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MAY 27 2005

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

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In the Matter of)
SUE ELLEN CASTRELLON,)
Member No. 128823,)
A Member of the State Bar.)

Case No. 02-O-15336-RMT
DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

INTRODUCTION

In this disciplinary matter, Anthony Garcia appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent Sue Ellen Castellon did not appear in person or by counsel.

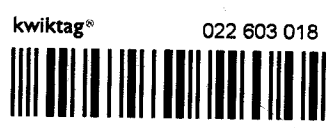
After considering the evidence and the law, the Court recommends, among other things, that respondent be disbarred.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on July 12, 2004, and was properly served on respondent on that same date at her official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On August 18, 2004, Respondent, through her then-counsel, David A. Clare, filed a

¹All future references to "section(s)" are to the Business and Professions Code unless otherwise specified.



1 response to the NDC.

2 On January 18, 2005, a substitution of attorney was filed indicating that Respondent was
3 now representing herself.

4 On January 19, 2005, a status conference order was properly served on Respondent at her
5 State Bar membership records address. The order advised her, among other things, that a trial
6 was set on the captioned matter for February 22, 2005, at 10:00 a.m.

7 On February 8, 2005, the State Bar properly served Respondent with a pretrial statement
8 which stated that her disbarment would be sought.

9 Respondent did not appear at trial on February 22. On February 22, 2005, the Court
10 entered respondent's default and enrolled her inactive effective three days after service of the
11 order. The order was properly served on her at her official address on that same date by certified
12 mail, return receipt requested. The return receipt bears a signature ("Battrick") and notes
13 delivery on February 24, 2005.

14 The matter was submitted for decision without hearing on February 22, 2005.

15 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16 The Court's findings are based on the allegations contained in the NDC as they are
17 deemed admitted and no further proof is required to establish the truth of those allegations.
18 (Section 6088; Rule 200(d)(1)(A), Rules Proc. of State Bar.) The findings are also based on any
19 evidence admitted.

20 It is the prosecution's burden to establish culpability of the charges by clear and
21 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
22 163, 171.)

23 **Jurisdiction**

24 Respondent was admitted to the practice of law in California on June 17, 1987, and has
25 been a member of the State Bar at all times since.

26 **Facts**

27 In January 1996, Thomas M. Woods retained Respondent to represent him in a dispute
28 with Woods' former wife, Denise. During that dispute, Woods became separated from his wife,

1 Tina, and Respondent also represented him in the dissolution of that marriage.

2 On September 18, 1997, a stipulated judgment was entered whereby Tina was ordered to
3 pay certain community debts. She did not comply with this order because she did not make
4 payments on student loans.

5 In August 1999, Respondent filed an Order to Show Cause for Woods in which he sought
6 modification of the division of debts by ordering that Woods assume certain financial obligations
7 and ordering Tina to repay him.

8 On June 6, 2000, Woods and Tina entered into a stipulation through their counsel
9 whereby Tina was to pay Woods \$40,000 in three installment payments to be made in 2000 as
10 follows: \$15,000 on June 16; \$15,000 on August 3; and \$10,000 on September 25. Tina made
11 the payments directly to Respondent. At the same time, Woods was negotiating with creditors to
12 try to reduce the amount of outstanding debt. The Court allowed Woods to keep any amount left
13 after the debts had been reduced.

14 On June 6, 2000, the same date the stipulation was filed, Respondent advised Woods that
15 she would not charge him any fees for the work she performed in 1999 and 2000 because it had
16 taken 10 months (from August 1999 to June 2000) to have the division of debts modified.

17 In June 2000, Respondent and Woods agreed that Woods would negotiate reductions in
18 the outstanding debts with the creditors and that Respondent would return to Woods any funds
19 that remained after the creditors had been paid. On November 22, 2000, Respondent
20 memorialized this agreement in an email she sent to Woods in which she stated: “[w]hen we
21 last spoke, I reminded you that the court is involved and since there are going to be funds going
22 back to you over and above the amounts paid to the creditors, the Court has to approve...”

