

**FILED**

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STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**THE STATE BAR COURT****HEARING DEPARTMENT - LOS ANGELES**

In the Matter of

Case No. 03-O-05003-PEM

ROBERT BRUCE HUTCHINS,**DECISION**

Member No. 136790,

A Member of the State Bar.**I. INTRODUCTION**

The above-entitled default matter was submitted for decision as of August 18, 2004, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar") waived the hearing in this matter and submitted a brief regarding culpability and discipline. The State Bar was represented by Anthony J. Garcia, Deputy Trial Counsel. Respondent Robert Bruce Hutchins did not participate in this matter, and his default was entered as a result of his failure to respond to the charges filed against him.

In light of Respondent's culpability in this proceeding, and after considering the aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends that Respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that Respondent be actually suspended for a period of sixty days, and until he makes the restitution specified below, and until he files a motion with the State Bar Court seeking termination of his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar.

II. PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges ("NDC") against Respondent on May 18, 2004, charging Respondent with five counts of

1 misconduct in connection with a single client matter.

2 A copy of the NDC was properly served upon Respondent on May 18, 2004, by certified
3 mail, return receipt requested, addressed to Respondent at his official membership records address
4 ("official address") maintained by Respondent pursuant to Business and Professions Code section
5 6002.1, subdivision (a). On May 26, 2004, the State Bar received the return receipt for the NDC,
6 showing delivery on May 25, 2004, and the name "J. Nichols" as the person signing for the delivery.

7 As Respondent did not file a response to the NDC as required by rule 103 of the Rules of
8 Procedure of the State Bar of California ("Rules of Procedure"), on July 6, 2004, the State Bar filed
9 a motion for the entry of Respondent's default. A copy of said motion was properly served upon
10 Respondent on July 2, 2004, by certified mail, return receipt requested, addressed to Respondent at
11 his official address. On July 7, 2004, the return receipt was returned to the State Bar, showing that
12 the motion was delivered on July 3, 2004, and the receipt was signed by "J. Nichols."

13 When Respondent failed to file a written response within 10 days after service of the motion
14 for the entry of his default, on July 20, 2004, the Court filed an Order of Entry of Default (Rule 200-
15 Failure to File Timely Response) and Order of Involuntary Inactive Enrollment.¹ A copy of said
16 order was properly served upon Respondent on July 20, 2004, by certified mail, return receipt
17 requested, addressed to Respondent's official address.

18 On August 18, 2004, the State Bar filed a brief on the issues of culpability and discipline and
19 waiver of hearing in this matter. The matter was submitted for decision on August 18, 2004.

20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 **Jurisdiction**

22 Respondent was admitted to the practice of law in the State of California on December 7,
23 1988, was a member at all times pertinent to these charges, and is currently a member of the State
24 Bar of California.

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28 ¹Respondent's involuntary inactive enrollment pursuant to Business and Professions Code
section 6007(e) was effective three days after the service of this order by mail.

1 **Facts re the Stone Matter**

2 On January 24, 2003, the State of Massachusetts entered a judgment by default in favor of
3 Stone Investment Banking, L.L.C., the plaintiff in a lawsuit against Vail Wire & Steel Fabricating,
4 Inc., in the amount of \$18, 172.00, with interest in the sum of \$3,536.85.

5 On April 29, 2003, Ralph X. Stone, who resides in Plymouth, MA, employed Respondent
6 to handle litigation in California against Vail Wire & Steel, a company located in California, to
7 recover the subject judgment.

8 On April 29, 2003, Stone paid Respondent \$2,500.00 in advanced attorney fees on behalf of
9 Stone Investment.

10 Thereafter Respondent took no action to recover the judgment. In fact, Respondent failed
11 to render any services in connection with the Stone Investment matter in California.

12 Between May 2003 and September 2003, Stone and his Massachusetts attorney, James S.
13 Singer repeatedly tried to contact Respondent to find out the status of the Stone Investment matter.
14 Stone and Singer sent numerous letters via regular mail, e-mail and fax, and also repeatedly called
15 Respondent by telephone, leaving messages for Respondent to return the telephone call.
16 Respondent failed to respond to any of Stone's or Singer's letters and telephone messages.

