

FILED May 25, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 13-O-11380
)	
QIN ZHANG,)	OPINION
)	
A Member of the State Bar, No. 225324)	
_____)	

In this appeal by Qin Zhang, she raises two issues: whether her default was properly entered; and whether the State Bar’s Office of the Chief Trial Counsel (OCTC) properly established her culpability of one count of maintaining an unjust civil action (Bus. & Prof. Code, § 6068, subd. (c)), and two counts of failing to report sanctions ordered by courts against her (*id.*, § 6068, subd. (o)(3)). The hearing judge, having found Zhang culpable on these charges, has recommended that she be suspended for one year, stayed, on conditions of probation which include a 30-day actual suspension. Although taking issue with much of the hearing judge’s decision concerning degree of discipline, Zhang does not specifically raise the question of the appropriate degree of discipline. Rather, she seeks dismissal of the charges.

OCTC contends that Zhang’s default was entered properly, her culpability is established, the recommended suspension is the minimum discipline needed to protect the public, and we should adopt the hearing judge’s recommended discipline.

Following our June 23, 2015 order to allow Zhang to participate on review despite the entry of her default, and after independently reviewing the record (Cal. Rules of Court, rule 9.12), we reject Zhang’s contentions as unfounded. We uphold the hearing judge’s culpability findings and recommended discipline.

I. ZHANG FAILED TO ESTABLISH ANY PROCEDURAL ERROR IN ENTRY OF HER DEFAULT

On February 19, 2014, OCTC issued its Notice of Disciplinary Charges (NDC) charging Zhang with culpability of one count of maintaining an unjust civil action (Bus. & Prof. Code, § 6068, subd. (c)),¹ and two counts of failing to report court-ordered sanctions against her (§ 6068, subd. (o)(3)).

On the same day, this NDC was properly served on Zhang by certified mail at her official membership address of record. (§ 6002.1 (a)(1).) This NDC notified Zhang prominently of the consequences of failure to timely answer, including entry of her default and her potential disbarment. (Rules Proc. of State Bar, rule 5.41, 5.80, et seq.)²

Zhang failed to appear at a March 24, 2014 Hearing Department initial status conference, and she failed to file a timely response to the NDC. On OCTC's April 7, 2014 motion, served on Zhang by certified mail at her address of record and acknowledged by her completion of a return receipt card, Zhang's default was entered on April 23, 2014. Incident to default, Zhang was also enrolled as an inactive member of the State Bar, effective April 26, 2014, and her enrollment has continued to date. (§ 6007, subd. (e).)

On April 24, 2014, Zhang moved unsuccessfully to extend the time to answer the NDC and included an answer. Her motion was denied for several deficiencies. The court notified Zhang by letter of this action and stated that she was in default. She did not file any additional relief request until nearly six months later when she filed a motion to set aside her default, accompanied by a proposed answer to the NDC. The hearing judge denied Zhang's motion, as

¹ All further references to sections are to the provisions of the Business and Professions Code unless otherwise noted.

² All further references to rules are to the provisions of the Rules of Procedure of the State Bar adopted pursuant to section 6086.

well as her motion for reconsideration. On December 26, 2014, we denied Zhang's petition for interlocutory review of the hearing judge's action, finding no abuse of discretion.

Shortly before we ruled on Zhang's December 2014 petition for interlocutory review, OCTC filed an amended petition for Zhang's disbarment, per rule 5.85, following the entry of default.³ Zhang failed to file a response to this petition and the hearing judge took the matter under submission on January 8, 2015. About two weeks later, Zhang sought interlocutory review before us, disputing the hearing judge's submission order. On February 6, 2015, we denied Zhang's petition because she had shown no abuse of discretion or error of law.

On November 6, 2014, we had filed our opinion in *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. In its procedural history of an attorney's default in disciplinary proceedings, *Carver* bears a strong resemblance to this case. (Compare *id.* at pp. 352-354.) With regard to the issue of ordering the defaulting attorney's disbarment under rule 5.85, we observed in *Carver* that the 2011 revisions to the Rules of Procedure created a significant change in the degree of discipline outcome in a default case. Prior to the 2011 changes, any appropriate sanction could be recommended even if an attorney defaulted. Following those rule revisions, OCTC was allowed to file a petition for disbarment after an attorney's default was entered. (*Id.* at p. 354.) However, we also noted that the purpose of the 2011 changes to provide for disbarment after a default was entered was to avoid multiple proceedings against members who "had essentially abandoned their licenses and never sought to participate in these proceedings." (*Ibid.*) We further noted in *Carver* that even after the 2011 rule changes, the hearing judge has "wide discretion to fashion appropriate relief," including in the present case, the very remedy which the hearing judge chose sua sponte after our *Carver*

³ OCTC had filed such a disbarment petition earlier, but it was denied by the hearing judge as premature.

decision was filed: setting aside the default for limited purposes only. (*Ibid.*, citing former rule 5.83(H).)

