



FILED

DEC 23 2004

THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

Case No. 03-O-02632-PEM

G. SCOTT CHRISTENSON,

Member No. 135434,

DECISION

A Member of the State Bar.

I. INTRODUCTION

In this default matter, Respondent **G. SCOTT CHRISTENSON**, is found culpable, by clear and convincing evidence, of misconduct in a single client matter involving failure to return unearned fees and failure to cooperate with the State Bar.

The court recommends, among other things, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for two months and until he makes restitution and until the State Bar Court grants a motion to terminate Respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. PERTINENT PROCEDURAL HISTORY

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served a Notice of Disciplinary Charges (NDC) on Respondent at his official membership records address on August 12, 2004, and filed it on August 18, 2004. (Rules Proc. of State Bar, rule 60.) The mailing was not returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On September 10, 2004, the State Bar sent a courtesy copy of the NDC to Respondent at

1 3909 B Middlefield Road, Palo Alto, California 94303. On the same day, the State Bar attempted
2 to telephone Respondent at his membership records telephone number and at an alternative phone
3 number. Both numbers were disconnected or were no longer in service.

4 However, on September 30, 2004, Respondent telephoned Deputy Trial Counsel Maria J.
5 Morga and informed her that he was aware of the NDC. Thereafter, at a meeting between the parties
6 on October 5, 2004, Respondent told Deputy Trial Counsel Morga that he would do certain things,
7 including filing a motion to set aside the default. On October 14, 2004, Respondent left her a voice
8 mail message indicating that he had not filed the motion.

9 Meanwhile, on motion of the State Bar, Respondent's default was entered on September 30,
10 2004. Respondent was enrolled as an inactive member under Business and Professions Code section
11 6007(e)¹ on October 3, 2004.

12 Respondent did not participate in the disciplinary proceedings. The court took this matter
13 under submission on October 20, 2004, following the filing of a brief on culpability and discipline.

14 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
16 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
17 200(d)(1)(A).)

18 **A. Jurisdiction**

19 Respondent was admitted to the practice of law in California on August 15, 1988, and has
20 since been a member of the State Bar of California.

21 **B. The Dhingra Matter**

22 On September 22, 2002, Sunita Dhingra hired Respondent to represent her husband, Rakesh
23 Dhingra, in a federal appeal of his criminal conviction. Respondent told Sunita that he was an
24 appellate lawyer and experienced with the federal appeals process. He told her that the attorney fees
25 would be \$25,000 and that a \$5,000 advance payment was required. Sunita then paid him \$5,000.
26 Respondent agreed to go and meet with Rakesh in the Santa Rita Jail to sign the retainer agreement.

27
28 ¹References to section are to the Business and Professions Code, unless otherwise noted.

1 A week later, Respondent went to the Santa Rita Jail. He was not permitted to meet with
2 Rakesh because he failed to follow the jail procedure of making an appointment before meeting with
3 an inmate. Respondent never went back to meet with Rakesh.

4 On October 12, Sunita emailed Respondent, requesting him to proceed with the appeal and
5 a status report of his meeting with Rakesh. Although Respondent replied to her email, he did not
6 address any of her concerns about the appeal or when he would meet with Rakesh.

7 On October 15, Respondent emailed Sunita and instructed her not to send any letters to
8 Rakesh's probation officer or the judge without his approval. He also promised that he would meet
9 with Rakesh by the end of the week.

10 On December 2, 2002, Sunita telephoned Respondent and told him that she and Rakesh
11 decided to terminate his employment for failing to pursue the appeal. She also requested Respondent
12 to return the \$5,000 advanced fee. In the same conversation, Respondent told her that he had not
13 done any work on the case and promised to refund the entire \$5,000 immediately. But Respondent
14 never returned the \$5,000 fee.

15 On March 19, 2003, Sunita wrote to Respondent and again asked that he return the \$5,000.
16 Respondent received the letter but did not respond to the letter or return the money.

17 On April 18, 2003, Respondent spoke with Sunita and told her that he would mail a check
18 in two days. Again, Sunita did not receive any money from Respondent.

