

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 10-O-04972-RAH
)	(10-O-06749; 10-O-09164)
WOLODYMYR Y. DOZORSKY,)	
)	DECISION AND ORDER OF
Member No. 98515,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

Introduction¹

In this disciplinary proceeding, respondent Wolodymyr Y. Dozorsky is charged with multiple acts of misconduct in three different matters. The charged misconduct includes: (1) aiding the unauthorized practice of law; (2) failing to perform legal services with competence; (3) failing to refund unearned fees; (4) failing to communicate significant developments; (5) failing to respond to client inquiries; (6) failing to report sanctions; and (7) failing to obey a court order.

The court finds, by clear and convincing evidence¹, that respondent is culpable of nine counts of misconduct. Based on the serious nature and extent of the misconduct, and in consideration of the extensive aggravating circumstances, the court recommends that respondent be disbarred from the practice of law in the State of California.

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.

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 August 15, 2011. On September 22, 2011, respondent filed a response to the NDC.

On September 22, 2011, both parties appeared for an in-person status conference. At the status conference, the court informed the parties that: pre-trial statements were due on or before November 21, 2011; an in-person pre-trial conference would be held on December 1, 2011; and that trial would commence shortly thereafter. On September 28, 2011, the court issued an order confirming the aforementioned trial and pre-trial dates. A copy of this order was properly served on respondent at his official membership records address. Said order was not subsequently returned to the State Bar Court by the U.S. Postal Service.

Respondent subsequently failed to file his pre-trial conference statement on or before November 21, 2011. On December 1, 2011, the court conducted the scheduled pre-trial conference; however, respondent failed to appear. Accordingly, the court issued an order requiring respondent to file his pre-trial statement by December 7, 2011. A copy of this order was served on respondent at his official membership records address. Said order was not subsequently returned to the State Bar Court by the U.S. Postal Service.

On December 14, 2011, respondent appeared for trial. In court, respondent filed his pre-trial statement and served a copy on the State Bar. The court found that respondent failed to comply with rule 5.101 of the Rules of Procedure of the State Bar of California. The court sanctioned respondent by ordering that he could not offer documentary or testimonial evidence, other than his own testimony. However, later in the trial, the court modified this order when respondent requested that he be allowed to offer a single exhibit.

On December 20, 2011, 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 15, 1981, and has been a member of the State Bar of California at all times since that date.

Case No. 10-O-04972 - Aiding the Unauthorized Practice of Law

Facts

J. Robert Lopez (Lopez) operated a paralegal service out of an office in Riverside, California (Riverside office). While a law school graduate, Lopez was not a member of the California Bar. Lopez worked with lawyers, offering legal services for customers in Riverside and at other locations. One such arrangement was with an attorney, Kevin Speir, who had previously leased space with Lopez at the Riverside office.

On September 18, 2008, respondent and Lopez entered into a commercial lease. Respondent agreed to sublease to Lopez, on a month-to-month basis, the Riverside office. As part of the Riverside office lease agreement, Lopez agreed to refer any prospective clients that call on the office to respondent. Respondent, in turn, agreed to supervise Lopez with respect to Lopez' work on any clients' cases that came in the office. At the time of this agreement, and thereafter, respondent was aware that Lopez was not a licensed California attorney, and therefore, could not provide legal advice. The arrangement respondent had with Lopez was essentially the same arrangement Lopez had previously had with Kevin Speir.

Respondent permitted Lopez to manage the Riverside office. As part of this management, Lopez interviewed prospective attorney employees, advertised the firm, met with clients regarding their cases, obtained signed retainer agreements, billed clients, and received legal fees. Respondent gave Lopez access to a bank account which Lopez could use to pay

incidental client costs when respondent was not in the office.² In addition to administrative matters, respondent permitted Lopez to independently work on legal matters, by filing pleadings in court on behalf of clients and supervising and directing the work of associate attorneys employed by the office.

After September 18, 2008, respondent permitted Lopez to practice law, including drafting and filing at least one complaint without supervision by respondent or any other attorney. Respondent was aware or should have been aware of Lopez' activities and failed to timely take steps to stop them.

In June 2010, respondent and Lopez had a falling out. Respondent filed an unlawful detainer action against Lopez, seeking to evict him and his related companies from the Riverside office.

Conclusions

Count One - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. By allowing Lopez to independently operate the Riverside office without appropriate supervision, including retaining clients, receiving payment for services, sending letters and filing pleadings on behalf of clients, paying costs on behalf of clients, and directing the work of associate attorneys in the office, respondent aided a person or entity in the unauthorized practice of law, in willful violation of rule 1-300(A).

