

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No. **08-O-11124-LMA**
)
JOHN WARNER LAWSON,)
) **DECISION**
)
Member No. 224213,)
)
)
A Member of the State Bar.)

I. Introduction

In this default disciplinary matter, respondent **John Warner Lawson** is charged with three counts of professional misconduct in one client matter, including (1) failing to perform competently; (2) failing to communicate with client; and (3) committing an act of moral turpitude.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law in California for one year, that execution of suspension be stayed, and that he be suspended for a minimum of 30 days and until the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, rule 205).

II. Pertinent Procedural History

On April 30, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on July 13, 2010, and respondent was enrolled as an inactive member on July 16, 2010. The matter was submitted on August 3, 2010, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on January 19, 2003, and has since been a member of the State Bar of California.

A. The Milleur Matter

On or about July 14, 2004, Leigh Milleur hired respondent to represent her in a personal injury matter against Madrona Manor.

On or about July 8, 2005, respondent filed, in Sonoma County Superior Court, *Leigh Milleur v. Madrona Manor Wine Country Inn & Restaurant, Inc.* (the Milleur case), case No. 237015.

On or about November 7, 2005, a Case Management Conference ("CMC") was held in the Milleur case. Respondent sent substitute counsel to the CMC. The court noted that respondent had failed to provide a CMC Statement. The court scheduled a further CMC for March 6, 2006. The court further required a CMC Statement filed 15 calendar days prior to the

CMC. Failure to file the CMC would result in the matter being dropped from the calendar. The minutes of the CMC were served, by mail, on respondent at his address of record.

On or about March 6, 2006, a CMC was held in the Milleur case. The court sent the case to alternative dispute resolution, to be completed by September 1, 2006. The case was set for trial on October 20, 2006.

On or about October 6, 2006, respondent and opposing counsel submitted a Stipulation and Proposed Order Re Continuance of Trial. The Stipulation was denied "Good Cause Not Shown."

On or about October 20, 2006, the Trial Call Calendar was made. On this date the Milleur case was called. Respondent was not present at the Trial Call. The court noted that it had received the Stipulation to Continue, but that good cause was not shown. The matter was passed to see if the Judicial Assistant had contact with respondent. The case was recalled; no contact with respondent had been made. The case was dismissed without prejudice for lack of prosecution. The minutes of the Civil Trial Call were served, by mail, on respondent at his address of record. Respondent received the minutes.

As of on or about October 20, 2006, respondent knew that the court had dismissed the Milleur case.

Between on or about October 20, 2006, and on or about August 28, 2007, Milleur made repeated inquiries of respondent asking for the status of her case. Respondent did not inform Milleur that her case had been dismissed.

On or about August 28, 2007, Milleur terminated the services of respondent with respect to the Milleur case.

As of on or about October 20, 2006, through at least August 28, 2007, respondent took no action on the Milleur case or inform Milleur that it had been dismissed.

On or about October 17, 2007, Milleur filed a motion to reopen the Milleur case. The motion was opposed. On or about January 15, 2008, the court reinstated the case and reopened discovery.

During the period from October 20, 2006, through at least August 28, 2007, respondent repeatedly misrepresented to Milleur the status of the Milleur case, including but not limited to the following dates:

- January 2007 – Respondent misrepresented to Milleur that he would be meeting with the judge to set final discovery, schedule a settlement conference and set a Master Calendar date to get a new trial date.
- February 27, 2007 – Respondent misrepresented to Milleur that he would push the judge for a settlement conference date within the next 21 days.
- March 2007 – Respondent misrepresented to Milleur that he had scheduled the deposition of defendant's medical expert for March 13, 2007. Before March 13, 2007, respondent misrepresented that the deposition had been cancelled by the expert. Respondent claimed to Milleur that he might have to go to the "referee" to obtain an order for the expert to attend the deposition.
- May 2007 – Respondent misrepresented to Milleur that he met with the judge on May 9, 2007. Respondent told Milleur that the judge wanted to see all the paper work within two weeks. Respondent also told Milleur that the new trial date had been vacated and that the parties were to submit briefs to the judge for a "neutral evaluation."

- June 2007 – Respondent misrepresented to Milleur that the judge wanted to see all “hard documents” and that the judge would let the parties know within the next two weeks as to how he would rule.

Conclusions of Law

Count 1(A): Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))¹

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Milleur of the dismissal of the Milleur case, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 1(B): Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))²

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

By failing to appear at the Trial Call on October 20, 2006, and by allowing the Milleur case to be dismissed, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 1(C): Moral Turpitude (Bus. & Prof. Code, § 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

¹ References to sections are to the provisions of the Business and Professions Code.

² References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

By repeatedly misrepresenting the Milleur case status to his client and concealing its dismissal from her, respondent committed an act involving moral turpitude and dishonesty in willful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are two aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing by abandoning the Milleur case and by making repeated misrepresentations to Milleur. (Std. 1.2(b)(ii).)

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of

³ Future references to standard(s) or std. are to this source.

sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.3, 2.4(b), and 2.6 apply in this matter.

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, 91-92; *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.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member’s willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges 90 days of actual suspension and cited several cases in support of its recommended level of discipline, including *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

The court finds *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716 to be instructive. There, the attorney was suspended for six months, stayed, with two years of probation and no actual suspension for failing to communicate with clients, failing to promptly return client file, and improperly withdrawing from employment in three matters. His five years of discipline-free practice is of little weight in mitigation. Unlike respondent, the attorney participated in the proceedings.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Instead of cooperating with the State Bar, respondent defaulted in this disciplinary proceeding. Therefore, balancing all relevant factors – respondent’s misconduct, the standards, the case law, and the aggravating evidence, the court concludes that placing respondent on a suspension for a minimum of 30 days would be appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommendations

A. Discipline

Accordingly, the court hereby recommends that respondent **John Warner Lawson** be suspended from the practice of law in California for one year, that said suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 30 days. He is to

remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent remains suspended for two years or more as a result of not satisfying the preceding conditions, he will remain suspended until he has shown proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Standard 1.4(c)(ii) and Rules Proc. of State Bar, rule 205.)

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

If respondent remains actually suspended for 90 days or more, he must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of this order. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁴

⁴ 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.)

D. Costs

It is further 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.

Dated: October _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court