

PUBLIC MATTER -- DESIGNATED FOR PUBLICATION

Filed August 31, 2005

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)

LISA D. COPREN,)

A Member of the State Bar.)

04-O-10584

OPINION ON REVIEW

THE COURT:*

The State Bar seeks summary review of a single issue regarding the hearing judge's discipline recommendation in this case. Respondent Lisa D. Copren did not file a response to the notice of disciplinary charges, her default was entered, and she has not participated in this proceeding in either the hearing or review departments.

The hearing judge found respondent culpable in a single client matter of failing to perform legal services competently, committing an act of moral turpitude, improper solicitation of a prospective client, failure to return \$750 in unearned fees and failure to cooperate with the State Bar. The hearing judge recommended, inter alia, that respondent be actually suspended for 60 days and until she made restitution of the unearned fees and until the State Bar Court granted her motion to terminate her actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar.

The State Bar contends only that the discipline recommendation should include a requirement that respondent be ordered to comply with the provisions of rule 955 of the

* Stovitz, P. J., Watai, J., and Epstein, J., participating.

California Rules of Court if her actual suspension exceeds 90 days.¹ We agree and will so modify the discipline recommendation.

FACTS, FINDINGS AND CONCLUSIONS

Briefly, the facts of this case are as follows. In April 2003, respondent sent an "Advisory Letter," addressed to "Dear Homeowner," to Barbara Swing, offering assistance to stop the foreclosure process of her property by filing a Chapter 13 bankruptcy petition. The letter contained numerous guarantees, warranties and predictions regarding the result of any representation by respondent. After receiving the letter, Swing hired respondent and paid her \$750 as advanced attorney fees. Swing was given a package of documents, which included a blank bankruptcy court amendment cover sheet and an undated bankruptcy petition, to be signed and returned to respondent's office as soon as possible. Two days later, Swing returned the signed documents as instructed. In July 2003, respondent filed Swing's bankruptcy petition and schedules without verifying the accuracy of the factual information contained in them with Swing. They contained inaccurate information regarding Swing's income and expenses.

The bankruptcy trustee filed a motion to dismiss Swing's bankruptcy because respondent did not file a completed "Class 1 Checklist" form. A hearing on the motion was set for September 2003. Swing attended the hearing; respondent did not.² Respondent also never

¹ We granted the State Bar's request to designate this matter for summary review pursuant to rule 308 of the Rules of Procedure of the State Bar. That rule provides that upon request the review department may summarily review matters raising limited issues which can be decided without a transcript of the hearing department proceedings. Matters eligible for summary review include cases where there is no challenge to the hearing judge's material findings of fact and the issues on review are contentions that the facts support conclusions of law different from those reached by the hearing judge, or disagreement as to the appropriate discipline, or other questions of law. The very limited contention raised by the State Bar falls squarely within the parameters of rule 308.

² Swing eventually hired new counsel. The trustee later withdrew the motion to dismiss as a result of the efforts of Swing's new counsel.

provided to Swing a required authorization form which was to have been signed by Swing and given directly to the trustee.

In September 2003, Swing sent respondent a certified letter terminating her services. In October 2003, Swing sent respondent a certified letter requesting the refund of her legal fees. Respondent did not respond to the letter or refund any of the advanced legal fees. Respondent performed work that had no value to Swing.

In January and March 2004, a State Bar investigator wrote to respondent regarding the Swing matter and requested a written reply. Respondent did not respond to the letters. In March 2004, the State Bar investigator telephoned respondent to remind her to respond to the January letter. Respondent told the investigator that she would send a response, but she did not do so.

The hearing judge found respondent culpable of: (1) failing to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct,³ in that respondent failed to file the required "Class 1 Checklist" form, failed to provide Swing with the required authorization form, failed to appear at the dismissal hearing, and failed to verify with Swing the accuracy of the information in the bankruptcy petition before filing it; (2) committing an act of moral turpitude in violation of section 6106 of the Business and Professions Code⁴ in that respondent had Swing sign a blank bankruptcy petition form and then completed and filed the petition without first confirming with Swing the accuracy of the information; (3) improperly soliciting Swing in violation of rule 1-400(E)(1) in that respondent's advisory letter to Swing promised her that the foreclosure process could be stopped, that the Chapter 13 plan would allow Swing to keep her home, that the Chapter 13 bankruptcy would create an automatic stay, and that the garnishment of Swing's wages, if any, would automatically stop; (4) failing to return unearned fees in violation of rule 3-700(D)(2) in that respondent failed to refund the \$750

³ All further references to rules are to these Rules unless otherwise noted.

⁴ All further references to sections are to this Code unless otherwise noted.

advanced fees; and (5) failing to cooperate with the State Bar in violation of section 6068, subdivision (i) in that respondent failed to respond to the State Bar's letters or participate in the investigation of the Swing matter.

The hearing judge found that respondent's lack of a prior record of discipline in nine years of practice was a mitigating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i).)⁵ In aggravation, the hearing judge found that respondent committed multiple acts of wrongdoing (std. 1.2(b)(ii)); that respondent harmed her client by depriving her of her funds (std. 1.2(b)(iv)); that respondent's failure to return unearned fees demonstrated indifference toward rectification of or atonement for the consequences of her misconduct (std. 1.2(b)(v)); and that respondent failed to participate in this disciplinary matter before the entry of her default (std. 1.2(b)(vi)).