17 Respondent provided no services to Stone Investment. Therefore, Respondent did not earn
18 the \$2,500.00 paid to him as advanced fees. At no time did Respondent refund any of the \$2,500.00,
19 despite the fact that he performed no services for Stone Investment.

20 On December 12, 2003, the State Bar opened an investigation pursuant to a complaint filed
21 against Respondent regarding his handling of the Stone Investment matter.

22 On January 7, 2004 and January 26, 2004, a State Bar investigator sent Respondent a letter
23 regarding the Stone Investment matter. The letters were sent to Respondent at his official
24 membership address. The letters were mailed by first-class mail, postage prepaid, by depositing
25 them for collection by the United States Postal Service in the ordinary course of business on or about
26 the date of the letter. The postal service did not return the letters as undeliverable or for any other
27 reason.

28 Respondent received the letters of the investigator, which requested that Respondent respond

1 in writing to specific allegations of misconduct in the Stone Investment matter. However,
2 Respondent did not respond to the investigator's letters or otherwise communicate with the
3 investigator regarding the matter.

4 **Count 1: Rules of Professional Conduct, rule 3-110(A) (Failure to Perform)**

5 The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule
6 3-110(A). Rule 3-110(A) provides that "[a] member shall not intentionally, recklessly, or repeatedly
7 fail to perform legal services with competence." By failing to perform the legal services for which
8 he was hired, specifically to recover the judgment entered in favor of his client, Stone Investment,
9 Respondent recklessly, repeatedly or intentionally failed to perform legal service with competence
10 in wilful violation of rule 3-110(A).

11 **Count 2: Section 6068(m) (Failure to Respond to Client Inquiries)**

12 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
13 section 6068(m), which requires an attorney to respond promptly to reasonable status inquiries of
14 clients and to keep clients reasonably informed of significant developments in their cases.
15 Respondent wilfully violated this section by failing to respond to any of Stone's and Singer's letters
16 and telephone messages seeking information regarding the status of the Stone Investment matter.

17 **Counts 3 & 4: rules 3-700(A)(2) (Improper Withdrawal From Employment) and 3-700(D)(2)**
18 **(Failure to Return Unearned Fees)²**

19 Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until he or
20 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client,
21 including giving due notice to the client, allowing time for employment of other counsel, complying
22 with rule 3-700(D), and complying with applicable laws and rules." By agreeing to represent Stone
23 Investment in recovering the Massachusetts judgment entered against Vail, and then taking no
24 action in the matter, and ceasing to communicate at all with Stone, including failing to respond to
25 numerous letters and telephone messages, Respondent effectively withdrew from representation of
26

27
28 ²The Court combines counts three and four in its analysis because, in part, identical
conduct is the basis for the charges under both rule 3-700(A)(2) and 3-700(D)(2).

1 Stone Investment. Respondent, therefore, was required to take steps to avoid reasonably
2 foreseeable prejudice to the client's rights. By failing to: (1) give notice of his intent to withdraw;
3 (2) allow Stone time to employ other counsel; (3) return unearned advanced fees paid by Stone,
4 Respondent failed to take steps to avoid reasonably foreseeable prejudice to his client's rights. Thus,
5 the State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 3-
6 700(A)(2).

7 Respondent is also charged with violating rule 3-700(D)(2), which requires an attorney, upon
8 termination of employment, to promptly refund unearned fees. However, as the court has already
9 found Respondent culpable of wilfully violating rule 3-700(A)(2), the court declines to find
10 Respondent also culpable of wilfully violating rule 3-700(D)(2) since rule 3-700(A)(2) mandates
11 compliance with rule 3-700(D)(2). Thus, an attorney's failure to return unearned fees in accordance
12 with the rule 3-700(D)(2), may be at least a portion of conduct disciplinable as a violation of rule
13 3-700(A)(2) prohibiting prejudicial withdrawal.

14 In this instance, Respondent performed no legal services for Stone Investment. Therefore,
15 Respondent did not earn any portion of the fee advanced by Stone. Respondent's failure to return
16 the unearned fees upon withdrawal from representation was relied on as part of the basis for finding
17 that Respondent violated the rule prohibiting prejudicial withdrawal. Therefore, the Court will not
18 use that same misconduct to find a separate violation of rule 3-700(D)(2) requiring the return of
19 unearned fees. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.)
20 The Court finds no violation of rule 3-700(D)(2).

