STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **JULIE L. WOLFF**, **Member No. 142531**, A Member of the State Bar.	)	**Case No. 04-O-15655-PEM** **DECISION**

I. Introduction

In this contested matter, respondent **Julie L. Wolff** is charged with three counts of misconduct in one client matter. The charged misconduct includes (1) failure to perform with competence; (2) failure to return a client file; and (3) failure to communicate. The court finds, by clear and convincing evidence, that respondent is culpable of two of the three charged acts of misconduct.

In view of respondent's misconduct and the aggravating and mitigating evidence, the court recommends, among other things, that respondent be suspended from the practice of law for 18 months, that execution of suspension be stayed, that she be placed on probation for two years with conditions, including actual suspension of six months from the practice of law.

II. Pertinent 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 April 4, 2006. On May 2, 2006, respondent filed a response to the NDC.

A three-day trial was held on November 14, 15, and 28, 2006. The State Bar was represented in this proceeding by Deputy Trial Counsel (DTC) Manuel Jimenez. Respondent appeared at trial in propria persona.

The court initially took this proceeding under submission on November 28, 2006, after the parties had presented their closing arguments. On November 29, 2006, the State Bar filed a "Notice of Motion and Motion to Reopen Record; Request for Judicial Notice; Memorandum of Points and Authorities; Declaration of Manuel Jimenez" (request to reopen). On December 12, 2006, respondent filed an opposition to the State Bar's request to reopen. The State Bar filed its response to respondent's opposition on December 18, 2006. On December 26, 2006, the court vacated the November 28, 2006 submission date and ordered that the matter stand resubmitted on December 26, 2006, following the court's denial of the State Bar's request to reopen.

On January 5, 2007 the State Bar filed a "Notice of Motion and Motion to Augment/Correct the Record; Request for Judicial Notice; Memorandum of Points and Authorities; Declaration of Manuel Jimenez"(request to augment the record), requesting that the court take judicial notice of *In the Matter of Julie L. Wolff* (Review Dept., December 21, 2006, No. 00-O-13294) __ Cal. State Bar Ct. Rptr. ___. The State Bar also requested that the court consider the review department's decision in that prior case as aggravation in this matter. Respondent did not file an opposition to the request to augment the record.

The court has considered the issues set forth in the State Bar's request to augment the record. Accordingly, good cause having been shown, the State Bar's request to augment the record and request for judicial notice is hereby **GRANTED**.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1989, and has since been a member of the State Bar of California.

B. The Hoffman Matter

On July 8, 2004, Kurt Hoffman (Hoffman) hired respondent to represent him in his marital dissolution matter. Hoffman paid respondent $4,000 in advanced fees. Prior to hiring respondent, Hoffman and his wife had started the dissolution process by working with a mediation counselor at the Law and Mediation Office of Delzer and Associates.

On July 22, 2004, respondent sent a letter to Robert Roth(Roth), the attorney for Hoffman's wife. In her letter to Roth, respondent identified herself as Hoffman's attorney, requested that Roth not contact Hoffman, stated that she would be filing a response in the dissolution proceeding, and invited Roth to contact her so that they could discuss the issues in the case.[1]

On July 23, 2004, Hoffman met with respondent and provided her with pertinent documents. July 23, 2004, was the last time Hoffman met with respondent.

On August 5, 2004, respondent wrote a letter to Roth, requesting that his client, Mrs. Hoffman, not make any modifications to the community property home.

On or about August 25, 2004, Roth wrote to respondent, providing her with Mrs. Hoffman's edits to the marital settlement agreement (MSA) ,which had been drafted on behalf of Hoffman and Mrs. Hoffman by the Law and Mediation Office of Delzer and Associates. In his letter, Roth requested that respondent inform him of whether the edits were acceptable. Respondent received Roth's August 25, 2004 letter; but, she did not respond to it.

On or about September 30, 2004, Roth again wrote to respondent, stating that he was still awaiting her response to his August 25, 2005 letter regarding the proposed changes to the MSA. The evidence is not clear and convincing that respondent received the September 30, 2004 letter.

On October 25, 2004, Roth sent yet another letter to respondent, pointing out that respondent had not responded to the August 25 or September 30, 2004 letters regarding the proposed edits to the MSA and had not filed a response to the petition for dissolution or a substitution of counsel in the dissolution matter. Respondent received the October 25, 2005 letter, but did not respond to Roth.

