

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 06-O-13172-LMA
)	
ROBERT MICHAEL YASPAN,)	DECISION
)	
Member No. 51867,)	
)	
A Member of the State Bar.)	
_____)	

I. Introduction

In this contested disciplinary proceeding, respondent **Robert Michael Yaspan** is charged with one count of violating rule 3-310(C)(2) of the State Bar Rules of Professional Conduct (avoiding actual conflicts of interests among multiple clients). The Office of the Chief Trial Counsel of the State Bar of California (State Bar) has the burden of proving the afore-cited charge by clear and convincing evidence. Because the evidence presented by the State Bar falls short of satisfying that standard, this court finds respondent not culpable of the single count with which he is charged and dismisses the proceeding against him with prejudice.

II. Pertinent Procedural History

On December 22, 2008, the State Bar filed and properly served on respondent a six-count Notice of Disciplinary Charges (NDC).¹ On February 9, 2009, respondent filed a response to the NDC. Approximately six months later, on July 14, 2009, the State Bar filed a motion to amend the NDC “on the grounds of insufficient evidence for Counts One, Two, Three, Five, and Six, and in the furtherance of justice for Count Four.”

The First Amended Notice of Disciplinary Charges (First Amended NDC), which was filed on July 29, 2009, consists of one count, not alleged in the original six-count NDC. The new count in the First Amended NDC alleges that respondent violated rule 3-310(C)(2) of the State Bar Rules of Professional Conduct by representing two clients, who had an actual conflict of interest for which a waiver was not obtained.

On August 21, 2009, the parties filed a factual stipulation.

A one-day trial was held on August 21, 2009. David A. Clare represented respondent. Deputy Trial Counsel (DTC) Larry DeSha represented the State Bar.

On September 21, 2009, after the parties presented their closing arguments, the court took this matter under submission for decision.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence and testimony introduced at this proceeding and on the parties’ factual stipulation. In this proceeding, the State Bar called respondent as its only witness. Respondent, who testified on his own behalf, also called Robert Lorsch as a witness. The court finds the testimony of respondent and his witness to be credible.

¹ Attorney Robert Thau was also named as a respondent in the six-count NDC, but the State Bar dropped all counts against him.

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar of California since that time.

B. Findings of Fact

In or about 2002, Robert Lorsch (Lorsch) a highly successful businessman met respondent at a hearing. Respondent represented the developer in a dispute with a homeowners' association; Lorsch was the chairman of the homeowners' association. Lorsch, who was impressed by respondent, retained respondent to represent a business entity that he owned and controlled in 2002. Respondent, however, was not retained by Lorsch in his individual capacity for any purpose in 2002.

On March 26, 2002, attorney J. Rivers (Rivers) filed a civil rights lawsuit in federal court on behalf of Cynthia Truhan (Truhan). Rivers and Truhan had a contingency fee agreement, which provided that Rivers would be paid 45% of the funds recovered.

In June 2002, Truhan became engaged to marry Lorsch. In July 2002, Lorsch and Truhan entered into an oral agreement, whereby Lorsch would advance funds for Truhan's attorney fees and costs in several civil litigation matters in which Truhan was a party; Lorsch would also act as Truhan's "case manager" for those cases. While Lorsch's duties were not clearly defined, they did include giving advice to Truhan on selection of attorneys and other strategic decisions. In case of a recovery for damages, the oral agreement provided that Lorsch would be repaid for his cash advances on Truhan's behalf and would receive a percentage of the recovery funds after payment of all costs.

Lorsch and Truhan orally agreed that any funds recovered would be used to reimburse Lorsch for the funds he had expended on Truhan's behalf for the federal civil rights lawsuit and three other cases. Lorsch and Truhan also agreed that any funds recovered would be used

to pay legal fees still owed on those cases. Additionally, Lorsch would receive 22.5% of any remaining funds for his case management services.

By September 2002, Lorsch had reviewed Truhan's federal civil rights case and had determined that he could arrange a better legal fee deal for Truhan. He recommended to Truhan that they negotiate a new contract with Rivers and hire respondent to (1) assist Rivers as needed and (2) disburse any funds recovered for the case. Truhan then hired respondent on or about September 15, 2002, on an hourly rate basis.

Lorsch negotiated a new fee agreement with Rivers, whereby Rivers accepted cash in exchange for reducing his contingency fee from 45% to 17.5% of the recovery after costs.

On October 21, 2002, Rivers sent the new retainer agreement to Truhan for her signature. The retainer agreement provided that any funds recovered would be paid into respondent's client trust account; and respondent would disburse the funds recovered as described in the agreement. Pursuant to the retainer agreement recovered funds would be used first to reimburse costs incurred, respondent's legal fees, another attorney's legal fees, and payments to Lorsch for his time incurred, consulting services, and funds he had advanced. After those payments were made, 17.5% of the balance would be disbursed to Rivers.

