FILED FEBRUARY 26, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **09-O-13903-RAH;**
	)	**11-O-15563 (Cons.)**
STEVEN ANTHONY GUILIN,	)	
	)	
Member No. 225982,	)	**DECISION AND ORDER**
	)	
A Member of the State Bar.	)	
	)	

Introduction[1]

This matter involves a Stipulation Re Facts, Conclusions of Law and Disposition executed by the State Bar of California (State Bar) and respondent Steven Anthony Guilin, and, thereafter, approved by the State Bar Court. That matter was later returned by the California Supreme Court for further consideration.

Significant Procedural History

On March 17, 2011, a Notice of Disciplinary Charges was filed in case number 09-O-13903. On January 31, 2012, respondent signed a Stipulation Re Facts, Conclusions of Law and Disposition (Stipulation) in the above-captioned matters. On February 2, 2012, the State Bar also signed the Stipulation, which was approved, as modified, by the Honorable Richard A. Platel on February 21, 2012, and filed by the State Bar Court on February 23, 2012.

[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.

On August 27, 2012, the Supreme Court issued an order in case No. S201790 returning the Stipulation "for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silverton* (2005) 36 Cal.4th 81, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)"

On November 1, 2012, the State Bar filed a motion for an order permitting limited modification of the returned Stipulation and to file a Notice of Disciplinary Charges. Specifically, the State Bar sought limited modifications of the aggravation and mitigation set forth in the Stipulation. Attached to the motion was a proposed Notice of Disciplinary Charges for case No. 11-O-15563. Respondent did not file a response to the motion. On November 28, 2012, the State Bar withdrew its motion. Trial in this matter was held on December 3, 2012, on the issue of the appropriate level of discipline. The State Bar was represented by Jessica Lienau. Respondent appeared in propria persona.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 24, 2003, and has been a member of the State Bar of California at all times since that date.

Case No. 09-O-13903 - Leung

Facts

On December 21, 2008, Ellen Leung (Leung) hired respondent to represent her brother, Luo Mao Chen (Chen), in an immigration matter requiring the filing of a petition for writ of habeas corpus. On December 21, 2008, Leung paid respondent $1,000 in advanced fees for his services. In January 2009, Leung paid respondent an additional $500 in fees. At the time Leung hired respondent, on December 21, 2008, Chen was in the custody of the United States Department of Homeland Security, Immigration and Customs Enforcement. Respondent agreed that he would pursue a petition for writ of habeas corpus on Chen's behalf to gain Chen's release.

On January 20, 2009, respondent visited Chen at a federal correctional facility in San Diego and reviewed the facts of the case and proposed an action plan. On January 30, 2009, respondent filed a petition for writ of habeas corpus in the United States District Court, Southern District of California, entitled *Luo Mao Chen v. Michael Chertoff, Secretary of the Department Homeland Security et al*., case number 09-CV-0185MMA-JMA (the Chen case). Respondent filed the petition for Chen, in pro per, rather than identifying himself as counsel for Chen. Prior to filing the petition in the Chen matter, respondent did not provide Chen an opportunity to review a draft of the petition. In addition, respondent signed Chen's name to the petition verification without Chen's permission.

At no time did respondent disclose to the court that Chen did not sign the verification and that respondent signed Chen's signature for him. When respondent filed the petition in the Chen case, he knew that Chen's name had been signed to the verification without any indication that someone was signing for Chen. Respondent also knew that Chen had not reviewed the petition nor had he authorized his signature on the verification. Respondent intentionally filed the petition with the Court without informing the court that someone had signed Chen's name to the verification.

After filing the petition in the Chen case, respondent took no action to serve the petition on the necessary federal agencies or otherwise advance the petition after it was filed. In April 2009, Leung spoke to respondent and informed him that she was told by the clerk of the court that no proofs of service on the necessary federal agencies had been filed with the court. Respondent denied that such service was necessary.

