

**PUBLIC MATTER
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 15-O-15603
)	
TERRI RAYNELL HANLEY,)	DECISION
)	
A Member of the State Bar, No. 199811.)	
_____)	

Introduction¹

In this contested disciplinary matter, respondent Terri Raynell Hanley (Respondent) is charged with four counts of misconduct, including unauthorized practice of law, collecting an illegal fee, failing to refund an unearned fee, and moral turpitude. Having considered the facts and the law, as well as the mitigation and aggravation, the court finds Respondent culpable of the alleged misconduct and recommends, among other things, a minimum period of actual suspension of 30 days and until payment of restitution.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) against Respondent on September 30, 2016. Respondent filed a response to the NDC on October 24, 2016.



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 January 25, 2017, the State Bar put on its case-in-chief and rested. The court then granted Respondent's motion to continue the trial, providing her more time to prepare her defense. On February 22, 2017, Respondent put on her defense.

The State Bar was represented by Supervising Senior Trial Counsel Robert Henderson. Respondent represented herself. This matter was submitted for decision on February 22, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 15, 1998, and has been a member of the State Bar of California at all times since that date.

Case No. 15-O-15603 – The Cullen Matter

Facts

On July 1, 2015, Respondent was suspended for failing to pay her State Bar membership dues. In or about that same date, Respondent became aware of her suspension.

On October 4, 2015, Denise and Dennis Cullen (the Cullens) met with Respondent to discuss whether she could represent them in a dispute with a neighbor and their homeowners' association (HOA). Although Respondent knew she was not entitled to practice law, she held herself out as entitled to practice and met with the Cullens. Respondent agreed to represent the Cullens and was hired to draft two letters on the Cullens' behalf: (1) a letter demanding that the HOA take action; and (2) a cease and desist letter to their neighbor.

Respondent did not inform the Cullens that ~~she was not~~ entitled to practice law.² On October 5, 2015, the Cullens provided Respondent with the HOA documents. On October 9,

² Respondent testified that she told the Cullens from the outset that she was not currently an active attorney. The court did not find Respondent's testimony on this subject to be credible in light of the credible testimony from Denise and Dennis Cullen, as well as the surrounding documentary evidence. Such evidence included the parties' exchanges by text, email, and social media, as well as the check the Cullens provided Respondent made out to "Terri Hanley Law Offices" with a notation on the memo line stating "Legal retainer fee." (See Exh. 3.)

2015, the Cullens paid Respondent \$750 in advanced attorney fees.

The Cullens repeatedly mentioned to Respondent that they needed her to perform the legal services for which she was retained as soon as possible. Respondent, however, did not provide the Cullens with any of the legal services for which she was retained between October 5 and October 21, 2015. Sometime between October 10 and October 22, 2015, the Cullens learned through the internet that Respondent was not entitled to practice law.

On October 22, 2015, the Cullens requested that Respondent either perform or return the \$750. Respondent replied that same day, stating that the State Bar was taking much longer than expected to switch her license back to active status, but that she anticipated being returned to active status that same day. (Exh. 4, pp. 44-45.) This was the first time Respondent told the Cullens that she was not entitled to practice law.

On October 22, 2015, Respondent was reinstated to the practice of law after paying her outstanding membership dues. She had borrowed money from a friend to pay her outstanding membership dues.

On October 24, 2015, the Cullens reported Respondent to the State Bar. In their complaint to the State Bar, the Cullens requested the return of their \$750 retainer due to Respondent "misleading [them to believe] she was eligible to practice law." (Exh. 6, p. 119.)

Respondent did not provide the Cullens with either of the letters she was retained to draft. Nor has she refunded any portion of the \$750 in advanced attorney fees.

Conclusions

Count One – § 6068, Subd. (a) [Unauthorized Practice of Law]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6126 provides that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise

practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor.³ By meeting with and agreeing to represent the Cullens in a legal dispute when she knew she was not entitled to practice law in California, Respondent held herself out as entitled to practice law when she was not an active member of the State Bar of California. Accordingly, Respondent willfully violated section 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

As illustrated below, the same facts and circumstances establish Respondent's culpability in Counts One and Two. The court therefore assigns no additional weight to Count One in determining the appropriate discipline. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 [appropriate resolution does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct].)

Count Two – Section 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. By meeting with and agreeing to represent the Cullens in a legal dispute when she knew she was not entitled to practice law in California, Respondent intentionally held herself out as entitled to practice law when she was not an active member of the State Bar, thus committing acts involving moral turpitude, dishonesty, and corruption, in willful violation of section 6106.⁴

³ The NDC did not allege that Respondent actually practiced law while she was not entitled.