² This account was separate from respondent's client trust account and his primary general operating account.

Case No. 10-O-06749 - The Arechiga Matter

Facts

In March 2010, respondent and Lopez operated another office located in Santa Ana, California. This office was rented by Lopez alone.

In February 2010, without informing respondent, Lopez hired Linda Martin Gilchrest as an associate attorney. She had responded to an advertisement in the *Los Angeles Times* placed by Lopez for an attorney position with respondent's firm. Specifically, the job she applied for was for an associate attorney who would make special appearances. She worked in both the Santa Ana and the Riverside offices. Respondent met with her in the Santa Ana office shortly after she was hired.³

Gilchrest met with Silvia Arechiga and her husband in approximately March 2010. By the time they met, Arechiga had already signed a retainer agreement and paid \$2,500 of the agreed \$5,000 retainer.⁴ Gilchrest learned in her first meeting that the foreclosure date had already passed on their home, and she advised the clients of that fact. The clients were not happy with the news that the firm could do nothing for them. Gilchrest advised the clients that they could contact another attorney for a second opinion.⁵

Gilchrest left the firm in April 2010, after about six weeks of employment. She left because she did not feel things "were being handled properly" at the firm. Her complaints were primarily regarding the administrative problems the firm had, but she also was disturbed after

³ Gilchrest also met with respondent at a third office in either Irvine or Tustin. However, it appears she did not work consistently out of this office.

⁴ The office quoted her a fee of \$5,000, and provided a retainer which contained the heading "The Lopez Group, Inc./Law Offices of W. Dozorsky, 1815 S. Main Street, Santa Ana, CA 92707." Lopez gave her a receipt for the \$2,500 payment.

⁵ Gilchrest met with Arechiga a second time, but it was unclear from the testimony which discussions occurred at the first or the second meeting.

being told by a paralegal that Lopez had a criminal record in Texas for the unauthorized practice of law. She did not inform respondent of Lopez' alleged prior criminal background.

Conclusions

Count Two - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

The State Bar failed to prove by clear and convincing evidence that respondent violated rule 1-300(A) in the Arechiga matter. Therefore, this count is dismissed with prejudice.

Count Three - 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. The State Bar failed to prove by clear and convincing evidence that respondent violated rule 3-110(A) in the Arechiga matter. Therefore, this count is dismissed with prejudice.

Count Four - 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. The State Bar failed to prove by clear and convincing evidence that respondent violated rule 3-700(D)(2) in the Arechiga matter. Therefore, this count is dismissed with prejudice.

Case No. 10-O-09164 - The Rodriguez Matter

Facts

In late September 2009, Juliana Rodriguez (Rodriguez) made an appointment with Lopez regarding a case against a lender. She met with Lopez, but did not meet respondent. Lopez signed Rodriguez up as respondent's client.

Lopez took several months to file a lawsuit on Rodriguez' behalf. From September 2009 to March 10, 2010, Rodriguez called all of the numbers available to her to try to contact

respondent. She credibly testified that she called every day, in her efforts to reach respondent. No one returned her calls.⁶

On March 16, 2010, respondent's office filed a complaint for Rodriguez and Jose Marin (Marin) in the Pomona courthouse of the Los Angeles Superior Court, titled *Rodriguez v. Chapel Mortgage Corp.*, case number KC 058256. Although the complaint purportedly bore respondent's signature, the signature, in fact, was not respondent's. Respondent had never met Rodriguez or Marin, despite the fact that his name and address were on the caption of the summons and the complaint.⁷

On March 18, 2010, the court served respondent with a Notice of Case Management Conference, ordering him to appear. The notice also warned him that his failure to appear may result in sanctions being imposed. Respondent received the Notice of Case Management Conference.

On June 29, 2010, the court set an Order to Show Cause Hearing to occur on July 28, 2010, as to why sanctions should not be assessed against respondent for failing to file a proof of service of the complaint. The Order to Show Cause (OSC) also warned that sanctions may be imposed for failure to comply or appear. Respondent received the OSC.

Respondent did not appear at the July 28, 2010 OSC hearing. At the hearing, Judge Steven D. Blades, the judge presiding, set a further OSC as to why the matter should not be dismissed. He set a hearing for August 13, 2010. Respondent received this order.

⁶ It appears that at least one of the numbers Rodriguez called ((949) 673-3894) was respondent's telephone number in Irvine. She testified that she got this number from respondent's official State Bar membership records. Respondent received at least one message from Rodriguez, but did not realize she was a client.

