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STATE BAR COURT CLERK'S OFFICE  
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**THE STATE BAR COURT**

**HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case No. 03-O-03343-JMR
<b>CHERYL A. BROWN,</b>	)	
Member No. 151634,	)	<b>DECISION</b>
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this default matter, Respondent **CHERYL A. BROWN** is found culpable, by clear and convincing evidence, of misconduct in a single client matter, involving failure to perform services competently, failure to communicate, failure to return client files, withdrawal from employment without court's approval, and failure to maintain a current address 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 30 days 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**

On December 3, 2003, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent at her official membership records address. (Rules Proc. of State Bar, rule 60.) The mailing was not returned as undeliverable or for any other reason. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

1 On motion of the State Bar, Respondent's default was entered on February 18, 2004.  
2 Respondent was enrolled as an inactive member under Business and Professions Code section  
3 6007(e)<sup>1</sup> on February 21, 2004.

4 Respondent did not participate in the disciplinary proceedings. The court took this matter  
5 under submission on March 18, 2004, following the filing of the State Bar's brief on culpability and  
6 discipline.

### 7 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default  
9 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
10 200(d)(1)(A).)

#### 11 A. Jurisdiction

12 Respondent was admitted to the practice of law in California on December 7, 1990, and has  
13 since been a member of the State Bar of California.

#### 14 B. The Chiang Matter

15 In March 2000, Johnson Chiang hired Respondent to represent him in a marital dissolution  
16 action in *Chiang v. Chiang*, Alameda County Superior Court, case No. H-212357-8. At the time,  
17 he gave certain documents regarding his marriage to Respondent.

18 On May 17, 2002, Respondent filed a motion for preliminary disclosure. However, the  
19 matter was continued and eventually taken off calendar in November 2002 because no one appeared  
20 at the hearing.

21 Between May 2002 and February 2003, Respondent performed no services for Chiang.  
22 During that period, Chiang attempted to communicate with Respondent but to no avail. In February  
23 2003, Chiang employed another attorney, Linda Shao, to represent him.

24 Attorney Shao diligently tried to locate Respondent to obtain a substitution of attorney and  
25 the client papers in order to respond to outstanding discovery requests, but she was unsuccessful.  
26 When attorney Shao attempted to contact Respondent at Respondent's official membership records

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28 <sup>1</sup>References to section are to the Business and Professions Code, unless otherwise noted.

1 address in San Jose, the landlord told her that Respondent had moved. When she wrote to  
2 Respondent at Respondent's home address in Santa Clara, which she found through a private  
3 investigator, the letter was returned as undeliverable. And when she attempted to trace Respondent  
4 through the U.S. Postal Service, the service located the same address as that of the investigator's  
5 search.

6 On April 2, 2003, attorney Shao filed an ex parte application re substitution of counsel  
7 requesting that the court permit her to substitute in as counsel since Respondent could not be found.  
8 The application was granted.

9 Sometime after May 2002, Respondent abandoned her law office. She did not inform Chiang  
10 that she had changed her address and telephone number or that she no longer was performing any  
11 services on his behalf.

12 On July 29 and November 10, 2003, the State Bar wrote to Respondent regarding the Chiang  
13 matter. The letters were properly sent to Respondent at her official address but they were returned  
14 as undeliverable.

15 ***Count 1: Failure to Perform (Rule 3-110(A) of the Rules of Professional Conduct)***<sup>2</sup>

16 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail  
17 to perform legal services with competence.

18 Respondent failed to appear at the hearing on the motion for preliminary disclosure in the  
19 Chiang matter, resulting in the matter being taken off calendar in November 2002. After May 2002,  
20 she did not perform competently any other legal services for which she was employed, forcing her  
21 client to retain another attorney to take over the matter in February 2003. Therefore, Respondent  
22 recklessly failed to competently perform services in wilful violation of rule 3-110(A).

23 ***Count 2: Failure to Communicate (Business and Professions Code Section 6068(m))***

24 Section 6068, subdivision (m), requires an attorney to respond promptly to reasonable status  
25 inquiries of clients and to keep clients reasonably informed of significant developments in matters  
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27 <sup>2</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise  
28 noted.

1 with regard to which the attorney has agreed to provide legal services.

2 By failing to communicate with her client from May 2002 through February 2003 and by  
3 failing to inform Chiang that she was not going to appear at the motion hearing, Respondent failed  
4 to respond to Chiang and to keep him informed of significant development in his matter in wilful  
5 violation of section 6068, subdivision (m).

6 ***Count 3: Failure to Promptly Return Client File (Rule 3-700(D)(1))***

7 Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release  
8 to the client, at the request of the client, all the client papers and property.

9 Respondent constructively terminated her services after May 2002. Upon her termination  
10 of employment, Respondent failed to promptly return Chiang's papers in wilful violation of rule 3-  
11 700(D)(1).

12 ***Count 4: Withdrawal From Employment Without Court's Permission (Rule 3-700(A)(1))***

13 Rule 3-700(A)(1) provides that an attorney shall not withdraw from employment in a  
14 proceeding without the court's permission if its rules require such permission for the termination of  
15 employment.

16 Respondent, in effect, withdrew from Chiang's case since she did not appear at the court  
17 hearing or perform any other services. At the time of her withdrawal, she was counsel of record for  
18 Chiang in *Chiang v. Chiang*. She was required to obtain the court's permission to withdraw as  
19 counsel but she did not do so. Despite repeated attempts by attorney Shao to locate Respondent to  
20 obtain a substitution of attorney, Respondent was nowhere to be found. Therefore, Respondent  
21 wilfully violated rule 3-700(A)(1) by withdrawing from employment without the court's permission.