⁴ See *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 588-589 [holding oneself out as entitled to practice law is violation of Business and Professions Code section 6106, proscribing acts of moral turpitude, dishonesty, and corruption]; compare with *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602 [unauthorized practice of law by suspended attorney did not involve moral turpitude where attorney reasonably believed he was entitled to practice law].)

Count Three - Rule 4-200(A) [Illegal Fee]

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. By charging and collecting \$750 for legal services when she was not entitled to practice law, Respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).

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. Respondent has yet to refund the \$750 attorney fee she charged the Cullens to draft the two letters. Respondent's fee was illegal and therefore unearned. Respondent's failure to refund the Cullens' unearned fees constitutes a willful violation of rule 3-700(D)(2).

Aggravation⁵

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Good Character (Std. 1.6(f).)

Respondent provided character evidence from three witnesses. Respondent's character witnesses consisted of one attorney and two long-time friends.⁶ Respondent's character witnesses attested to her honesty, intelligence, and good character. They also demonstrated an understanding of Respondent's misconduct. Respondent's good character evidence warrants limited weight in mitigation. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171 [testimony from only three character witnesses not entitled to significant weight in mitigation].)

No Prior Record of Discipline (Std. 1.6(a).)

Respondent was admitted to practice law in California in 1998, and has no prior record of discipline. Her nearly seventeen years of discipline-free conduct prior to the present misconduct warrant significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

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. 1.1.)

~~In determining the level of discipline, the court looks first to the standards for guidance.~~
(*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v.*

⁶ These witnesses testified telephonically and also provided declarations. The court notes that the declaration of William Coats did not contain an actual signature and the declaration from Monique Aw did not contain any signature at all.

State Bar (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

In this case, the standards call for a broad range of sanctions. (See standards 2.3(b); 2.10(b); and 2.11.) The most severe sanction is found at standard 2.11, which provides that disbarment or actual suspension is appropriate for an act of moral turpitude.

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.)

In its pretrial statement, the State Bar requested that Respondent be actually suspended for 30 days. At the close of trial, the State Bar increased its recommendation to a minimum of 90 days. Respondent, on the other hand, argued that her case should be resolved with an admonition.

In determining the appropriate discipline to be recommended in this matter, the court has found *In the Matter of Johnston, supra*, 3 Cal. State Bar Ct. Rptr. 585, to be instructive. In *Johnston*, an 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 that he was still working on her case while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary proceeding as well.

While the present case is somewhat less egregious than *Johnston*, the court is concerned by Respondent's willingness to hold herself out as entitled to practice, meet with clients, and accept legal representation and fees when she knew she was not authorized to practice law. While the court finds that the present matter warrants a lower level of discipline than *Johnston*, there is not sufficient justification to deviate from the actual suspension prescribed in standard 2.11.

Therefore, having considered the evidence, the standards, and the case law, the court concludes that, among other terms and conditions, a period of actual suspension of 30 days and until payment of restitution to the Cullens is sufficient to protect the public, the courts, and the legal profession.

Recommendations

It is recommended that respondent **Terri Raynell Hanley**, State Bar Number 199811, 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 probation⁷ for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first 30 days of probation, and will remain suspended until the following requirements are satisfied:
 - i. She makes restitution to Denise and Dennis Cullen in the amount of \$750 plus 10 percent interest per year from October 9, 2015 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Denise and Dennis

⁷ 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.)

Cullen, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

- ii. If she remains suspended for 90 days or more as a result of not satisfying the preceding condition, she 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. Failure to do so may result in disbarment or suspension; and
 - iii. If Respondent remains suspended for two years or more as a result of not satisfying the preceding condition, she must also provide satisfactory proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law before her actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
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 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.
 4. 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 of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
 5. Subject to the assertion of applicable privileges, 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.
 6. 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.

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.)

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

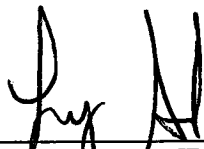
Multistate Professional Responsibility Examination

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, or during the period of Respondent's 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.

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.

Dated: March 16, 2017



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 16, 2017, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

TERRI R. HANLEY
634B 1ST ST
BENICIA, CA 94510 - 3212

- by fax transmission to:
- by email, addressed as follows:

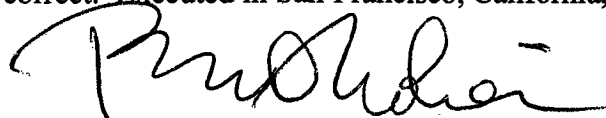
terrirhanley@gmail.com

robert.henderson@calbar.ca.gov

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROBERT A. HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 16, 2017.



Bernadette Molina
Case Administrator
State Bar Court