Applying *Carver*, the hearing judge denied OCTC's petition for disbarment and ordered Zhang's default set aside for the limited purpose of receiving evidence in mitigation and aggravation. However, as Zhang remained in default, she was not allowed to participate in a hearing or present evidence. (Rule 5.82(3).)

After the hearing judge filed his decision recommending, inter alia, a 30-day suspension, Zhang timely sought review and filed her opening brief and a reply brief. We have allowed her to participate in the review of the hearing judge's decision on the merits. (See *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 106 [authorizing plenary review of decisions fully disposing of Hearing Department proceedings following default].)

Before us, Zhang urges a variety of contentions as to the impropriety of entry of her default, as well as her claim that the Rules of Procedure allowing disciplinary charges to lead automatically to disbarment deprive her of due process. As the facts show, the hearing judge denied OCTC's petition for disbarment and recommended a discipline after considering all relevant factors. (See discussion *post*.)

Zhang's other contentions alleging error in the entry of her default or in not setting it entirely aside were presented twice to the hearing judge and to us. We twice denied Zhang relief in earlier interlocutory reviews. We have no basis to consider the issues again. (*In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. at p. 355.)

II. ZHANG'S MISCONDUCT WAS AMPLY ESTABLISHED

The NDC notified Zhang prominently that if she defaulted, she would no longer be permitted to participate in the proceedings. (Rule 5.82(3).) Upon entry of Zhang's default, the hearing judge deemed the facts set forth in the charges of the NDC admitted, as authorized by

rule 5.82(2). His decision made findings consistent with the admitted charges in the three counts charged against Zhang. We adopt those findings which we summarize, based on the admission of the allegations of the NDC. As to count one, in May 2011, Zhang willfully failed to maintain such actions only as appear to her to be legal or just, proscribed by section 6068, subdivision (c). She violated section 6068, subdivision (c), by filing on behalf of herself and Booloon Inc. (a corporation formed by Zhang and her brother), a suit in Los Angeles County Superior Court that was without merit due to the same superior court's dismissal of an earlier suit also brought by Zhang and Booloon, Inc., naming the same parties and alleging the same facts and same legal theories arising from the same transaction.⁴

As to counts two and three, we also adopt the hearing judge's findings, which we summarize collectively: Zhang willfully violated section 6068, subdivision (o)(3), by failing to report to the State Bar, within 30 days of having knowledge of them, the imposition of judicial sanctions against Zhang in January 2012 of \$10,982 in a later *Booloon* action discussed *ante*, and of judicial sanctions imposed against Zhang in November 2012 of \$1,500 and \$4,756 in the later *Booloon* case.

Although some of Zhang's contentions before us as to culpability are unclear, she does contend, without citation of any authority, that evidence is required to find her culpable beyond the admitted allegations of the NDC. We find that Zhang's position is without merit, since no evidence beyond the admission of allegations of the NDC is required to prove the facts if sufficient to support the charges, once an attorney defaults. (*In the Matter of Carver, supra*,

⁴ See *Ricard v. Grobstein, Goldman, Stevenson, Siegel, LeVine & Mangel* (1992) 6 Cal.App.4th 157, 161-162 (court has power to sustain demurrer without leave to amend to later civil action brought in same court as previous one filed against same parties, and arising from same claim of primary right, where plaintiff's purpose was solely to circumvent ruling in first court action, rather than to seek direct review of first court action; second action treated as filed for improper purposes and warranted imposition of sanctions).

5 Cal. State Bar Ct. Rptr. at p. 355 [rule 5.82]; *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602, 605 [Trans. Rules Proc. of State Bar, rule 552.1].)

Zhang also points to her conduct in the *Booloon v. Google* litigation at issue in this proceeding, that she sued as a *party* to the proceeding, not as *counsel* to a party. She contends also, without citation to apt authority, that neither section 6068, subdivision (c), nor section 6068, subdivision (o)(3), extends to conduct which she took in litigation she commenced as a party. Again, she is incorrect. First, as discussed *ante*, the limited evidence in this record shows that she was not only representing herself as a party, but was also representing a corporation, Booloon, Inc., which she formed with her brother. However, even if Zhang had represented only herself as a party, the language of neither statute is limited to an attorney's actions taken only in representing clients. Both statutes would also apply to actions taken by a member of the State Bar in self-representation. Decisions are in accord. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 187-188 [attorney who filed frivolous personal appeals and motions against others for delay and harassment found culpable, inter alia, of violating § 6068, subd. (c), and § 6068, subd. (o)(3)]; see also *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1041-1043 [unjust civil suit filed by Sorenson for his law firm associate employee over minor billing dispute with court reporting firm as to cost of deposition services violated § 6068, subd. (c)].)