23 On June 6, 2000, Respondent deposited into her Union Bank of California client trust
24 account (“CTA”) number 0630016959 Tina’s first payment in the amount of \$15,000.

25 On June 26, 2000, Respondent caused Union Bank to prepare three cashier’s checks to
26 Woods’ creditors. The checks totaled \$12,271.85, which left a balance of \$2749.15. Between
27 July 6 and 26, 2000, the balance in the CTA fell below \$2749.15 on various occasions including \

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1 the following:

2 <u>DATE</u>	<u>CTA BALANCE</u>
3 July 6, 2000	\$2700.59
July 7, 2000	2200.59
4 July 17, 2000	1225.59
July 20, 2000	725.59
5 July 27, 2000	327.59

6 On August 3, 2000, Respondent deposited into her CTA Tina's second payment of
7 \$15,000. After this deposit, Respondent's CTA should have contained \$17,749.15 of Woods'
8 funds; however, the balance fell on various dates, including:

9 <u>DATE</u>	<u>CTA BALANCE</u>
10 August 3, 2000	\$13,805.00
August 14, 2000	10,305.24
11 August 17, 2000	7,805.00
August 31, 2000	11,755.63
12 September 8, 2000	5,961.24

13 On August 18, 2000, Respondent wrote check number 1694 for her CTA in the amount of
14 \$15,000 to Key Bank USA, one of Woods' creditors. On the date Respondent wrote the check,
15 she knew that there were insufficient funds in her CTA.

16 Between August 18 and September 25, 2000, Respondent stopped payment on the check.

17 On September 25, 2000, Respondent deposited a total of \$14,955 into her CTA, including
18 Tina's third and final \$10,000 payment. Following this deposit, the CTA balance was
19 \$22,216.24. Respondent should have had at least \$27,749.15 of Woods' funds in her CTA.

20 On September 25, 2000, Respondent caused Union Bank to prepare a cashier's check for
21 \$15,000 to Key Bank USA, one of Woods' creditors, since there were now sufficient funds to
22 cover the check. After this check was issued, Respondent should have had at least \$12,749.15 in
23 her CTA for Woods. Between September 25 and December 29, 2000, the balance in her CTA
24 fell below \$12,749.15 on at least the following dates:

25 <u>DATE</u>	<u>CTA BALANCE</u>
26 September 29, 2000	\$7178.75
October 18, 2000	2205.24
27 October 24, 2000	204.24
28 December 29, 2000	750.50

1 Respondent dishonestly or with gross negligence misappropriated at least \$11,998.65².

2 On November 10, 2000, Woods sent and Respondent received an email in which he
3 requested the return of all funds remaining in Respondent's possession after payments were made
4 to Woods' creditors.

5 On November 22, 2000, Respondent sent Woods an email informing him that she could
6 not turn over the balance of Woods' funds until after approval was received by the court and by
7 Tina's counsel.

8 On November 27, 2000, Respondent sent Woods another email in which she told him that
9 he should not spend the remaining funds until the case was over but that she did not know when
10 the case would be over. On this date, the balance in Respondent's CTA was \$1294.84.

11 Respondent knew that the information contained in these emails was false. She knew that
12 court and opposing counsel approval was not necessary to disburse the funds. She also knew that
13 she had misappropriated all but \$1294.84 of Woods' funds so she could not disburse all of the
14 funds to him.

15 Between December 2001 and March 27, 2002, Woods placed over 30 calls to Respondent
16 inquiring about the status of payments to his creditors and the return of Woods' funds.
17 Respondent did not return Woods' calls.

18 On March 27, 2002, Woods sent and Respondent received a letter in which he reminded
19 her of their agreement whereby Respondent would return to Woods any funds remaining after
20 payments were made to his creditors. He demanded the return of \$12,750. He also inquired
21 about the status of payment to his creditors and the return of his funds. Respondent did not
22 answer the letter.

23 Between March 28 and June 20, 2002, Woods placed 42 more calls to Respondent's
24 office. She did not return the calls.