On May 8, 2009, Leung hired new counsel, Jonathan Montag (Montag), to represent Chen in the Chen case. On the same date, Montag filed a notice of appearance in the Chen case. Montag then served the relevant federal agencies and filed the necessary proofs of service. On

May 26, 2009, the court in the Chen case filed an order to show cause why the petition should not be granted. Before the matter was heard, Chen was released from custody, and the petition was dismissed as moot.

At no time did respondent provide an accounting to Chen or Leung for the $1,000 he had received in advanced fees for legal services in the Chen case. Respondent did not earn all of the $1,500 received from Leung on behalf of Chen for his services in the Chen case.

Conclusions

Count One - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

By submitting the verified petition when he knew that Chen had not reviewed it and had not signed the verification and without indicating that someone had signed the verification for Chen, respondent, through gross negligence, sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in violation of Business and Professions Code section 6068, subdivision (d).

Count Two - (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.

By not obtaining Chen's verification on the petition and not taking action to serve the petition on the necessary federal agencies or otherwise advance the petition after it was filed, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Count Three - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

By not accounting to Chen or Leung for the $1,000 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

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.

By not refunding to Chen or Leung any of the $1,000 as unearned fees, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 11-O-15563 - Garcia

Facts

On May 31, 2007, Norma Garcia (Garcia) was placed in removal proceedings at the U.S. Immigration Court by the U.S. Department of Homeland Security, Immigrations and Customs Enforcement, File No. A88-170-004. On November 27, 2007, Garcia hired respondent to represent her in the removal proceedings that were initiated against her on May 31, 2007. On November 27, 2007, Garcia paid $1,250.00 in advance attorney fees to respondent.

Respondent made an appearance on Garcia's behalf in U.S. Immigration Court, File No. A88-170-004 on February 1, 2008. At that time, while respondent was present in court, the Immigration Court set the matter for hearing on December 9, 2009, and set the deadline for the filing of relief applications for June 17, 2008. After the February 1, 2008 appearance,

respondent requested an extension for the filing of relief applications on June 16, 2008, and the court granted respondent an extension until July 16, 2008, to file any relief applications.

On July 16, 2008, respondent failed to file a relief application on Garcia's behalf in U.S. Immigration Court, File No. A88-170-004. On July 16, 2008, respondent filed a second request for an extension for the filing of relief applications in U.S. Immigration Court, File No. A88-170-004. On August 7, 2008, the court, in U.S. Immigration Court, File No. A88-170-004, denied respondent's July 16, 2008 request for an extension and issued an order that Garcia's case would be dismissed as abandoned. Respondent received notice of the Court's decision on August 7, 2008. On November 19, 2008, an INS Officer arrived at Garcia's residence with a deportation order.

On November 19, 2008, Garcia went to respondent's office and met with respondent's non-attorney assistant Manuel Mejia (Mejia), who told Garcia that respondent would file a motion to reopen Garcia's matter. On November 21, 2008, a Motion to Reopen was filed with the U.S. Immigration Court, File No. A88-170-004, on Garcia's behalf, purportedly by California attorney George Siddell (Siddell). The Motion to Reopen purports to have been both prepared by and signed by Siddell. However, Siddell neither prepared nor signed the Motion to Reopen.

On or about November 21, 2008, a Notice of Entry of Appearance as Attorney, indicating that Siddell was now the attorney for Garcia, was filed with the U.S. Immigration Court. This document purports to have the signature of both Siddell and Garcia.

Prior to the filing of the Motion to Reopen on November 21, 2008, Garcia had never met or had any communication whatsoever with Siddell, nor was he given an opportunity to review the Motion to Reopen. Garcia did not sign the Notice of Entry of Appearance as Attorney. Rather, respondent or his employee signed Garcia's name to the Notice of Appearance of Attorney.