21 **Count 5: Business and Profession Code, Section 6068(i) (Failure to Cooperate)**

22 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
23 section 6068(i), which requires an attorney to cooperate with and participate in a State Bar
24 disciplinary investigation or proceeding. Respondent wilfully violated this section by failing to
25 respond to the January 7, 2004 and January 26, 2004 letters of the investigator requesting a written
26 response to the allegations of misconduct being investigated in connection with the Stone Investment
27 matter.

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IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

Mitigation

Respondent bears the burden of presenting and proving mitigating circumstances by clear and convincing evidence. (Rule of Proc. of State Bar, Title IV, Standards of Attorney Sanctions for Professional Misconduct, Standard 1.2(e).)³ As Respondent's default was entered in this matter, Respondent failed to introduce any mitigating evidence. The Court takes judicial notice of the membership records of the State Bar which show that Respondent has no prior record of discipline. (Evidence Code §452.) Respondent was admitted to the practice of law in December 1988, and the misconduct found herein began in April 2003. Therefore, Respondent had a blemish-free period of fifteen plus years. The Court accords mitigating weight to Respondent's lack of a prior record of discipline.

Aggravation

Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).) Respondent failed to perform the legal services for which he was hired; improperly withdrew from employment, including failing to refund unearned fees; failed to respond to the client's status inquiries; and failed to cooperate in the investigation of the State Bar.

Respondent caused significant harm to his client, which is an aggravating circumstance pursuant to standard 1.2(b)(iv). Specifically, for more than five months, Respondent failed to render the legal services he agreed to perform, while at the same time, holding the money advanced by the client, and ignoring the many attempts to contact him to discuss the matter. Respondent simply abandoned the client, without taking any action on behalf of the client.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).) Respondent's continued failure to return the unearned fees, even after the complaint to the State Bar, demonstrates his complete indifference toward rectification for the consequences of his misconduct.

³All further references to standards are to the Standards for Attorney Sanctions for Professional Misconduct, Title IV, Rules of Procedure.)

1 Respondent's failure to participate in this proceeding prior to the entry of his default
2 demonstrates a lack of cooperation, and is an aggravating circumstance pursuant to standard
3 1.2(b)(vi).

4 V. DISCUSSION

5 In determining the appropriate discipline to recommend in this matter, the Court looks at the
6 purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of
7 disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal
8 profession; the maintenance of high professional standards by attorneys and the preservation of
9 public confidence in the legal profession."

10 In addition, standard 1.6(b) provides that the specific discipline for the particular violation
11 found must be balanced with any mitigating or aggravating circumstances with due regard for the
12 purposes of imposing disciplinary sanctions.

13 In connection with a single client matter, Respondent has been found culpable of various
14 violations of the rules and statutes governing attorney conduct. The applicable standards provide
15 for the imposition of a broad range of sanctions ranging from reproof to disbarment. (See standards
16 2.4(b), 2.6, and 2.10.) In addition, standard 1.6(a) states, in pertinent part, "If two or more acts of
17 professional misconduct are found or acknowledged in a single disciplinary proceeding, and different
18 sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or
19 most severe of the different applicable sanctions." In this instance, standard 2.6 is the most severe
20 sanction, providing for disbarment or suspension, depending on the gravity of the offense or the
21 harm, if any, to the victim, with due regard to the purposes of imposing discipline.

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

26 The State Bar recommends, inter alia, that Respondent be actually suspended from the
27 practice of law for ninety days.

28 In *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, a default

1 proceeding involving a single client matter, the attorney abandoned the client, failed to cooperate
2 with the State Bar's investigation, and failed to submit a change of address to the State Bar. He had
3 no prior discipline in nine years of practice at the time of the misconduct. The attorney was
4 suspended for one year, execution of the suspension was stayed, and he was placed on probation for
5 one year, with thirty days of actual suspension.

6 In *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, the
7 attorney was suspended for eighteen months, execution of the suspension was stayed, and he was
8 placed on probation for two years, with ninety days actual suspension. The attorney was found
9 culpable of abandonment in two client matters, including failure to cooperate with the State Bar's
10 investigations, and in one of the matters, failure to comply with a court order to respond to discovery
11 requests. His six years of practice without discipline was found to not be mitigating.