Truhan subsequently instructed respondent to modify the fee agreement to reflect the oral agreement she had made with Lorsch, i.e., to define the "case management fee" to be paid to Lorsch as a contingency fee amounting to 22.5% of the recovery after deductions for costs and non-contingent legal fees owed on the federal case and three other lawsuits.

On November 29, 2002, respondent sent Truhan a letter (Exh. 2) containing the proposed modifications to the fund disbursement section of the retainer agreement. As instructed by Truhan, the proposed changes in respondent's letter stated that Lorsch's case management fee would be 22.5% of the recovery after the specified deductions.

On page four of that November 29, 2002 letter to Truhan, respondent wrote, “If this is acceptable please sign below.” Respondent affixed his own signature to the letter, immediately following the closing, “Sincerely yours.” Beneath that closing and respondent’s signature were the words, “ACCEPTED AND AGREED AND SO DIRECTED,” followed by a signature line for Cynthia Truhan. Underneath the signature line for Truhan are the words, “ACCEPTED AND AGREED,” followed by a signature line for Robert H. Lorsch.² Thus, in his November 29, 2002 letter to Truhan, respondent requested that both she and Lorsch sign the proposed modification, if said modification was found to be acceptable.

Respondent’s request that both Truhan and Lorsch sign the modification is made in a letter that is addressed and directed only to Truhan; neither the letter, nor the request is addressed or directed to Lorsch. In his letter to Truhan, respondent is advising/requesting that Truhan get Lorsch’s signature on the modification, which was drafted per her instructions and which defined and limited the fees to which Lorsch might be entitled.

Count 1: Avoiding the Representation of Conflicting Interests (Rules Prof. Conduct, Rule 3-310(C)(2))³

Rule 3-310(C)(2) provides that an attorney must not, without the informed written consent of each client, accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict.

Specifically, in this proceeding, the State Bar, first, must prove by clear and convincing evidence that respondent represented not only Truhan, but Lorsch regarding the November 29, 2002 letter transaction in order to establish a violation of rule 3-310(C)(2).

² On the November 29, 2002 letter, submitted into evidence as the State Bar’s exhibit 2, the signature “Cynthia Truhan” appears on her signature line; and the signature line of Robert Lorsch bears his signature and the date, “12-1-02.”

³ References to rules are to the current Rules of Professional Conduct.

The State Bar alleges that respondent provided legal representation to Truhan and Lorsch by preparing the retainer modification for both Truhan and Lorsch and obtaining both of their signatures on the November 29, 2002 letter that respondent addressed to Truhan. (First Amended NDC, ¶14.)

The November 29, 2002 letter (Exh. 2), however, shows that respondent's request to obtain the signatures of Truhan and Lorsch was addressed and directed solely to Truhan. That Lorsch signed the letter, which was directed and addressed to Truhan, is insufficient to show that respondent advised Lorsch regarding the letter transaction or made or directed a request to him regarding the modification to the fee agreement. Nor do respondent's requests or advice to his client, Truhan, create an attorney-client relationship between him and Lorsch.

Moreover, the evidence presented at trial fails to demonstrate that respondent performed any services for Lorsch or represented him. To the contrary, Lorsch testified that in his individual capacity, he did not retain respondent for any purpose in 2002, which would include the November 29, 2002 letter transaction. Respondent testified that only Truhan was his client. He also testified that he wanted Lorsch to sign the November 29, 2002 letter in order to bind Lorsch to the modification for Truhan's protection.

Respondent's conduct supports his testimony. Respondent addressed the November 29, 2002 letter only to Truhan, because, as he testified, only she was his client; and only she requested that respondent prepare the modification. Neither respondent's testimony, nor Lorsch's testimony was contradicted; and the court finds their testimony credible.

That Lorsch agreed to be bound by the modification does not establish that an attorney-client relationship existed between him and respondent. In fact, no evidence was presented to show that respondent had any communication with Lorsch regarding the letter transaction. In sum, the evidence presented at trial is insufficient to support the allegation that respondent

represented Lorsch or anyone other than Truhan regarding the November 29, 2002 letter transaction.

Accordingly, the court concludes that the State Bar failed to prove by clear and convincing evidence that respondent is culpable of violating rule 3-310(C)(2).

IV. Disposition

In light of the foregoing, **IT IS HEREBY ORDERED** that the above-entitled disciplinary proceeding against respondent **Robert Michael Yaspan** is **DISMISSED WITH PREJUDICE IN ITS ENTIRETY**.

V. Costs

Because respondent has been exonerated of the charge against him following a trial on the merits, he may file a motion seeking reimbursement from the State Bar for reasonable expenses, other than fees for attorneys or experts, of preparing for trial as authorized by Business and Professions Code section 6086.10, subdivision (d). (See Rules Proc. of State Bar, rule 283.)

Dated: January _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court