19 On May 13, 2003, Sunita wrote to Respondent about the \$5,000. Respondent did not respond
20 to the letter. On July 25, she telephoned Respondent about the money. Respondent, for the first
21 time, told her that he would not be returning the entire \$5,000 because he was going to retain 50%
22 of the fee for talking to her on the telephone for five or ten minutes before taking the case. She
23 requested that Respondent send her an itemized statement of the charges and expenses. Respondent
24 promised that he would send her a bill and the money in one week. Sunita never received any
25 communication, statement or money from Respondent.

26 She continued to pursue the matter, emailing and telephoning him. On August 5, 2003,
27 Respondent replied by email and said he would provide the itemized statement and money the same
28 day. Again, Respondent did not do what he promised.

1 On September 4, Sunita threatened to sue him if he did not refund her the money. On
2 November 3, 2003, Sunita was awarded a judgment against Respondent for \$5,000 in the Santa Clara
3 County Small Claims Court.

4 On July 22, 2003, and April 16, 2004, a State Bar investigator wrote to Respondent regarding
5 the Dhingra matter and requested a written reply. The letters were properly sent to Respondent at his
6 official address. They were not returned as undeliverable or for any other reason. Respondent did
7 not respond to the letters.

8 ***Count 1: Failure to Return Unearned Fees (Rule 3-700(D)(2) of the Rules of Professional***
9 ***Conduct)***²

10 Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly
11 any part of a fee paid in advance that has not been earned.

12 When Sunita terminated his employment on December 2, 2002, Respondent admitted that
13 he had not done any work on the case and promised to refund the entire \$5,000 immediately. But
14 he failed to do so. Therefore, Respondent wilfully violated rule 3-700(D)(2) by failing to return any
15 portion of the \$5,000 advanced fees paid by Sunita even though he had repeatedly promised to
16 refund her.

17 ***Count 2: Failure to Deliver Client Funds Promptly (Rule 4-100(B)(4))***

18 Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in
19 the possession of the attorney which the client is entitled to receive.

20 Under count 2, the State Bar erroneously charges that Respondent violated "rule 4-
21 100(b)(2)"³ for not providing Sunita with an itemized statement of the charges and expenses after
22

23 ²References to rule are to the current Rules of Professional Conduct, unless otherwise
24 noted.

25 ³The charge of rule "4-100(b)(2)," which provides that an attorney must identify and label
26 a client's properties promptly upon receipt and keep them for safekeeping, is a typographical
27 error. The rule that correlates with the alleged misconduct of failing to provide an itemized
28 statement is rule 4-100(B)(3), which requires that a member maintain complete records of all
funds, securities and properties of a client coming into the possession of the member or law firm
and render appropriate accounts to the client regarding them.

1 being requested to do so by the client. (NDC, 5:4-6.) At the same time, the State Bar argues that
2 Respondent is charged with violating rule 4-100(B)(4) for failing to pay the unearned fees for almost
3 two years after Sunita first made her request. (Brief on Culpability and Discipline, 4:17-18.)

4 Here, Respondent has already been found culpable of failing to return unearned fees in wilful
5 violation of rule 3-700(D)(2). Charging him for failing to promptly pay the unearned fees in
6 violation of rule 4-100(B)(4) is duplicative, which serves little purpose. (*Bates v. State Bar* (1990)
7 51 Cal.3d 1056.) Moreover, although Respondent failed to provide an accounting to Sunita, he was
8 not charged with violating rule 4-100(B)(3) and the Notice of Disciplinary Charges was not
9 amended. A respondent needs to be adequately apprised of the precise nature of the charges. (*In the*
10 *Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163.) Therefore, Respondent could
11 not be held culpable of an uncharged violation. In light of the conflicting charges of rules 4-
12 100(B)(2) and 4-100(B)(4) and the duplicative charges of rules 3-700(D)(2) and 4-100(B)(4), count
13 two is hereby dismissed with prejudice.

14 ***Count 3: Failure to Cooperate With the State Bar (Business and Professions Code Section***
15 ***6068(i))***

16 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
17 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
18 July 2003 and April 2004 letters or participate in the investigation of the Dhingra matter, Respondent
19 failed to cooperate with the State Bar in wilful violation of section 6068(i).

20 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

21 **A. Mitigation**

22 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
23 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

24 However, Respondent's lack of a prior record in 14 years of practice is a mitigating factor.
25 (Std. 1.2(e)(i).)

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28 ⁴All further references to standards are to this source.