12 In this default proceeding, Respondent has been found culpable of the following misconduct
13 in connection with a single client matter: failure to competently perform the legal services for which
14 he was hired, failure to communicate with the client, followed by improper withdrawal from
15 employment, including, failing to return unearned fees. In addition, he failed to cooperate with the
16 State Bar's investigation. In mitigation, he has a blemish-free record of fifteen plus years. In
17 aggravation, the court found he engaged in multiple acts of wrongdoing, caused significant harm to
18 his client, demonstrated indifference toward rectification of or atonement for the consequences of
19 his misconduct; and failed to participate in this matter prior to the entry of his default. Respondent's
20 misconduct and lack of participation in this matter raise concerns about his ability or willingness to
21 comply with his ethical responsibilities to the public and to the State Bar. Respondent has offered
22 this Court no explanation regarding the Stone Investment matter, where he literally walked away
23 from his professional obligations. The Court is without information about the circumstances that
24 led to Respondent's misconduct, or equally important, about any rehabilitative efforts on his part.
25 Therefore, the Court is not satisfied that Respondent is unlikely to repeat the misconduct that has
26 been found in the matter now before the Court.

27 After considering the misconduct found, the aggravating circumstances that are present, and
28 the one mitigating factor, and discipline imposed in similar cases, the Court is convinced that

1 suspension is warranted, but less than the ninety days recommended by the State Bar. The Court
2 views Respondent's misconduct as more extensive than that found in *Lilley*, but less extensive than
3 that found in *Greenwood*. Therefore, the Court will recommend that Respondent be actually
4 suspended from the practice of law for sixty days, among other things.

5 DISCIPLINE RECOMMENDATION

6 Accordingly, it is hereby recommended that Respondent ROBERT BRUCE HUTCHINS
7 be suspended from the practice of law for two (2) years, that said suspension be stayed; and that
8 he be actually suspended from the practice of law for sixty (60) days and until he makes
9 restitution to Ralph X. Stone (or the Client Security Fund, if appropriate) in the amount of
10 \$2,500.00 plus 10% interest per annum from April 29, 2003, and furnishes satisfactory proof
11 thereof to the State Bar Office of Probation; and until the State Bar Court grants a motion to
12 terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the
13 Court. (Rule 205(a), (c), Rules Proc. of State Bar.)

14 It is also recommended that he be ordered to comply with the conditions of probation, if
15 any, hereinafter imposed by the State Bar Court as a condition for terminating his actual
16 suspension.

17 If the period of actual suspension reaches or exceeds two years, it is further recommended
18 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar
19 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to
20 Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also,
21 rule 205(b).)

22 It is also recommended that if the period of actual suspension reaches or exceeds ninety
23 (90) days, respondent be ordered to comply with the requirements of rule 955 of the California
24 Rules of Court within 120 calendar days of the effective date of the Supreme Court order in this
25 matter, and file the affidavit provided for in paragraph (c) within 130 days of the effective date of
26 the order showing his compliance with said order. Failure to comply with rule 955 could result
27 in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to
28 file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44

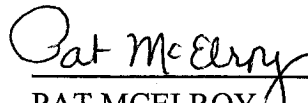
1 Cal.3d 337, 341.)

2 It is further recommended that Respondent be ordered to take and pass the Multistate
3 Professional Responsibility Examination given by the National Conference of Bar Examiners
4 within one year from the effective date of the Supreme Court's order or during the period of his
5 actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar
6 Office of Probation within said period.

7 **COSTS**

8 The Court recommends that costs be awarded to the State Bar pursuant to Business and
9 Professions Code section 6086.10, and that those costs be payable in accordance with section
10 6140.7.

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13 Dated: November 30, 2004

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PAT MCELROY
15 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 November 30, 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:

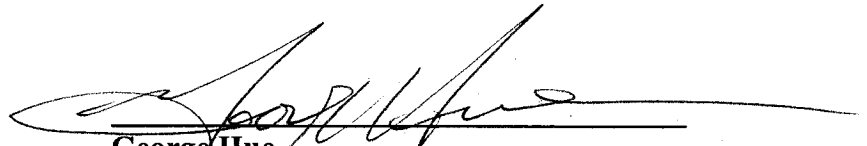
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ROBERT B. HUTCHINS
501 W GLENOAKS BLVD #34
GLENDALe CA 91202

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

ANTHONY GARGIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 30, 2004.**


George Hue
Case Administrator
State Bar Court