⁷ The address listed on the summons and complaint was respondent's Irvine address. This was an address that he, alone, used and was not associated with the office space he shared with Lopez in Riverside or Santa Ana.

Rodriguez independently checked the register of actions at the Pomona courthouse and determined that there was a hearing set for August 13, 2010. As such, she appeared at the August 13, 2010 hearing, but respondent did not. At this hearing, Judge Blades ordered respondent to pay the court \$500 in sanctions and set the matter for a further OSC hearing on September 15, 2010, to determine if additional sanctions were appropriate. The court further ordered respondent to personally appear. Respondent received this further OSC.

Respondent did not appear at the September 15, 2010 OSC hearing. Judge Blades assessed an additional sanction of \$1,500 against respondent and continued the Case Management Conference to November 16, 2010, and set a further OSC for additional sanctions, also to be heard on that date. The court also stated in its order that it intended to report the matter to the State Bar of California. Respondent received this order. Further, Judge Blades personally told respondent about the November 16, 2010 hearing when he saw him in his courtroom on another unrelated matter.⁸

Respondent did not appear at the November 16, 2010 OSC hearing, nor did he call in to the court. Judge Blades again ordered an additional \$1,500 in sanctions, for a total of \$3,500. He continued the Case Management Conference and set a further OSC, both to be heard on January 26, 2011. Respondent received this order.

Respondent did not appear at the January 26, 2011 hearing. At that hearing, Judge Blades dismissed the action. Respondent did not file any motions for relief from the sanctions or the dismissal order. Further, respondent was aware of the two sanction orders in the amount of \$1,500 each imposed against him by Judge Blades, but did not notify the State Bar of the

⁸ The court inquired of respondent as to why he had not appeared. Respondent stated that he was not aware of the case and that someone else had filed it using his name. The court reminded him of the upcoming November 16, 2010 hearing.

sanctions. Respondent never spoke with Rodriguez regarding any of the hearings or any of the sanction orders.

Conclusions

Count Five - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

The State Bar alleged that by failing to appear at the Order to Show Cause hearings set for July 28, 2010, August 13, 2010, September 15, 2010, November 16, 2010, and January 26, 2011, in the Rodriguez matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A). The misconduct in Count 5, however, is basically the same misconduct relied upon by the court to establish culpability in Counts 10, 11, 12, and 13. Consequently, Count 5 is dismissed with prejudice, as duplicative.⁹

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

Section 6068, subdivision (m), provides that an attorney has a duty to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. The NDC alleges that respondent violated section 6068, subdivision (m), by failing to inform Rodriguez of the five Order to Show Cause hearings and the three sanction orders.

Respondent claims that he had no duty to Rodriguez or Marin, since he was unaware of the clients and had not filed the complaint on their behalf. While the evidence indicated that respondent did not prepare or file the complaint, respondent was aware, at the very least, that Rodriguez thought he was her attorney. In the initial complaint, and in several orders from Judge Blades, filed and served on respondent thereafter, respondent was clearly listed as the attorney of

⁹ Respondent's failure to appear at the hearing on January 26, 2011, was not reflected in Counts 10, 11, 12, and 13; however, this single failure to appear, standing alone, does not demonstrate a violation of rule 3-110(A).

record in the matter, and on occasion, was ordered to *personally* appear at the Order to Show Cause hearing.

Any one of these notices and Orders to Show Cause should have prompted respondent to seek out Rodriguez to inform her of what was occurring in the case. Together, all of the Orders to Show Cause and sanction orders compelled respondent to take action. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 563 [duty to communicate with persons who reasonably believe they are clients].) If he had a question as to whether he had agreed to provide Rodriguez legal services, he at least was required to inform her of that fact.¹⁰ Instead, respondent did nothing.

Consequently, the court finds that by failing to inform Rodriguez of the July 28, 2010, August 13, 2010, September 15, 2010, November 16, 2010, and January 26, 2011 Orders to Show Cause and the total of \$3,500 in sanctions assessed against respondent, respondent failed to keep a client reasonably informed of significant developments in the matter, in willful violation of section 6068, subdivision (m).

Count Seven - § 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients. Rodriguez' inquiries were primarily made to Lopez or other staff members, and respondent was not told of them. Although respondent did receive at least one inquiry, it came at a time when he did not believe Rodriguez was his client. Consequently, the court finds the record does not establish, by clear and convincing evidence, a willful violation of respondent's duty to promptly respond to reasonable status inquiries of clients. Count Seven is therefore dismissed with prejudice.

