

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: **10-O-07420-RAH**
)
LOUISA BELLE PENSANTI,)
) **DECISION and ORDER**
)
Member No. 200988,)
)
A Member of the State Bar.)

Introduction¹

In this disciplinary matter, respondent Louisa Belle Pensanti stipulated to culpability in three counts of professional misconduct in one client matter, including (1) failing to perform services competently; (2) failing to promptly return unearned fees; and (3) appearing for party without authority. Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) stipulated to disposition and the State Bar Court approved the stipulation.

In June 2012, the California Supreme Court returned this disciplinary matter for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

Thus, the sole issue in this matter is the level of discipline. Respondent maintained that the stipulated discipline of one-year stayed suspension and one-year probation was adequate

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.

while the State Bar urged that the level of discipline be increased to an additional actual suspension of two months. After further consideration of the recommended discipline in light of the applicable attorney discipline standards and case law and in view of respondent's mitigating evidence, including no prior disciplinary record in 12 years of practice, cooperation with the State Bar, and recognition of her wrongdoing, the court concludes that the original recommended discipline was sufficient to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. Accordingly, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that she be placed on probation for one year.

Significant Procedural History

On October 12 and 19, 2011, respondent and the State Bar, respectively, signed a Stipulation Re Facts, Conclusions of Law and Disposition. State Bar Court Hearing Judge Richard A. Honn approved the stipulation on November 3, 2011. The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving was filed on November 14, 2011.

On June 21, 2012, the Supreme Court issued an order that returned the stipulation for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

On August 31, 2012, the State Bar filed a motion for leave to file a notice of disciplinary charges. The court denied the motion on September 5, 2012.

Trial in this matter was held on September 19, 2012. At trial, the State Bar by oral motion again requested to renew the motion to file the notice of disciplinary charges. The court denied the motion.

The case was submitted for decision on September 19, 2012.

The State Bar was represented by Deputy Trial Counsel Monique T. Miller. Respondent was represented by attorney Michael E. Wine.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 1999, and has been a member of the State Bar of California at all times since that date.

Case No. 10-O-07420 – The Torres Matter

Facts

In August 2008, Eduardo Torres retained respondent for representation on appeal in *People v. Torres*, case No. B208896, Second Appellate District of California. The due date for the appellant's opening brief was September 22, 2008. Between May 27, 2008, and March 16, 2009, Torres's family paid respondent \$10,000 in advanced fees for her legal services on behalf of Torres.

On August 19, 2008, respondent notified the court by letter of her representation of Torres. On September 10, 2008, respondent filed a request for an extension of time to file the opening brief. On September 11, 2008, the court granted the extension.

On October 31, 2008, respondent filed a second request for an extension. On November 12, 2008, the court granted the requested extension with the caveat that no further extension would be granted.

On December 26, 2008, the court notified respondent by letter of her failure to timely file an opening brief. On February 27, 2009, the court dismissed Torres's appeal because respondent failed to file an opening brief.

On May 5, 2009, the court issued a remittitur, ending the Torres matter. On August 5, 2009, respondent sent Torres a letter, informing him that her office had not filed the appeal brief

and that she would take “all necessary measures in order to remedy the situation.” Thereafter, respondent failed to take action on behalf of Torres.

By failing to provide any legal service of value to Torres, respondent failed to earn the \$10,000 advanced fees paid by Torres’s family on his behalf.

In January 2010, Torres terminated respondent’s representation and retained new counsel. On January 21, 2010, attorney Jamie Harley mailed respondent a letter, informing respondent that she was taking over representation of the Torres matter and requesting a refund of the unearned advanced fees.

On January 25, 2010, Torres’s parents mailed respondent two letters, confirming respondent’s termination of Torres’s representation and Harley’s representation of Torres.

On February 26, 2010, Harley’s office mailed respondent a second letter, requesting a refund of the advanced fees to Torres. Respondent received the letter but did not provide a refund.

On March 2, 2010, without Torres’s authorization and consent, respondent filed a motion for recall of remittitur and reinstatement of appeal, claiming the default and dismissal of the appeal was caused by administrative and staffing problems. The court denied respondent’s motion, finding that respondent had virtually abandoned Torres.

On March 22, 2010, attorney Harley’s motion to recall remittitur and reinstate the appeal on behalf of Torres was granted.

On July 28, 2012, respondent fully repaid all restitution to Torres in the amount of \$13,254.74. Payment was made after disciplinary proceedings had commenced.

Conclusions

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 failing to provide any legal service of value to Torres and by failing to file an opening brief on behalf of Torres, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

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 Torres the \$10,000 unearned fees as requested by his new attorney, upon termination of her employment, respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of rule 3-700(D)(2).

§ 6104 – Appearing Without Authority

Section 6104 states: “Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension.”

By filing a motion for recall of remittitur and reinstatement of appeal after the client had terminated her employment and had retained new counsel, respondent, without authority, appeared for a party to an action, in willful violation of section 6104.

