of a Significant Development

Respondent failed to inform Swaran Singh about the denial of the I-730 application in May 2003.

Business and Professions Code section 6068, subdivision (m),⁵ provides that it is the duty of an attorney “[t]o respond promptly 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 Swaran Singh in May 2003 that his I-730 application had been denied, respondent failed to keep Swaran Singh reasonably informed of a significant development in a matter in which respondent had agreed to provide legal services.⁶

²Swaran Singh had undertaken efforts to recreate his file before it was finally provided by respondent.

³Counts one and four of the NDC were dismissed without prejudice prior to trial at the State Bar's request.

⁴References to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

⁵Unless otherwise noted, all further section(s) references are to this source.

⁶The State Bar also alleged that between March 2003 through November 2003, respondent failed to return numerous telephone messages left by Swaran Singh requesting a status update. The court, however, finds that this allegation was not proven by clear and convincing evidence.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)⁷ Here, the mitigating factors are compelling.

Respondent was admitted to the practice of law in California in December 1975 and has no prior record of discipline. Respondent's 27 years of discipline-free practice at the time of his misconduct in 2003 is a strong mitigating factor. (Standard 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.) A lengthy period of practice without misconduct, such as respondent's, is a significant indicator of the lack of potential for future misconduct. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 363.) Thus, respondent's 27 years in the practice of law with no prior record of discipline is entitled to much weight in mitigation. (See *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749.)

Additionally, respondent presented evidence demonstrating a litany of health problems suffered by both he and his wife over the past nine years. (Std. 1.2(e)(iv).) Respondent's health problems began in October 1999, when, at the age of 71, he was diagnosed with colon cancer. While it is reasonable to assume that the multiple health problems suffered by respondent and his wife had some impact on his legal practice, respondent did not establish, by clear and convincing evidence, that these health problems were directly responsible for the misconduct. Therefore, the health problems suffered by respondent and his wife can only be afforded nominal weight in mitigation.

Respondent also presented evidence of pro bono work. Respondent testified that he has performed a substantial amount of pro bono work and that he received an award in San Francisco for his outstanding pro bono contributions. Respondent has also served as a pro tem judge in Contra Costa County. Respondent's pro bono activities warrant some consideration in mitigation. (See *In*

⁷All further references to standards are to this source.

the Matter of Bach (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.)

Finally, respondent argued that Swaran Singh only filed a complaint with the State Bar because he was effectively required to do so pursuant to *Matter of Lozada* (BIA 1988) 19 I. & N. Dec. 637. In *Lozada*, the Board of Immigration Appeals held that an individual seeking relief from an order of deportation or exclusion on the basis of ineffective assistance of counsel must submit, inter alia, a statement as to whether the individual filed a complaint with any disciplinary authority regarding their attorney's conduct, and if a complaint was not filed, the individual must explain why not.

The court did not hear sufficient evidence to establish that Swaran Singh would not have submitted a complaint to the State Bar but for *Lozada*. However, assuming arguendo, that this was the case, it still does not change the fact that respondent committed misconduct. Therefore, the court finds that the potential collateral effects of *Lozada* do not warrant any consideration in mitigation.

B. Aggravation

The court finds one aggravating circumstance. The State Bar argued that respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to return the file of Swaran Singh for over two years and not until after Swaran Singh submitted a complaint to the State Bar. The court agrees; however, the weight of this aggravation is partially diminished by the fact that much of the misconduct that the court relied on in finding respondent culpable of violating rule 3-700(D)(1) is the same as that which establishes this point of aggravation. (See *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 308.)

The State Bar also argues in aggravation that respondent's misconduct significantly harmed Swaran Singh. (Std. 1.2(b)(iv).) Swaran Singh was forced to recreate his file and therefore suffered some degree of harm. The State Bar, however, has not met its burden of proving by clear and convincing evidence that this caused Swaran Singh significant harm pursuant to standard 1.2(b)(iv). Therefore, this allegation must fail.

V. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the

purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of a minimum sanction ranging from reproof to suspension. (Standards 2.4(b), 2.6, and 2.10.) Standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.”

Standard 2.6 provides that culpability of a member of a violation of section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim. Standard 2.4(b) states that, “Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.” Standard 2.10 provides that culpability of a member of a violation of rule 3-700(D)(1) shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim.

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 recommends that respondent be actually suspended from the practice of law

for 30 days. In making this recommendation, however, the State Bar only relies on the standards and fails to cite any equivalent case law in support of its position.

After reviewing the case law, the court notes the lack of supporting authorities directly on point. Therefore, the court turns to analogous decisions for guidance. The court finds *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, to be instructive. In *Hanson*, the respondent, in a single-client matter, failed to promptly provide his client with a refund of unearned fees in the amount of \$769. Additionally, the respondent failed to reply to a letter from opposing counsel seeking confirmation that the respondent no longer represented his former client. As a result, the respondent was found culpable of failing to promptly return an unearned legal fee and failing to take reasonable steps to avoid foreseeable prejudice to his client upon termination of his employment. In aggravation, the respondent had a prior record of discipline consisting of a private reproof. The Review Department, however, found that the respondent's prior record did not merit significant weight in aggravation because it had occurred some nineteen years earlier and was minimal in nature. The Review Department found no evidence in mitigation. The respondent received a public reproof.

The court also finds *In the Matter to Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, to be somewhat analogous to the instant misconduct. In *Cacioppo*, the respondent, in a single-client matter, was found culpable of failing to render a proper accounting and failing to communicate with his client. In mitigation, the respondent's excellent reputation and good character were demonstrated through the testimony and letters of numerous persons of high standing in the community. In aggravation, the respondent had a prior public reproof and failed to fully cooperate with the State Bar. The Review Department noted that if the respondent, who had been practicing for seventeen years, had no prior record of discipline, then a reproof would have been justified. However, since the respondent had been previously reproved, the court recommended a six-month stayed suspension with a one-year period of probation.

The misconduct in the instant case is roughly equivalent to that of *Hanson* and *Cacioppo*. Yet, unlike *Hanson* and *Cacioppo*, the instant case involves less aggravation and more mitigation. Respondent's lack of a prior record of discipline in over 27 years of practice leads the court to

believe that the instant misconduct is aberrational and unlikely to be repeated. Therefore, after considering the case law, the standards, and the individual circumstances of this case, the court finds that a private reproof is the appropriate disposition of this matter.

VI. DISCIPLINE ORDER

Accordingly, it is ordered that respondent **MOHINDER SINGH** is hereby privately reproofed. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the private reproof will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the private reproof imposed in this matter. Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reproof for a period of one year following the effective date of the private reproof imposed in this matter:

1. During the one-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within thirty (30) days after the effective date of his private reproof, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his private reproof. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the one-year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request.

3. Within ten (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;

4. Respondent must submit written quarterly reports to the Office of Probation on each

January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to his reproof within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproof; and

6. Within one year of the effective date of this private reproof, respondent must provide to the Probation Office satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.).

IT IS SO ORDERED.

Dated: February __, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court