On October 18, 19, and 21, 2004, Hoffman telephoned respondent. On each of those occasions, Hoffman left a message requesting a call back from respondent regarding issues pertaining to his dissolution matter. Hoffman did not receive a response to any of his messages. In mid-October of 2004, Hoffman went to respondent's office, but found the blinds drawn, and

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[1]Respondent never filed a response to the dissolution proceeding.

the office locked. On October 28, 2004, Hoffman sent respondent a letter in which he expressed his frustration at not receiving any communications from respondent regarding his case since August 5, 2004, requested that respondent reply to his letter by November 5, 2004, and warned that if he received no response from respondent he would seek other counsel.

On November 8, 2004, respondent forwarded to Hoffman a copy of a schedule of assets and debts, income and expense declaration, and declaration of disclosure, which documents respondent had received from Roth, and which had been signed by Mrs. Hoffman on September 17 and 21, 2004. When respondent did not reply to Hoffman's October 28, 2004 letter by Hoffman's November 5 deadline, Hoffman decided to terminate respondent's services. On November 9, 2004, Hoffman retained John Murray (Murray) to represent him in his dissolution petition. On November 20, 2004, Hoffman wrote respondent a letter terminating respondent's services. In that letter Hoffman requested a full refund of the $4,000 which he had paid respondent. In early December 2004, respondent sent Hoffman a refund of the $4,000 advance fees, which she had received from him. Hoffman cashed the check from respondent on December 13, 2004.

On November 22, 2004, Murray wrote to respondent and requested Hoffman's file. However, respondent never provided the file to Murray. In his November 22 letter to respondent, Murray stated that if respondent did not advise him that she had filed a substitution of attorney when she assumed representation of Hoffman, Murray would execute a substitution from Hoffman in propria persona and file it with the court. Respondent testified that she did not file a substitution of attorney form with the court. However, Murray also never filed a substitution of counsel in Hoffman's dissolution matter.[2]

In October 2005, respondent informed Murray that respondent no longer wanted to retain Murray, but was going to proceed with the dissolution in propria persona. During his representation of Hoffman, Murray did not file a response to the petition for dissolution.

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[2]Murray, who represented Hoffman for 11 months, subsequent to respondent's representation of Hoffman, testified that he never filed a substitution of attorney form in Hoffman's marital dissolution matter.

The certified Certificate of Fact (Exhibit 3), which had been issued by the Sacramento Superior Court stated, "in the matter of Hoffman v. Hoffman a Dissolution of Marriage judgment was filed December 8, 2005, with the marriage being dissolved 'Upon Entry of Judgment' and that as both petitioner (Claire Hoffman) and respondent (Kurt Hoffman) had agreed to proceed with the case uncontested and in a default status, no response to be filed with the court was necessary. Accordingly, no response had been filed."

The Certificate of Fact also stated that "no document indicating any substitution of attorney in regards to [Kurt Hoffman] has been filed."

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))[3]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

The State Bar charges that respondent violated rule 3-110(A), by failing to file a substitution of counsel, by failing to file a response to the petition for dissolution, and by failing to respond to Roth's edits on the MSA.

It was respondent's position at trial that neither a response to the petition or a substitution of attorney form was necessary to finalize the Hoffman dissolution. Respondent testified that a response was not needed in the Hoffman dissolution matter because the parties had expressed, in writing, not anticipating Hoffman filing a response to the petition. A response would have only been necessary if Mrs. Hoffman would be proceeding with a default. Respondent contended that it is common practice to proceed with a dissolution proceeding without a response.

No evidence was presented that contradicted respondent's contentions. Moreover, the evidence (Exhibit 3), which shows that the dissolution was in fact finalized without a response or substitution being filed in the matter, supports respondent's testimony that neither a response to the petition or a substitution of attorney form was necessary to finalize the Hoffman dissolution.

Where a respondent's testimony is plausible and uncontradicted, it should be regarded as

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[3]References to rule are to the current Rules of Professional Conduct, unless otherwise stated.

proof of the fact to which a respondent testified, especially where contrary evidence, if it existed would be readily available but was not offered. (*In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128,137 fn.6.) Thus, the court does not find the evidence clear and convincing that respondent's not filing a substitution of counsel form or a response to the petition in the Hoffman dissolution amounted to a failure to perform with competence.

The State Bar also charges that respondent's failure to respond to Roth, regarding his edits to the MSA, violated rule 3-110(A). However, no evidence was presented at trial to show that Roth's proposed edits to the MSA were necessary to the finalization of the dissolution. Thus, the evidence is not clear or convincing that by not responding to Roth on the issue of his proposed edits, respondent failed to perform legal services with competence.

Accordingly, as the evidence that respondent violated rule 3-110(A) is not clear and convincing, the court dismisses count 1 with prejudice.