25 On June 20, 2002, Woods sent and Respondent received a letter in which he terminated
26 her services and demanded the immediate return of \$12,750. She did not answer this letter.

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²\$12,749.15 minus the \$750 balance left in the CTA on December 29, 2000.

1 On November 6, 2003, Respondent's then-counsel, David A. Clare, wrote to the State Bar
2 on Respondent's behalf, setting forth the language of the January 11, 1996 retainer agreement
3 between Respondent and Woods, which indicated that " ...all future funds on deposit will be held
4 in trust and [Woods] authorizes [Respondent] to pay the fees and other charges [Woods] incur[s]
5 in this matter." As such. Clare stated that Respondent was entitled to retain the \$12,749.15
6 Woods claimed. However, prior to this letter, Respondent never informed Woods that he owed
7 her legal fees.

8 As early as November 2000, Woods had placed Respondent on notice that he claimed the
9 \$12,749.15 as his own pursuant to their June 2000 agreement. Despite this notice, by December
10 29, 2000, Respondent withdrew all but \$750.50 of Woods' funds from her CTA.

11 **Conclusions of Law**

12 **Count One - RPC 4-100(A) (Failure to Maintain Client Funds in Trust Account)**

13 RPC 4-100(A) requires, in relevant part, that an attorney place all funds held for the
14 benefit of clients, including advances for costs and expenses, in a client trust account.

15 There is clear and convincing evidence that Respondent wilfully violated RPC 4-100(A)
16 by not maintaining \$12,749.15 of Woods' funds in the client trust account.

17 **Count Two - Section 6106 (Dishonesty or Moral Turpitude)**

18 Section 6106 makes it a cause for disbarment or suspension to commit any act involving
19 moral turpitude, dishonesty or corruption, whether the act is committed in the course of her or
20 her relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

21 There is clear and convincing evidence that Respondent violated section 6106 of the
22 Business and Professions Code. She dishonestly or through gross negligence misappropriated at
23 least \$11,998.65 of Woods' funds. Accordingly, he committed an act of moral turpitude,
24 dishonesty or corruption in wilful violation of section 6106.

25 **Count Three - Section 6106 (Dishonesty or Moral Turpitude)**

26 There is clear and convincing evidence that Respondent violated section 6106 of the
27 Business and Professions Code. Although she had already misappropriated Woods' funds,
28 Respondent misrepresented to Woods that she could not return the funds without the court's and

1 opposing counsel's approval and that he should not spend the money until the case was over.
2 Accordingly, she committed an act of moral turpitude, dishonesty or corruption in wilful
3 violation of section 6106.

4 **Count Four - Rule 4-100(A)(2) (Withdrawing Disputed Funds)**

5 Rule of Professional Conduct 4-100(A)(2) provides that entrusted funds belonging
6 in part to the client and in part presently or potentially to the attorney or law firm, the
7 portion belonging to the latter must be withdrawn at the earliest reasonable time after the
8 attorney's or firm's interest becomes fixed. However, when the right of the attorney or
9 firm to receive a portion of trust funds is disputed by a client, the disputed portion shall
10 not be withdrawn until the dispute is finally resolved.

11 There is clear and convincing evidence that Respondent wilfully violated rule 4-
12 100(A)(2) by removing \$11,998.65 of Woods' funds from her CTA when she knew Woods
13 claimed those funds as his own. Respondent withdrew client funds from her CTA prior to the
14 resolution of a dispute with the client over Respondent's right to receive those funds.

15 **Count Five - Section 6106 (Dishonesty or Moral Turpitude)**

16 There is clear and convincing evidence that Respondent violated section 6106 of the
17 Business and Professions Code. She issued CTA check 1694 for \$15,000 to Key Bank USA
18 when she knew she had insufficient funds in the CTA to cover the check. Accordingly, she
19 committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

20 **Count Six - Section 6068(m) (Failure to Communicate)**

21 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries
22 of clients and to keep clients reasonably informed of significant developments in matters with
23 regard to which the attorney has agreed to provide legal services.