III. THE HEARING JUDGE'S RECOMMENDED DISCIPLINE WAS FAIR AND WARRANTED

We begin our analysis of the recommended degree of discipline by consulting the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.⁵ (*In re Silvertan* (2005) 36 Cal.4th 81, 91.)

⁵ The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards, and all further references to standards are to this source.

We start with a prime point of the standards, central to our function and cited by the hearing judge below, that the purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1; e.g., *Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Standard 2.9 guides discipline for Zhang's conduct in maintaining a frivolous action. Actual suspension is the presumed sanction for such conduct if it resulted in significant harm to an individual or the administration of justice and did not demonstrate a pattern of misconduct. For filing a frivolous action resulting only in harm, reproof or suspension is the presumed sanction.

Standard 2.12 (b) presumes that reproof is the sanction for Zhang's conduct in failing to report judicial sanctions under section 6068, subdivision (o)(3).

Since Zhang committed both violations in this proceeding, the standards guide the more severe sanction as the recommended one. (Std. 1.7(a).) Here, that is standard 2.9 for Zhang's maintaining a frivolous action.

The standards provide for consideration of mitigating and aggravating circumstances. Zhang must prove mitigating ones by clear and convincing evidence (std. 1.6), and OCTC must prove aggravating circumstances by clear and convincing evidence (std. 1.5).

We adopt the hearing judge's analysis of mitigation and aggravation below. The hearing judge found only one factor in mitigation that Zhang's lack of prior discipline over eight years of practice was entitled to some consideration, noting decisional law that it did not deserve significant mitigating weight given the relatively brief amount of Zhang's length of practice. (Std. 1.6(a); *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295

[period of just over eight years of practice prior to misconduct is mitigating, but not deserving of significant weight].)

The hearing judge properly considered Zhang's multiple acts of misconduct to be aggravating (std. 1.5(b)), but he concluded correctly that the State Bar did not prove clearly that Zhang's misconduct caused significant harm to warrant aggravation under standard 1.5 (j).

Balancing these few factors against the substantive standard applicable here (std. 2.9(b)) shows that the hearing judge's recommended 30-day suspension, as part of a larger stayed suspension, is well within the range of reproof to suspension guided by standard 2.9(b). It is also the discipline imposed in a comparable decision for violation of section 6068, subdivision (c), relied on by the hearing judge, *Sorensen v. State Bar*, *supra*, 52 Cal.3d 1036.

In *Sorensen*, the attorney had no discipline in about 11 years of practice prior to the misconduct, although that factor was not expressly noted in fixing the discipline. The facts in *Sorensen*, however, show a much greater harm to the defendant of Sorensen's litigation than occurred here. Moreover, the Supreme Court found that not only did Sorensen violate section 6068, subdivision (c), but also violated section 6068, subdivision (g), by pursuing a course of action against the court reporter impelled by spite and vindictiveness to seek redress out of all proportion to the minor amount at issue. (*Id.* at pp. 1042-1043.)

The case before us lacks the evidence of oppression or significant harm found in *Sorensen*. Nevertheless, it presents two counts of Zhang's culpability in failing to report court-ordered sanctions—misconduct not found in *Sorensen*. OCTC states that reliance in this case by the hearing judge on the 30-day actual suspension, together with a longer probationary suspension, which was also imposed in *Sorensen*, was neither arbitrary or unreasonable, and was appropriate. We agree. *Sorensen* is an apt guide to a fair degree of discipline in this case and we adopt the hearing judge's recommendation of that discipline.

IV. RECOMMENDATION

For the foregoing reasons, we recommend that Qin Zhang be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Zhang be placed on probation for two years on the following conditions:

1. She is suspended from the practice of law for the first 30 days of the period of her probation.
2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.
3. Within ten days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.
6. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
7. Within thirty days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Zhang be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

STOVITZ, J.⁶

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.

⁶ Honorable Ronald W. Stovitz, Retired Presiding Judge of the State Bar Court, serving as Review Department Judge Pro Tem by appointment of the California Supreme Court.