Count 2: Failure to Promptly Return Client File (Rule 3-700(D)(1))

Rule 3-700 (D)(1) requires an attorney whose employment has terminated to promptly release to the client, at the request of the client, all the client papers and property.

On November 20, 2004, Hoffman sent respondent a letter which stated that Hoffman was terminating respondent's services and that Hoffman would be seeking other counsel to represent him in the dissolution matter. On November 22, 2004, Murray sent respondent a letter stating that his firm had been hired by Hoffman to provide representation to Hoffman in his dissolution proceeding. Murray, as Hoffman's attorney, requested in that letter that respondent provide him with the contents of Hoffman's file or that respondent inform Hoffman's firm when the file could be picked up at respondent's office. Respondent, however, never returned the case file to Murray or to respondent.

Respondent's retainer agreement, introduced into evidence as Exhibit 1, reflects respondent's belief that the client is presumed to have the original file and it is the client's responsibility to provide a copy of that file to his subsequent attorney. The retainer agreement has a provision that states that no copies of the file will be provided or made available to another attorney absent advance payment from the client in the full amount demanded by the attorney

(i.e, respondent) at the time such a request for a duplicate file is made.

Respondent's retainer agreement violates rule 3-700(D(1), which requires that a client's file must be promptly returned upon termination of services to the client (or his attorney) upon request–regardless of any payment due from the client.

Finally, the court does not find credible respondent's testimony that on November 8, 2004, she met with Hoffman, terminated her services with him and gave him the client file. If respondent had returned the file to Hoffman, she would have contravened the terms of her own retainer agreement. Moreover, Hoffman would not have needed to send the November 20, 2004 letter to respondent, wherein he terminated respondent's services, if respondent had already terminated those services and returned the file at the purported November 8 meeting.

Accordingly, the court finds that upon respondent's termination of employment, she failed to return Hoffman's file, as requested, in wilful violation of rule 3-700(D)(1).

Count 3: Failure to Communicate (Bus. & Prof. Code, § 6068, subd. (m))

Business and Professions Code section 6068, subdivision (m),[4] provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Hoffman's October 18, 19, and 21, 2004 phone messages and by failing to reply to Hoffman's October 28, 2004 letter, respondent failed to respond to Hoffman's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

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).)[5] There are some compelling mitigating factors.

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[4]All references to section are to the Business and Professions Code, unless otherwise stated.

[5]All further references to standards are to this source.

Respondent testified as to her pro bono and community services. Respondent testified that she had performed a substantial amount of pro bono work in the dependency courts of Sacramento.[6] She testified regarding at least three cases on which she had worked pro bono.

In addition respondent attested to community work, including working as a volunteer at the Valley SPCA. Respondent testified that for the last five years she has been working to find homes for homeless cats and dogs. Respondent's exhibits E, F, G, and H are photographs of numerous of the 83 kittens and several large dogs for which respondent has found homes. The evidence presented by respondent is sufficient to establish that she is very involved and active with the SPCA in her community.

The court, finds respondent's uncontroverted testimony as to her pro bono work and community services credible, and assigns slightly less than moderate weight in mitigation to her pro bono and volunteer work. (Std. 1.2(e)(vi).) (See, *In the Matter of Crane & DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139,158, fn. 22 [a respondent's own testimony regarding the respondent's own community service may be considered as some evidence in mitigation, notwithstanding that it does not meet the requirement that good character be established by a wide range of references].)

B. Aggravation

There are several aggravating factors. (Standard 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2 (b)(i).) On December 21, 2006, the Review Department of the State Bar Court recommended that respondent be suspended for three years, stayed, placed on probation for three years on conditions, including that she be actually suspended for 18 months.[7] (*In the Matter of Julie L. Wolff* (Review Dept., December 21, 2006,

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[6]Respondent's testimony regarding her pro bono work in the dependency court is not undercut, nor disproved, by the fact that in one of her cases the appellate court was highly critical of her work.

[7]The recommendation of the review department has not yet become final. Although the recommendation of the review department is not yet final, a prior record of discipline includes recommended discipline that has not yet been approved by the court of last resort in the jurisdiction. (See, Rules Proc. of State Bar, rule 216 (a).)

No. 00-O-13294) __ Cal. State Bar Ct. Rptr. ___.) Respondent's misconduct included failure to inform clients of significant developments, failure to perform competently, failure to obey a court order, withdrawal from employment without court permission, and withdrawal from employment without protecting the clients' interests.

Respondent committed multiple acts or wrongdoing, including failure to return a client file and failure to communicate. (Std. 1.2(b)(ii).)

V. Discussion

The purpose of 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.)