Prior to November 21, 2008, Siddell had no communication with respondent about Garcia's case nor did Siddell give respondent permission to file a Motion to Reopen on Garcia's behalf in Siddell's name or a Notice of Entry of Appearance as Attorney in Siddell's name. Respondent prepared the Motion to Reopen and filed it with a caption indicating that Siddell had prepared the Motion to Reopen, instead of indicating that respondent had prepared the Motion. Respondent signed Siddell's name to the Motion to Reopen as well as the Notice of Entry of Appearance of Attorney without Siddell's permission.

At no time did respondent disclose to the court that Siddell did not sign or prepare the Motion to Reopen and that respondent in fact prepared the Motion to Reopen and signed Siddell's name for him. At no time did respondent disclose to the Court that Siddell did not sign the Notice of Entry of Appearance as Attorney, but that respondent signed Siddell's name for him. When respondent filed the Motion to Reopen and the Notice of Entry of Appearance as Attorney in the Garcia case, he knew that Siddell's name had been signed to the Motion and the Notice without any indication that someone was signing for Siddell. Respondent also knew that Siddell had not reviewed either the Motion or Notice or authorized his signature on either document. Respondent intentionally filed the Motion and the Notice with the Court without informing the Court that someone had signed Siddell's name to these two documents for him.

At no time did respondent disclose to the Court that Garcia did not sign the Notice of Entry of Appearance as Attorney, but that respondent or his employee signed Garcia's name for her. When respondent filed the Notice of Entry of Appearance as Attorney in the Garcia case, he knew that Garcia's name had been signed to the Notice without any indication that someone was signing for Garcia. Respondent also knew that Garcia had not reviewed the Notice or authorized her signature on the document. Respondent intentionally filed the Notice with the Court without informing the Court that someone had signed Garcia's name to this document for her.

On December 11, 2008, the U.S. Immigration Court, in File No. A88-170-004, denied Garcia's Motion to Reopen as untimely.

Conclusions

Count One - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth]) and Count Two - (§ 6106 [Moral Turpitude])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

By submitting the Motion to Reopen to the court under the guise that it was prepared and signed by Siddell when respondent in fact prepared the Motion to Reopen and signed Siddell's name to it and did not indicate that someone had signed for Siddell; by filing the Notice of Appearance of Attorney for Siddell without Siddell's knowledge; by signing both Siddell's and Garcia's signatures to the Notice without their permission and without indicating to the court that someone had signed for Siddell and Garcia, respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in willful violation of section 6068, subdivision (d). The same facts also support a finding that respondent committed an act of moral turpitude in willful violation section 6106. However, since the same facts establish culpability under both statutes, the charges are duplicative, and the court will not give any weight in determining the recommended discipline in this matter to the violation of section 6106. (*In the Matter of Chesnut (*Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 175 [where same facts underlie both violations of sections 6106 and 6068, subdivision (d), in determining appropriate discipline, no weight given to section 6106 violation].)

Aggravation[2]

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent committed multiple acts of misconduct.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent has no prior record of discipline over many years of practice. Respondent has been admitted to practice law in California since 2003. However, the misconduct occurred in 2008. Five years is an insufficient amount of time to justify substantial mitigation credit for having no prior record. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67.) Further, any mitigation is reduced because the underlying misconduct is serious. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.) As such, the court accords no mitigation weight to respondent's lack of a prior record of discipline.

Candor/Cooperation to State Bar (Std. 1.2(e)(v).)

By entering into a stipulation, respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary investigation and proceedings prior to the filing of a Notice of Disciplinary Charges.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 provides that the primary purposes of disciplinary proceedings "are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

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

Standard 1.6(a) provides, in pertinent part, 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. Furthermore, standard 1.6(b) provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

The standards applicable to the misconduct in this matter are standards 2.2(b), 2.4(b), 2.6 and 2.10. The most severe sanctions are found in standards 2.2(b) and 2.6. Standard 2.2(b) provides that a violation of rule 4-100(B)(3) must result in at least a three month actual suspension, irrespective of mitigating circumstances. Standard 2.6 provides that violation of certain provisions of the Business and Professions Code, including section 6068, subdivision (d), must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

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.) As 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.)