1 **B. Aggravation**

2 There are several aggravating factors. (Std. 1.2(b).)

3 Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) He failed to return
4 unearned fees and abandoned his client.

5 Respondent harmed his client by depriving her of her funds. (Std. 1.2(b)(iv).)

6 Respondent's failure to return unearned fees after promising to do so, despite repeated
7 demands from Sunita, demonstrates indifference toward rectification of or atonement for the
8 consequences of his misconduct. (Std. 1.2(b)(v).)

9 Respondent's failure to participate in this disciplinary matter before the entry of his default
10 is also a serious aggravating factor. (Std. 1.2(b)(vi).)

11 **V. DISCUSSION**

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

16 Respondent's misconduct involved one client matter. The standards provide a broad range
17 of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and
18 the harm to the client. (Stds. 1.6, 2.6 and 2.10.)

19 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
20 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach
21 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at
22 p. 251.)

23 The State Bar urges one year stayed suspension and three months actual suspension and until
24 Respondent makes restitution. In support of its recommended discipline, the State Bar cited *In the*
25 *Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690 [one year stayed and three years
26 probation, including 45 days actual suspension and restitution of \$3,000, for his misconduct in a
27 single client matter]. But because Respondent has defaulted in this proceeding, the State Bar argues
28 that a greater level of discipline than 45 days actual suspension is required.

1 The court agrees, but a 90-day actual suspension is too harsh for misconduct in a single client
2 matter involving one act of failure to return unearned fees.

3 In a similar case, *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr.
4 585, the attorney who had no prior record of discipline in 12 years of practice was actually suspended
5 for 60 days for misconduct in a single client matter. The attorney failed to communicate with his
6 client and failed to perform competently which caused his client to lose her case. He also improperly
7 held himself out as entitled to practice law by misleading his client into believing he was still
8 working on her case while he was on suspension for not paying his State Bar dues. He defaulted in
9 the disciplinary proceedings as well.

10 Failing to appear and participate in this hearing shows that Respondent comprehends neither
11 the seriousness of the charges against him nor his duty as an officer of the court to participate in
12 disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Although
13 Respondent may have had contacted Lawyers Assistance Program for help, his failure to participate
14 in this proceeding leaves the court without information about the underlying cause of Respondent's
15 misconduct or of any mitigating circumstances surrounding his misconduct.

16 In view of Respondent's misconduct, the case law and the aggravating evidence, placing
17 Respondent on an actual suspension for two months and until he makes restitution would be
18 appropriate to protect the public and to preserve public confidence in the profession. It is not
19 recommended that a conditional rule 955 of the Rules of Court be imposed.

20 VI. RECOMMENDED DISCIPLINE

21 Accordingly, the court hereby recommends that Respondent **G. SCOTT CHRISTENSON**
22 be suspended from the practice of law for one year, that said suspension be stayed, and that
23 Respondent be actually suspended from the practice of law for two months and until he makes
24 restitution to Sunita Dhingra or the Client Security Fund, if appropriate, in the amount of \$5,000,
25 plus 10% interest per annum from December 2, 2002, and provide proof thereof to the Office of
26 Probation; and until he files and the State Bar Court grants a motion to terminate his actual
27 suspension. (Rules Proc. of State Bar, rule 205.)

28 It is also recommended that Respondent be ordered to comply with any probation conditions

1 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.
2 (Rules Proc. of State Bar, rule 205(g).)

3 It is also recommended that if Respondent is actually suspended for two years or more, he
4 will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his
5 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard
6 1.4(c)(ii).

7 It is further recommended that Respondent take and pass the Multistate Professional
8 Responsibility Examination within one year after the effective date of this order or during the period
9 of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891,
10 fn. 8.)

11 VII. COSTS

12 The court recommends that costs be awarded to the State Bar pursuant to Business and
13 Professions Code section 6086.10, and paid in accordance with section 6140.7.

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18 Dated: December 23, 2004

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20 _____
21 PAT McELROY
22 Judge of the State Bar Court
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CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 December 23, 2004, 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:

**G SCOTT CHRISTENSON
255 W JULIAN ST #501
SAN JOSE CA 95110**

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 23, 2004.**



Laretta Cramer
Case Administrator
State Bar Court