Respondent's misconduct involved one client matter. The standards for respondent's misconduct provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7, 2.4(b), 2.6, and 2.10.)

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept., August 24, 2006, No. 99-O-12923) __Cal. State Bar Ct. Rptr. ___.) It has been long-held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are 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 urges that respondent be suspended for "no less than two (2) years actual suspension with conditions." In support of its recommended discipline, the State Bar cited standard 1.7, but failed to cite any case law in support of its recommendation.

The court notes that the California Supreme Court has declined to rigidly apply standard 1.7, even in cases far more egregious than that of respondent's. In *Arm v. State Bar* (1990) 50 Cal.3d 763, the Supreme Court did not disbar an attorney with three prior disciplinary records. Instead, the Supreme Court actually suspended him for 18 months with a five year stayed

suspension and a five year probation. In *Blair v. State Bar* (1989) 49 Cal.3d 762, the court similarly declined to rigidly apply standard 1.7, even though the attorney had three prior disciplinary records. Here respondent has one, not three prior disciplinary records.

The court also finds the following cases to be instructive.

In *Lester v. State Bar* (1976) 17 Cal.3d 547, the Supreme Court actually suspended an attorney for six months for failing to perform services in four matters, failing to refund any portion of advanced fees, failing to communicate with clients, and with misrepresentation. Aggravation included his lack of candor before the State Bar and general lack of insight into the wrongfulness of his actions.

The Supreme Court in *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074 imposed a two-year actual suspension on an attorney who had abandoned four clients, failed to return unearned fees, failed to communicate with three clients, made misrepresentations to a client regarding her case status and failed to cooperate with the State Bar. The attorney also defaulted in the disciplinary proceeding. Here, respondent's misconduct is not nearly as egregious as that of Bledsoe. Here, respondent failed to communicate with one client and failed to return the client file. Unlike the attorney in Bledsoe, she immediately returned all advanced fees.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney, who had no prior record of discipline in 12 years of practice, was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed to perform competently which caused his client to lose her case. He also improperly held himself out as entitled to practice law by misleading his client into believing he was still working on her case while he was on suspension for not paying his State Bar dues. In addition, he defaulted in the disciplinary proceeding. Here, respondent failed to communicate with her client and to return the client file. Although respondent's misconduct is less serious than Johnston's, because respondent has a prior record of discipline, her discipline should be more than 60 days of actual suspension.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney abandoned two clients and engaged in the unauthorized practice of law while under actual suspension. The Supreme Court

found that the attorney's actions evidenced a serious pattern of misconduct whereby he willfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes. (*Id*. at p. 612.) He also had a prior record of discipline for similar misconduct and showed a lack of insight into the impropriety of his actions. As a result, he was actually suspended for six months with a stayed suspension of two years upon conditions of probation. Her, respondent's current misconduct is less serious than that of Farnham's. Respondent's misconduct involved only one client matter and respondent did not engage in any acts of misrepresentation.

Finally, in *Stuart v. State Bar* (1985) 40 Cal.3d 838, the attorney failed to communicate with a client and lost his client's file. In aggravation, the client lost his opportunity to pursue his case, and the attorney had a prior record of discipline. The Supreme Court concluded that a one year stayed suspension with conditions, including a 30 days actual suspension was appropriate.

In this matter, the gravamen of respondent's misconduct is her failure to communicate with her client in one client matter, aggravated by the fact that respondent has a prior record of discipline. In recommending discipline, the "paramount concern is the protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The court finds the State Bar's recommendation of two years actual suspension to be too harsh. Therefore, in view of respondent's misconduct, the standards in conjunction with the case law, and the mitigating and aggravating evidence, placing respondent on actual suspension for six months would be appropriate to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys.

VI. Recommended Discipline

Accordingly, it is recommended that **Julie L. Wolff** be suspended from the practice of law for 18 months, that execution of the suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first six months of probation;

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

3. 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 of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than (30) days, the report must be submitted on the next following quarter date; and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of probation period and no later than the last day of the probationary period;

4. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

5. 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;

6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the 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, 90015-2299, and passage of the test given at the end of the session. Arrangement to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from the Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rule 3201, Rules Proc. of State Bar.)

7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for 18 months that is stayed, will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Probation Unit, within one year of the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).) However, if the Supreme Court orders respondent to take and pass the MPRE in her prior matter (Review Dept., case No. 00-O-13294)), then she is not required to do so again in this matter.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraphs (a) and (c) of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. **Wilful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.**[8]

VII. Costs

The court recommends 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

[8]Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

and Professions Code section 6140.7 and as a money judgment.

Dated: February ___, 2007

PAT McELROY
Judge of the State Bar Court