24 By not responding to Woods' numerous telephone calls and letters, Respondent did not
25 respond promptly to Woods' reasonable status inquiries in wilful violation of section 6068(m).

26 **Count Seven - RPC 4-100(B)(4) (Failure to Promptly Pay)**

27 RPC 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the
28 client, any funds, securities or other properties in the possession of the attorney which the client

1 is entitled to receive.

2 By not disbursing Woods' funds despite his repeated requests and their June 2000
3 agreement, Respondent failed to promptly pay funds, as requested by the client, which the client
4 is entitled to receive and wilfully violated RPC 4-100(B)(4).

5 **LEVEL OF DISCIPLINE**

6 **Aggravating Circumstances**

7 Respondent has one prior instance of discipline. (Standard 1.2(b)(i), Rules of Procedure
8 of the State Bar of California, tit. IV, Standards for Attorney Sanctions for Professional
9 Misconduct ("standards").) In Supreme Court order no. S121073 (State Bar Court case no. 00-O-
10 13521), effective March 27, 2004, discipline was imposed consisting of three years stayed
11 suspension, four years probation with conditions including actual suspension of two years and
12 until Respondent complied with standard 1.4(c)(ii), for violations, in 10 client matters, of RPCs
13 3-300 (one count); 3-110(A) (eight counts); and 3-700(A)(2) (one count); and sections 6068(m)
14 (9 counts); 6090.5 (one count); and 6103 (one count). Multiple acts of misconduct was the
15 aggravating factor. In mitigation, the parties stipulated to several factors, including no prior
16 discipline, remorse and emotional distress due to caregiving for her husband who was facing
17 severe and life-threatening health conditions. The Court notes that some of the misconduct
18 encompassed by the prior disciplinary case occurred around the same time as the misconduct in
19 the instant case.

20 Respondent's multiple acts of misconduct are an aggravating factor. (Standard 1.2(b)(ii).)

21 Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Woods
22 repeatedly tried to contact Respondent over a period of months to obtain the status of his matter
23 and the return of his funds.

24 **Mitigating Circumstances**

25 Since respondent did not participate in these proceedings and he bears the burden of
26 establishing mitigation by clear and convincing evidence, the Court has been provided no basis
27 for finding mitigating factors.

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1 **Discussion**

2 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
3 protect the public, to preserve public confidence in the profession, and to maintain the highest
4 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
5 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

6 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
7 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
8 imposing discipline. If two or more acts of professional misconduct are found in a single
9 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
10 sanctions. (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The
11 standards, however, are guidelines from which the Court may deviate in fashioning the most
12 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*
13 *re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They
14 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*
15 (1988) 44 Cal.3d 820, 828.)

16 Standards 2.2(a) and (b), 2.3, 2.6(a) and 2.8 apply in this matter. The most severe
17 sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of
18 entrusted funds unless the amount misappropriated is insignificantly small or unless the most
19 compelling mitigating circumstances clearly predominate, in which case the minimum discipline
20 recommended is one year actual suspension.

21 Respondent has been found culpable of violations of RPCs 4-100(A); 4-100(B)(2) and
22 (4); and sections 6068(m) and 6106 in one client matter.

23 As was previously noted, some of the misconduct encompassed by the prior disciplinary
24 case occurred around the same time as the misconduct in the instant case. Accordingly, the
25 aggravating effect of this prior discipline is diminished as it is not indicative of Respondent's
26 inability to conform to ethical norms and the Court will consider the totality of the findings in
27 both cases to ascertain what the discipline would have been had the matters been brought as one
28 case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

1 In its pretrial statement, the State Bar recommended disbarment. The Court agrees.

2 The Court notes that the amount of money misappropriated in the present case,
3 approximately \$12,000, is not insignificantly small and there are no mitigating factors to be
4 considered herein since Respondent did not participate in these proceedings. There appears to be
5 no reason to deviate from the standard even without considering the misconduct and aggravating
6 and mitigating factors in the prior case.