¹⁰ *Butler v. State Bar* (1986) 42 Cal.3d 323, 329.

Count Eight - § 6068, subd. (o)(3) [Failure to Report Sanctions]

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000.00 or more which are not imposed for failure to make discovery. By failing to report the September 15, 2010 sanction in the Rodriguez matter, respondent willfully violated section 6068, subdivision (o)(3).

Count Nine - § 6068, subd. (o)(3) [Failure to Report Sanctions]

By failing to report the November 16, 2010 sanction in the Rodriguez matter, respondent willfully violated section 6068, subdivision (o)(3).

Count Ten - § 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. By failing to appear at the July 28, 2010 Order to Show Cause hearing in the Rodriguez matter, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Eleven - § 6103 [Failure to Obey a Court Order]

By failing to appear at the August 13, 2010 Order to Show Cause hearing in the Rodriguez matter, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Twelve - § 6103 [Failure to Obey a Court Order]

By failing to appear at the September 15, 2010 Order to Show Cause hearing in the Rodriguez matter, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Thirteen - § 6103 [Failure to Obey a Court Order]

By failing to appear at the November 16, 2010 Order to Show Cause hearing in the Rodriguez matter, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Count Fourteen - § 6103 [Failure to Obey a Court Order]

By failing to pay the \$500 sanction order imposed on August 13, 2010, the \$1,500 sanction order imposed on September 15, 2010, and the \$1,500 sanction order imposed on November 16, 2010, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

Aggravation¹¹

The record establishes three factors in aggravation by clear and convincing evidence.
(Std. 1.2(b).)

Prior Record of Discipline

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)
Respondent has three prior impositions of discipline.

¹¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

On September 9, 1993, the California Supreme Court issued an order (S033671) suspending respondent from the practice of law for two years, stayed, with a five-year period of probation, including a 45-day actual suspension. In this proceeding, respondent stipulated to failing to maintain client funds in trust, failing to promptly pay out client funds, and commingling. In mitigation, respondent had no prior record of discipline and cooperated with the State Bar. No aggravating circumstances were involved.

On July 22, 1998, the California Supreme Court issued an order (S070610) suspending respondent from the practice of law for two years, stayed, with a three-year period of probation, including a four-month actual suspension. In this proceeding, respondent stipulated that he practiced law while he was suspended and failed to comply with some of the terms of his prior disciplinary probation. No mitigating or aggravating factors were identified.

On September 21, 2001, the California Supreme Court issued an order (S099256) suspending respondent from the practice of law for three years, stayed, with a four-year period of probation, including an 18-month actual suspension. In this proceeding, respondent stipulated that he practiced law while he was suspended, misrepresented that he was entitled to practice, and prepared and filed a false rule 955 declaration.¹² In aggravation, respondent had a prior record of discipline and caused significant harm. In mitigation, respondent cooperated with the State Bar and much of his conduct was based on his mistaken but good faith belief that his prior period of actual suspension was stayed.

Multiple Acts/Pattern of Misconduct

The present matter involves multiple acts of misconduct. (Std. 1.2(b)(ii).) Respondent was found culpable on nine counts of misconduct.

¹² This rule is currently identified as California Rules of Court, rule 9.20.

Harm to Client/Public/Administration of Justice

Respondent's misconduct resulted in significant harm to Rodriguez and to the administration of justice. (Std. 1.2(b)(iv).) Respondent's inaction in the Rodriguez matter resulted in multiple OSC hearings and, ultimately, the dismissal of the action.

Mitigation

The record does not establish, by clear and convincing evidence, any factors in mitigation. (Std. 1.2(e).)

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. 1.3.)

Various standards apply in this matter; however, standard 1.7(b) is most pertinent to the court's analysis. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

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, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although 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.)

Here, respondent has been previously disciplined on three separate occasions. Despite his three prior disciplines, respondent continues to demonstrate an unwillingness or inability to conform his behavior to the ethical demands of the profession. (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Undeterred by his two previous disciplines involving practicing law while suspended, respondent willfully aided Lopez' ability to engage in the unauthorized practice of law. Moreover, the lack of compelling mitigating circumstances involved in the present matter and respondent's demonstrated indifference toward repeated court orders give the court little justification to recommend a level of discipline short of disbarment.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent Wolodymyr Y. Dozorsky, State Bar Number 98515, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court further recommends that respondent 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 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹³

¹³ 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.)

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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March _____, 2012

RICHARD A. HONN
Judge of the State Bar Court