After considering the discipline provided for by the Standards for Attorney Sanctions for Professional Misconduct and relevant case law, the hearing judge recommended that respondent be suspended from the practice of law for one year, that execution of that suspension be stayed, and that respondent be actually suspended for 60 days and until she made restitution in the amount of \$750 to Swing and until the State Bar Court granted her motion to terminate her actual suspension if it exceeded two years. Without explanation, the hearing judge did not recommend that respondent be ordered comply with rule 955 of the California Rules of Court if the actual suspension exceeded 90 days. The State Bar sought reconsideration of the hearing judge's decision, arguing that respondent should be required to comply with rule 955 if the actual suspension exceeded 90 days. The hearing judge denied the motion without explanation.

DISCUSSION

Rule 955 requires, among other things, that the suspended or disbarred attorney notify his or her clients, co-counsel, opposing counsel, or, in the absence of counsel, adverse parties, and

⁵ All further references to the Standards are to these Standards unless otherwise noted.

any court where litigation is pending of the attorney's suspension and consequent inability to act in the matters, return client papers and property as well as any unearned legal fees, and file an affidavit with the State Bar Court showing compliance with the rule. The affidavit must also set forth an address where communications with the suspended or disbarred attorney may thereafter be directed.

As the Supreme Court has noted, "rule 955 performs the critical prophylactic function of ensuring that all concerned parties - including clients, cocounsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending - learn about an attorney's discipline." (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) The rule also functions to keep the disciplinary authorities apprised of the location of the attorneys subject to discipline. (*Ibid.*) In this latter regard, the rule is also critical to the administration of disciplinary proceedings, proceedings which are designed to protect the public, courts and legal profession. (Cf. *Durbin v. State Bar* (1979) 23 Cal.3d 461, 468.)

The importance of rule 955 to the over-all goal of the discipline system is reflected in the discipline imposed for an attorney's failure to comply with its provisions. "[D]isbarment is generally the appropriate sanction for a willful violation of rule 955." (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Furthermore, an attorney's failure to comply may also be punished as a contempt or a crime. (Cal. Rules of Court, rule 955(d); *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.) The criminal punishment for a violation of the rule is imprisonment in the state prison or county jail. (§ 6126, subd. (c).)

Ordinarily, compliance with rule 955 is ordered where the period of actual suspension is 90 days or more. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341.) The hearing judge in the present case recommended that respondent be actually suspended for 60 days and until she made restitution and until the State Bar Court granted her motion to terminate her actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar.

In view of respondent's failure to participate in this proceeding, respondent may not timely pay the restitution or file her Rules of Procedure of the State Bar, rule 205 motion. Thus, her actual suspension may very well exceed 90 days. The hearing judge apparently recognized this possibility as she recommended that if respondent's actual suspension exceeded two years, respondent be ordered to demonstrate her fitness to resume the practice of law pursuant to the provisions of standard 1.4(c)(ii).

As the State Bar has pointed out, in isolated cases, we have in the past not recommended to the Supreme Court that an attorney suspended for 90 days or more be ordered to comply with rule 955, (see, e.g., *In the Matter of Crane & DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 161 [attorney had not lived in the state for several years and did not practice law]; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108 [attorney continuously suspended for approximately 5 years prior to current proceeding].) However, none of the factors involved in those prior cases are present here. On the other hand, rule 955 of the California Rules of Court does not require a minimum actual suspension before recommending that an attorney comply with it,⁶ and it has on occasion been ordered by the Supreme Court in cases of 60 days' actual suspension (e.g., *Conroy v. State Bar* (1990) 51 Cal.3d 799, 806). Thus, the hearing judge would have had discretion to recommend respondent's compliance with rule 955 of the California Rules of Court, without regard to restitution.

The hearing judge did not explain why she declined to recommend that respondent be ordered to comply with California Rules of Court, rule 955 if the actual suspension exceeded 90 days. She may have believed that imposing this condition would have been at odds with the purpose of Rules of Procedure of the State Bar, rule 205, which we have observed "is to eliminate the necessity of multiple proceedings against an attorney who is unwilling to

⁶ For practical reasons, compliance with rule 955, is not typically recommended for actual suspensions of less than 60 days. (But see *Wren v. State Bar* (1983) 34 Cal.3d 81, 83, 90-91 [45-day actual suspension].)

participate in the disciplinary process and evidences no interest in maintaining his or her membership in the bar.” (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110.) As we explained in *Stansbury*, the “frequent scenario of a defaulting attorney in a case not involving serious misconduct, prior to the adoption of rule 205, was suspended suspension conditioned on the attorney complying with modest conditions of probation. Upon the attorney’s failure to comply with those conditions of probation, a second separate proceeding based on the failure to comply with the conditions of probation frequently resulted in discipline requiring actual suspension and a requirement that the disciplined attorney notify his or her clients of that discipline under rule 955 of the California Rules of Court. Upon the attorney’s failure to comply with California Rules of Court, rule 955, a third additional separate proceeding commenced, frequently resulting in disbarment for that failure.” (*Id.* at p. 110, fn. 9.)

Ordering respondent to comply with California Rules of Court, rule 955 in this proceeding in which she has not participated could result in a subsequent disciplinary proceeding based on alleged failure to comply. Nevertheless, we believe that the importance of California Rules of Court, rule 955 to the goals of attorney discipline far outweighs these considerations. For the protection of the public, courts and legal profession, we must ensure that all concerned courts and parties are apprised of respondent’s suspension and are thereby afforded an opportunity to take steps to protect their respective interests. We find no discernable reason on this record to not include this critical requirement.

CONCLUSION

For the foregoing reasons we modify the hearing judge’s discipline recommendation to add the following to page 10 of her decision: "If respondent remains actually suspended for 90 days or more, it is further recommended that respond be ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within one hundred twenty (120) and one hundred thirty (130) days, respectively, from the

effective date of the Supreme Court order herein." With this modification, the hearing judge's decision is the final decision of the State Bar Court in this matter. (See Rules Proc. of State Bar, rule 308(c).)