7 If the prior misconduct and other factors are considered, the Court recommends
8 disbarment nonetheless. The Court found *McMorris v. State Bar* (1983) 35 Cal.3d 77
9 instructive. In *McMorris*, the attorney was disbarred for habitually disregarding his clients'
10 interests. In seven matters for five clients over a period of nine years, Respondent McMorris was
11 found culpable of failing to perform and to communicate, improperly withdrawing from
12 representation and committing an act of moral turpitude in violation of section 6106. Client
13 harm was found in aggravation, including the entry of a default judgment and the need for the
14 client to retain other counsel to have it set aside. He did not participate in the discipline hearing
15 and had three prior instances of discipline.

16 The Supreme Court noted: "As we have repeatedly stated, willful failure to perform legal
17 services for which an attorney has been retained in itself warrants disciplinary action, constituting
18 a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]'
19 (Citation omitted.) Moreover, habitual disregard by an attorney of the interests of his or her
20 clients combined with failure to communicate with such clients constitute acts of moral turpitude
21 justifying disbarment. (Citations omitted.)" (*McMorris v. State Bar, supra*, 35 Cal.3d at p. 85.)

22 In determining its recommended degree of discipline, the Court considered Respondent's
23 prior disciplinary record and the harm resulting from his misconduct. "Significantly, in
24 examining the combined record of this disciplinary proceeding and [respondent's] prior
25 discipline, we are confronted not by isolated or uncharacteristic acts but by 'a continuing course
26 of serious professional misconduct extending over a period of several years.' (Citation omitted.)
27 We are therefore concerned with what appears to have become an habitual course of misconduct.
28 We believe that the risk of petitioner repeating this misconduct would be considerable if he were

1 permitted to continue in practice. (Citation omitted.) As [Respondent] has previously
2 demonstrated, the public and the legal profession would not be sufficiently protected if we
3 merely, once again, suspended [him] from the practice of law. (Citation omitted.)" (*McMorris v.*
4 *State Bar, supra*, 35 Cal.3d at p. 85.) The Supreme Court's reasoning is equally applicable in this
5 case.

6 Respondent's misconduct and lack of participation in this matter raises concerns about
7 her ability or willingness to comply with her ethical responsibilities to the public and to the State
8 Bar. No explanation has been offered that might persuade the Court otherwise and the Court can
9 glean none. Having considered the evidence and the law, the Court believes that disbarment is
10 the most adequate means of protecting the public and is proportionate to the misconduct found
11 Accordingly, the Court so recommends.

12 **DISCIPLINE RECOMMENDATION**

13 IT IS HEREBY RECOMMENDED that Respondent **SUE ELLEN CASTRELLON** be
14 **DISBARRED** from the practice of law in the State of California and that her name be stricken from
15 the rolls of attorneys in this state.

16 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
17 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the
18 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph
19 (c) within 40 days of the effective date of the order showing her compliance with said order.

20 **COSTS**

21 The Court recommends that costs be awarded to the State Bar pursuant to Business and
22 Professions Code section 6086.10, and that those costs be payable in accordance with section
23 6140.7.

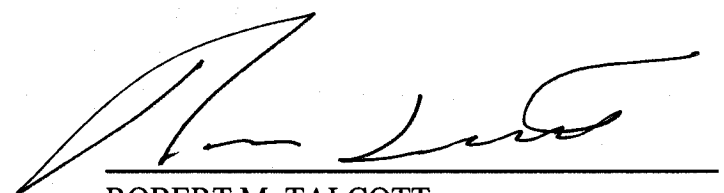
24 **ORDER REGARDING INACTIVE ENROLLMENT**

25 It is ordered that Respondent be transferred to involuntary inactive enrollment status
26 pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from
27 the date of service of this order and shall terminate upon the effective date of the Supreme
28 Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant

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to its plenary jurisdiction.

Dated: May 26, 2005



ROBERT M. TALCOTT
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 Los Angeles, on May 27, 2005, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed May 27, 2005**

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


- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**Sue E. Castellon
2220 Otay Lakes Rd #502
Chula Vista, CA 91915**

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

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 27, 2005.



Tammy R. Cleaver
Case Administrator
State Bar Court