Aggravation²

There were no aggravating circumstances.

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.

Mitigation

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

Respondent has no prior record of discipline in the 12 years she has practiced law.

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

Respondent was candid and cooperative to the State Bar during disciplinary investigation and proceedings, including agreeing to a stipulation as to facts, conclusions of law and disposition.

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent has taken objective steps demonstrating some remorse which steps are designed to atone for her misconduct.

Respondent has joined the Solo and Small Firm Section of the State Bar. However, she has not attended any of its events or meetings.

Respondent has also submitted to the State Bar a new law office management plan. Under the new law office management plan, respondent speaks to all incoming clients on the telephone, rather than sharing those duties with another attorney. After being advised that it was improper, respondent also no longer asks for a non-refundable fee. An additional change is that all refund requests must be processed within two weeks.

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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of

imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.4(b), 2.6 and 2.10 apply in this matter. Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member's culpability of willfully failing 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 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

The most severe sanction is found at standard 2.6(a) which recommends suspension or disbarment for violation of section 6104, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing 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.) 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.)

Respondent has been found culpable, in one client matter, of failing to perform legal services with competence; not promptly refunding an unearned fee; and appearing for a party in an action without the authority to do so. There were no aggravating factors. Mitigating

circumstances included no prior discipline in 12 years of practice, recognition of her misconduct, and cooperation with the State Bar.

The State Bar contends that respondent should be actually suspended for two months, citing *Harris v. State Bar* (1990) 51 Cal.3d 1082 in support of its recommendation.

Respondent, on the other hand, argues that the original stipulated disposition – one year’s stayed suspension and one year’s probation – is the proper level of discipline, citing *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 in support of his argument.

The discipline imposed in several Supreme Court cases involving an attorney’s abandonment of a single client in situations where the attorney had no prior record of discipline ranged from no actual suspension to 90 days of actual suspension.

In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed a six-month stayed suspension and one-year probation with no actual suspension for the attorney’s one client abandonment in a marital dissolution matter. His inattention spanned one year. Although he had no prior record of discipline in five years of practice, his misconduct was aggravated by his failure to participate in the review department proceedings, which demonstrated his failure to appreciate the seriousness of the disciplinary charges against him.

In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Supreme Court imposed 30 days’ actual suspension for an attorney, who was acting as attorney for a trust and an estate for which he was also the executor, and who failed through neglect and inattention to fulfill important and material requirements of his office as executor for over five years, which ultimately resulted in his removal from office by the probate court. Aggravating factors included significant harm to the estate and a beneficiary and indifference toward rectification. In mitigation, the court considered the attorney’s 30 years of blemish-free practice, the lack of personal gain from the misconduct and the emotional and physical strain of caring for his terminally-ill mother.

In *Harris v. State Bar, supra*, 51 Cal.3d 1082, the attorney, admitted to practice 10 years earlier, neglected a personal injury matter for over four years and the client died during the pendency of the case, resulting in a considerable financial loss to the estate. The Supreme Court suspended her for three years, stayed, with an actual suspension of 90 days, due to the duration of the misconduct and the seriousness of the harm suffered as a result of the misconduct. The attorney showed no remorse or even an understanding that her neglect was improper.

In *In the Matter of Riordan, supra*, the attorney was suspended for six months, stayed, and placed on probation for one year for failure to perform services competently (failed to timely file an appellant's opening brief after obtaining eight extensions of time to file), failure to comply with Supreme Court orders and failure to timely report judicial sanctions. His 17 years of practice with no prior record of discipline was a significant mitigating factor.

Here, respondent's misconduct was not as extensive as those in *Harris, Layton*, and *Riordan*, and did not involve years of abandonment or cause serious harm, albeit the substituting attorney had Torres's appeal reinstated. Like *Van Sloten*, respondent's misconduct occurred for about a year. Her mitigation was more compelling than that of *Van Sloten* in that respondent participated in these proceedings and agreed to a stipulation and disposition to settle this disciplinary matter. And she had no prior record of discipline in 12 years of practice, whereas the attorney in *Van Sloten* had no prior record of discipline in only five years of practice.

Respondent now recognizes the underlying office management issues that contributed to the misconduct, and has formulated and submitted a new law office management plan. In addition, she is now a member of the Solo and Small Firm Section of the State Bar.

Accordingly, having further considered the evidence, the standards and case law, the court believes a period of stayed suspension and probation, among other things, is appropriate and sufficient to protect the public, the courts and the legal profession.

Recommendations

It is recommended that respondent Louisa Belle Pensanti, State Bar Number 200988, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation³ for a period of one year subject to the following conditions:

1. 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.
2. 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.
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. 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.
5. 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.

³ 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.)

6. 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.)

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.

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 November 14, 2011, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby vacated.

Dated: December _____, 2012

RICHARD A. HONN
Judge of the State Bar Court