Respondent has been found culpable of (1) violating his duty to employs means consistent with the truth and seeking to mislead the judge or judicial officer by an artifice or false statement of law or fact (two matters);[3] (2) failing to perform legal services with competence; (3)

[3] Respondent was also found culpable of violating section 6106; however, as noted above, as that charge is duplicative of the section 6068, subdivision (d) violation, the court does

failing to render appropriate accounts; and (4) failing to return unearned fees. In mitigation, respondent displayed spontaneous candor and cooperation to the State Bar. In aggravation, respondent committed multiple acts of misconduct.

The State Bar urges that the recommended discipline in this matter include a three-year stayed suspension and three years' probation on conditions including a two year actual suspension and until restitution and until he complies with standard 1.4(c)(ii). Respondent believes that two years' probation and a nine-month actual suspension is the appropriate discipline in this matter.

In determining the appropriate discipline to be imposed in this matter, the court has found *Aronin v. State Bar*, *supra*, 52 Cal.3d 276, instructive. In *Aronin*, the Supreme Court suspended the respondent for three years, the execution of which was stayed, and the respondent was placed on probation subject to certain terms and conditions, including a nine-month actual suspension. The respondent was found culpable of misconduct in four matters. The respondent was found culpable of violating (1) former rule 8-101(A) by failing to deposit client funds into a client trust account and commingling those funds with his own monies (two matters); (2) former rule 6-101 and section 6103 by failing to timely pay a court reporter's fees and by falsely stating that he had in his possession a cancelled check for the payment of those fees; (3) former rule 8-101(B)(4) by failing to return unexpended costs to his client; (4) sections 6106, 6103 and 6068, subdivision (a) by signing his clients' names to a pleading; and (5) former rule 8-101(A)(2) for improperly recording a deed of trust on his client's property before he was entitled to do so. The Supreme Court found no aggravating circumstances. In mitigation, the respondent had 17 years of

---

not give any weight in determining the recommended discipline in this matter to the section 6106 violation.

unblemished practice without prior misconduct, and the respondent was under stress at the time of his misconduct due to his wife's gambling.

Both *Aronin* and the present matter involve misleading conduct by signing others' names to documents to cause the court and others to believe that those individuals had, in fact, signed the documents when they had, in fact, not done so. However, respondent engaged in more extensive misleading conduct than the respondent in *Aronin*, as respondent filed three such misleading documents while *Aronin* involves only one document. Both matters also involve trust accounting violations, misconduct in connection with the performance of legal services, and failing to return funds (in *Aronin* it was costs; in the present matter it was unearned fees). However, the mitigating circumstances in *Aronin* are more significant, particularly the fact that the respondent in that case had practiced law for 17 years prior to his misconduct.

Accordingly, having considered the evidence, the nature and extent of the misconduct, the standards and the case law, the court concludes that a period of actual suspension somewhat greater to that imposed in *Aronin* is appropriate in this matter and is sufficient to protect the public, the courts and the legal profession from further wrongdoing by respondent.

Recommendations

It is recommended that respondent Steven Anthony Guilin, State Bar Number 225982, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation[4] for a period of two years, subject to the following conditions:

1. Respondent Steven Anthony Guilin is suspended from the practice of law for the first ten months of probation.

[4] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. Within 10 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 respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

7. Within one year after the effective date of the discipline herein, respondent 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 respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

8. Respondent must make restitution to Ellen Leung and Luo Mao Chen, jointly, in the amount of $1,000.00 plus 10 percent interest per year from December 21, 2008 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Ellen Leung or Luo Mao Chen, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

> Respondent must make restitution to Norma Garcia in the amount of $1,250.00 plus 10 percent interest per year from November 27, 2007 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Norma Garcia, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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

The order filed on February 23, 2012, approving, as modified, the parties' Stipulation Re

/ / /

/ / /

/ / /

Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby **VACATED**.

Dated: March _____, 2013

RICHARD A. HONN
Judge of the State Bar Court