22 ***Count 5: Failure to Maintain A Current Address (Section 6068(j))***

23 Section 6068(j) states that a member shall comply with the requirements of section 6002.1,  
24 which provides that Respondent shall maintain on the official membership records of the State Bar  
25 a current address to be used for State Bar purposes. By clear and convincing evidence, Respondent  
26 wilfully violated section 6068(j) when she failed to maintain a current official membership records  
27 address and the July 29 and November 10, 2003 letters from the State Bar were returned as  
28 undeliverable.

1 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

2 **A. Mitigation**

3 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.  
4 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).<sup>3</sup>) However, Respondent's 11 years of practice  
5 of law without a prior record of discipline is a strong mitigating factor. (Std. 1.2(e)(i).)

6 **B. Aggravation**

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

8 Respondent committed multiple acts of wrongdoing, including withdrawing from  
9 employment without court's permission, failing to perform services, failing to communicate, and  
10 failing to return client papers. (Std. 1.2(b)(ii).) However, Respondent's misconduct from May 2002  
11 through February 2003 in one client matter does not rise to the level of a pattern of misconduct. The  
12 Supreme Court has limited this characterization to "only the most serious instances of repeated  
13 misconduct over a prolonged period of time." (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217.)  
14 Here, Respondent's misconduct within nine months did not occur repeatedly or over an extended  
15 period of time.

16 Although Respondent's failure to return client papers caused Chiang substantial delay, there  
17 is no clear and convincing evidence that the client suffered substantial harm. (Std. 1.2(b)(iv).)

18 Respondent demonstrated indifference toward rectification of or atonement for the  
19 consequences of her misconduct. (Std. 1.2(b)(v).) She has yet to return the client file to Chiang.

20 Respondent's failure to participate in this disciplinary matter prior to the entry of her default  
21 is a serious aggravating factor. (Std. 1.2(b)(vi).)

22 **V. DISCUSSION**

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

27 \_\_\_\_\_  
28 <sup>3</sup>All further references to standards are to this source.

1 Respondent's misconduct involved one client matter. The standards provide a broad range  
2 of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and  
3 the harm to the client. (Stds. 1.6, 2.4(b), 2.6, and 2.10.)

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

8 The State Bar urges 90 days of actual suspension, citing several cases, including *King v. State*  
9 *Bar* (1990) 52 Cal.3d 307, *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.  
10 267, and *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, in support of  
11 its recommendation.

12 The court finds that the misconduct found in *King* is more serious than that of Respondent  
13 and that *Kennon* and *Lilley* are more analogous to this matter.

14 In *King*, the Supreme Court actually suspended the attorney for 90 days with a four-year  
15 stayed suspension and probation for neglecting two clients and causing substantial harm to one client  
16 who had lost his personal injury action with damages of \$82,000 due to the attorney's inaction. He  
17 had no prior record of discipline in 14 years of practice.

18 Here, Respondent abandoned one client and has had no prior record of discipline in 11 years  
19 of practice. Her inaction caused substantial delay but the client did not lose his case.

20 In *In the Matter of Kennon*, the attorney who had no prior record of discipline was actually  
21 suspended for 30 days with a two-year stayed suspension and a two-year probation for his  
22 abandonment of two clients and failure to return unearned fees of \$2,000 to one client.

23 In *In the Matter of Lilley*, the attorney who had no prior record in 13 years of practice  
24 defaulted and was actually suspended for 30 days for one client abandonment, failure to cooperate  
25 and failure to submit a change of address.

26 Failing to appear and participate in this hearing shows that Respondent comprehends neither  
27 the seriousness of the charges against her nor her duty as an officer of the court to participate in  
28 disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to

1 participate in this proceeding leaves the court without information about the underlying cause of  
2 Respondent's misconduct or of any mitigating circumstances surrounding her misconduct.

3 Given Respondent's default and misconduct in one client matter, the court concludes that a  
4 30-day actual suspension would be adequate to protect the public and to preserve public confidence  
5 in the profession.

## 6 VI. RECOMMENDED DISCIPLINE

7 Accordingly, the court hereby recommends that Respondent **CHERYL A. BROWN** be  
8 suspended from the practice of law for one year, that said suspension be stayed, and that Respondent  
9 be actually suspended from the practice of law for 30 days and until she files and the State Bar Court  
10 grants a motion to terminate her actual suspension. (Rules Proc. of State Bar, rule 205.)

11 It is recommended that Respondent be ordered to comply with any probation conditions  
12 hereinafter imposed by the State Bar Court as a condition for terminating her actual suspension.  
13 (Rules Proc. of State Bar, rule 205(g).)

14 If the period of actual suspension reaches or exceeds two years, it is recommended that she  
15 remain actually suspended until she has shown proof satisfactory to the State Bar Court of her  
16 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard  
17 1.4(c)(ii).

18 It is further recommended that Respondent take and pass the Multistate Professional  
19 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,  
20 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)  
21 and provide proof of passage to the Probation Unit, within one year of the effective date of the  
22 discipline herein or during the period of her actual suspension, whichever is longer. Failure to pass  
23 the MPRE within the specified time results in actual suspension by the Review Department, without  
24 further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State  
25 Bar, rule 321(a)(1) and (3).)

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VII. COSTS

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

Dated: May 20, 2004

  
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**JOANN M. REMKE**  
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 May 20, 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:

**CHERYL A. BROWN**  
**1040 LINCOLN AVE**  
**SAN JOSE CA 95125**

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

**TAMMY ALBERTSEN-MURRAY , Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 20, 2004**.



**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court